



وزارت امور خارجه

اداره
شماره
تاریخ
پست

9th February, 1960.

Dear Mr. Laylin,

With reference to your letter of December 3rd 1959, regarding your correspondence with the Government of Afghanistan, I have much pleasure in enclosing a copy of the agreement which was concluded with Afghanistan in 1938 with a declaration signed in Kabul by the Ambassador of Iran for the Iranian Government, and the Afghan Minister of Foreign Affairs on behalf of the Afghanistan Government.

The Iranian Parliament ratified the Agreement, but the Afghan Parliament, first postponed and later refused its ratification.

Yours sincerely,

Abbas Aram

John G. Laylin Esq.,
Covington & Burling,
Union Trust Building,
Washington, 5.D.C.



MINISTÈRE IMPÉRIAL
DES AFFAIRES ÉTRANGÈRES

AGREEMENT BETWEEN THE IMPERIAL GOVERNMENT OF
IRAN AND THE ROYAL GOVERNMENT OF AFGHANISTAN
RELATING TO THE DIVISION OF THE HELMAND WATER.

The Imperial Government of Iran and the Royal Government of Afghanistan having been equally desirous to make equitable arrangement for the division of the Helmand water between the two countries,

Have resolved to conclude a special agreement for this purpose and have appointed as their Plenipotentiaries:-

For the Imperial Government of Iran;
His Excellency Mr. Bagher Kazemi
the Ambassador of the Imperial
Government of Iran in Kabul.

For the Royal Government of Afghanistan;
His Highness Ali Mohammad Khan
Minister of Foreign Affairs of
the Royal Government of Afghanistan.

Who having communicated to each other their respective full powers, found in good and due form, have agreed as follows:-

Article 1.-

The Governments of Iran and Afghanistan agree that every year any quantity of water from the Helmand river which reaches Band-i-Kamal is divided between Iran and Afghanistan on equal portion after leaving Band-i-Kamal Khan.

Article 2.-

In order that the beneficial use of water made from Charborjak village to Band-i-Kamal Khan is not increased more than the quantity of water drawn at present, the Government of Afghanistan undertakes not to construct nor to repair any other canal on the said distance in addition to the present running canals.



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Article 3.-

The officials and the authorised water distributors of the two parties together shall in the autumn of each year determine the quantity of water reaching Band-i-Kamal Khan and shall ascertain any amount of water that each of the two parties take from Band-i-Kamal Khan to Sikh Sar through the canals branching of the Helmand river, thus taking into account the share of each party in a manner that the two shares are equally divided.

They shall duly submit to each other, water distribution lists and the names of water courses together with the amount of water flowing in the canals of each party after having been determined. Should there be required hereafter, any alteration in the said lists whereby desiring to increase the flow at one and instead to reduce at the other, they shall inform each other.

Article 4.-

The equipments and instruments required for the determination of the amount of water flowing in the river and each party's canals, shall be provided by the technical officers of Iran and Afghanistan at the expenses of the two countries equally shared by them and are installed at suitable localities from Band-i-Kamal Khan onward. They shall likewise regulate if necessary, the river flow from Band-i-Kamal Khan till Sikh Sar;

Article 5.-

In order that the division and regulation of the waters of the Helmand river are made on equitable terms as desired in this Agreement, the technical officers of the two parties shall build at any suitable point in their own territory permanent watersheds. The expenses incurred for the construction of these watersheds shall be born by the two Contracting Parties proportion to the amount of water drawn by them after having reached an Agreement between them on its plan.



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Article 6.-

Until such time as permanent masonry structure of dams and weirs are built Tamarisk weirs shall be built as formerly. Should the two parties need Tamarisk they shall supply each other on payment of cost.

Article 7.-

As the canal head of the water courses directly branching of the Helmand river from Band-i-Kamal Khan and running into the territory of the two parties is in earth work, in order that no increase or deficiency is found in the water share of each party the two Governments undertake to build gradually as from the date of signing of this Agreement, until four years the canal heads by bricks and lime in a proper manner.

Article 8.-

The two Governments undertake not to take measure or action from Band-i-Kamal Khan till Doust Mohammad Khan village and Sikh sar the last watershed, which would cause deficit or shortage in the share of the two parties.

Article 9.-

The two Governments of Iran and Afghanistan mutually agree that their water distributor and technicians who are charged to execute the works mentioned in this Agreement together with their workmen charged for closing cleaning and regulating of the weirs and canals between Band-i-Kamal Khan till Sikh Sar which their actions in the territory of the other party according to this Agreement is considered permissible, may enter without arms into the territory of each other.

Note - The materials, instruments and tools which the officials and workmen require for carrying out the duties provided in this Agreement or they take away with them for meeing their livelihood while leaving the border shall be exempt from payment of custom duties.



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Article 10.-

Should the Helmand river from above the Band-i-Kamal Khan be conducted into a new bed, the provisions of Article 1 shall be put into effect and watershed fixed by the Agreement of the two Governments in other locality which would correspond to Band-i-Kamal Khan in the present estate of Chakhansur.

Should the Helmand river be conducted from below the Band-i-Kamal Khan into a new bed or should the present bed becomes so deep as to make the irrigation of Sistan impossible in such event the two Governments agree that for the irrigation of the lands in Sistan from the share of the water determined in Article 1 to enter into an agreement with mutual consent under separate terms.

Article 11.-

Any dispute arising in connection with the enforcement of this Agreement which the water distributors and those incharge may be unable to settle or may be out of their power, shall be settled under the authority of the Governor and the director of Finance in Sistan on behalf of the Government of Iran and the Governor and director of Finance of Chakhansur on behalf of the Government of Afghanistan. The decision adopted by this joint commission shall be binding. If the subject under dispute could not be solved by this means within two months from the date of its appearance it shall be settled by the concerned departments of the two parties at its earliest possible time.

Article 12.-

The two Contracting Parties undertake that in the event of the nationals of either party violating the conditions set out for the use of water of the Helmand river from Band-i-Kamal Khan as defined in the Agreement or encroaching from the provisions thereof, shall immediately take necessary steps in their own territory for its adjustment and to impose lawful punishment on the offender.



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Article 13.-

The two Contracting Parties shall within two months from the date of signing this Agreement, inform the boundary officials and the residents around the river, of the arrangements made for the beneficial of the Helmand water from the Band-i-Kamal Khan and their share of the water in their own territory.

Article 14.-

Each Contracting Party shall immediately after the signing of this Agreement appoint officials for the control and inspection of the enforcement of the Articles of the Agreement and shall introduce them to the other party by writing.

Article 15.-

This Agreement shall be ratified within three months from the date of signing by the appropriate authorities of the two Governments. The instruments of ratification shall be exchanged in Kabul.

Article 16.-

This Agreement shall be valid and put in force after the exchange of the instruments of ratification.

Done in duplicate in Persian language; both copies being authoritative.

In witness whereof, the above named Plenipotentiaries have signed the present Agreement and have affixed thereto their seals.



MINISTERE IMPERIAL
DES AFFAIRES ETRANGERES

DECLARATION

In view of the sincere friendly and brotherly relations which happily exist between the Imperial Government of Iran and the Royal Government of Afghanistan, at this time when the Agreement relating to the division of the water of the Helmand river is being signed by the respective plenipotentiaries of the two parties, in order that no grievance or misunderstanding may remain between the dwellers of Sistan and Chakhansur and naturally between the Governments of the two parties and that the resident nationals of the said parties may trust the friendship and cooperation of each other with extreme frankness and mutual confidence, the following Joint Declaration is signed and attached to the Agreement of the division of the Helmand water dated today.

First - The Imperial Government of Iran hereby declares that its sole intention from the present Agreement is the cultivation and irrigation of Sistan so that the cultivators may not on this account be in deficit and distress and has no intention whatsoever to seize any means or pretext for interfering in the internal affairs of Afghanistan and it consistently wishes the success and prosperity of Afghanistan.

Second - The Royal Government of Afghanistan declares that under no circumstances has any intention to cause any deficiency or suppress or in any way to stop the flow of water to Sistan and for this purpose shall not permit any measures to be taken which would curtail the water share of Iran from Band-i-Kamal Khan (as provided in the Article 1 of the Agreement) and to damage the cultivation and irrigation of Sistan.

Kabul - dated 6th Bahman 1317.

The Ambassador of the
Imperial Government of
Iran.

The Minister of Foreign
Affairs of the Royal
Government of Afghanistan.

Bagher Kazemi

Ali Mohammad

Temporary Agreement for Distribution
of Water

In accordance with instructions from their Governments, the Representatives of the Imperial Government of Iran and of the Royal Afghan Government having met on 11/7/1316 (11th Mizan 1316) at Band-i-Kohak and after measuring the quantity of water for canals of both countries and measuring the water falling into Band-i-Kamal Khan, it was decided that half of the water from Band-i-Kamal Khan be left to Lakhshak according to the protocol dated 15/6/1315 (15th Shahriwar 1315)* corresponding to 12th Sumbola, 1315.* The protocol was agreed to by the representatives of the Royal Afghan Government and of the Imperial Government of Iran on 15/7/1316 (15th Mehr 1316)** corresponding to 13th Mizan 1316**, at Chakhansur and copies were exchanged between them. ⁶²¹
1937

Representatives of the
Imperial Government of Iran

Mr. Hasan Dibaian, Chief
of Agriculture Department
and Public Domain of Seistan.

Mr. Manuchir Khalmani,
Engineer and Chief of
Construction of Seistan.

Representatives of the
Royal Afghan Government

Mohamed Ashraf Khan,
Assistant to Oriental
Bureau, Ministry of Foreign
Affairs

Mohamed Kabir Khan,
Engineer, Director of
Eastern Road of Afghanistan.

PROTOCOL

The representatives of the Royal Afghan Government and of the Imperial Government of Iran, having met in a friendly spirit, have agreed temporarily that any quantity of water from the Helmand River that reaches Band-i-Kamal Khan and between that point and Band-i-Lakhshak will be distributed half and half between the inhabitants of Afghan Chakhansur and Iranian Siestan. Each party is entitled to use its share at any places in its territory. Prior to flood in the Helmand River, in order that no damage be incurred, dams will be constructed as usual. However, at that time also the Afghan subjects are able to use half of the said water at any place it is needed.

This agreement is executed in duplicate and signed by the representatives of both parties. Dated Fifteenth Shahriwar corresponding to twelfth Sumbols, thirteen hundred fifteen. ***

* September 3-5, 1936

** October 5-7, 1937

*** September 3-5, 1936

Representatives of the
Royal Afghan Government

Mohamed Karim Khan,
Chief of the Mission

Mohamed Ashraf Khan,
Frontier Commissioner

Mohamed Siddiq Khan,
Director of Foreign Affairs,
of Farah & Chakhansur

Mohamed Kabir Khan, Engineer

Representatives of the
Imperial Government of Iran

Sarkar Sarhang Dokry,
Chief of the Mission

Mr. Nasiri, Representative of the
Ministry of Foreign Affairs

Mr. Shoerazi, representative of
the Finance Ministry

Mr. Halati, representative of the
General Directorate of Agricul-
ture

Agreement between the Royal Afghan
Government and the Imperial Govern-
ment of Iran concerning Distribution
of Water of the Helmand River.

Section 1

The Governments of Afghanistan and Iran agree that any quantity of water reaching Band-i-Kamal Khan* from the Helmand River every year may be distributed equally between Afghanistan and Iran after Band-i-Kamal Khan.

Section 2

In order that from the village of Char Burjak to Band-i-Kamal Khan no water may be used in excess of the quantity of water now consumed, the Afghan Government agrees not to dig or construct any canal in addition to canals now running within the above distance.

Section 3

The authorized officials and water distributors of both sides will determine jointly each year the quantity of water reaching Band-i-Kamal Khan in the autumn season, and will fix the quantity of water to be taken by each party by canals from Band-i-Kamal Khan to Sikh Sar to be counted equally in the shares of both sides. The method of distribution, the names of canals and the quantity of water of canals of both sides will be communicated to each other after determination. In case hereafter any change is deemed essential in the above methods of distribution of water, they will inform each other if they want more water at one place and instead less at another place.

Section 4

Necessary apparatus and instruments for the determination of the quantity of river and canal water of both sides will be furnished equally by the technical staffs of Afghanistan and Iran at the Governments' expense and will be installed at appropriate places after Band-i-Kamal Khan and will also regulate the watercourse of the River from Band-i-Kohak to Sikh Sar if necessary.

Section 5

In order that the distribution of water of the Helmand River from Band-i-Kamal Khan may be accomplished on an equitable basis, which is the object of this agreement, the technical staffs of both parties will build permanent watersheds

* Kamal Khan Dam

at appropriate places in their territories. The expenses for erection of these watersheds will be borne by the contracting parties after agreeing together in the proportion of water to be used by them.

Section 6

Dams from tamarisk wood will be built as before until permanent dams and dikes are constructed. If tamarisk wood is needed for construction of dams by one of the parties, the other party will supply the wood against payment.

Section 7

As the mouths of canals which come out directly from the Helmand River and Bank-i-Kamal Khan and run into the territories of both parties are made of mud, and in order that no damage be sustained by either party, the contracting parties agree to construct the mouths of bricks and lime at their own expense within four years of the signing of this contract.

Section 8

The contracting parties agree that no action will be decided upon and taken from Band-i-Kamal Khan to Deh* Dost Mohamed Khan and Sikh Sar which may reduce the share of water of, or cause damage to, either party.

Section 9

The Governments of Afghanistan and Iran reciprocally agree that the technicians and water distributors serving as staffs for the operation of this contract and similarly laborers and workmen for construction of dams, cleaning and regulating dams and canals between Band-i-Kohak and Sadh-i-Sar, are allowed to enter the territory of each other with necessary permits without weapons provided they are authorized to work in the opposite territory in accordance with this Agreement.

Note: Materials, apparatus and articles which are required for carrying out this contract or living necessities which they take with them across the frontier will be exempt from customs duty.

Section 10

In case the Helmand River shifts to a new bed from Band-i-Kamal Khan, the application of Section 1 to any other place which may serve instead of Band-i-Kamal Khan in the present Chakhansur District will be settled by the contracting

* Deh = village

parties and watershed will be determined. If below Band-i-Kamal Khan it should shift to a new bed, or if the present bed becomes so deep that it cannot irrigate Seistan lands, the contracting parties agree in this case to supply water for Seistan lands under separate terms and conditions from the share of water specified in Section 1.

Section 11

Any kind of differences which occur in the execution of the provisions of this Agreement which cannot be settled by the water distributors or the officials in charge, or which may be beyond their authority, will be settled by the Afghan Governor and Revenue Officer of Chakhansur and the Iranian Governor and Revenue Officer of Seistan or their representatives. Their unanimous vote will be final and decisive. If the dispute is not settled within two months from the date it originated, it will be settled definitely at an early date by the Central Governments of the Contracting Parties.

Section 12

Each of the contracting parties agrees that if nationals of either interfere with the method prescribed in this Agreement for the use of water of the Helmand River from Band-i-Kamal Khan, or violate the provisions of the Agreement, they shall be prosecuted at once in its territory and the culprits shall be legally punished.

Section 13

Within two months from the date of the signing of the Agreement each of the Contracting Parties will inform its frontier officials and inhabitants living along the river about the arrangement for utilizing water and as to its share from Band-i-Kamal water.

Section 14

Each of the Contracting Parties immediately after the signature of this Agreement will nominate an official to supervise the carrying out of the provisions of the Agreement and will inform the other party in writing.

Section 15

This Agreement will be ratified by the competent authorities of the Contracting Parties within three months after its signature and instruments of ratification will be exchanged in Kabul.

Section 16

This Agreement will be valid and effective after exchange of ratifying documents.

Kabul, Eighth of Jadda (Dey) 1317*

Royal Afghan Minister
of Foreign Affairs

Ambassador of the
Imperial Government of Iran

* December 29, 1938

DECLARATION

In view of the sincere friendly and brotherly relations which happily exist between the Royal Afghan Government and the Imperial Government of Iran, on this occasion when the Agreement for the distribution of Helmand River water is being signed by the Plenipotentiaries of the Contracting Parties and in order that there may not remain any anxiety or misunderstanding between the inhabitants of Chakhansur and Siestan and the two Governments, and so that the inhabitants of both sides can with great sincerity and with confidence in their reciprocal friendship cooperate with and trust one another, the Plenipotentiaries have signed the following joint declaration and annexed it to the Agreement for the distribution of Helmand River water of today's date.

1. The Royal Afghan Government hereby declares that it has no object or intention whatsoever to interfere with the supply of water to Seistan and therefore will not allow any action which may result in a reduction of the share of Iran from Band-i-Kamal Khan (as specified in Section 1 of the Agreement) that would cause damage and loss to the Agriculture and irrigation of Seistan.
2. The Imperial Government of Iran hereby declares that its sole object under this Agreement is agriculture and irrigation of Seistan so that farmers may not be in difficulty and distress, and has no idea to find any pretext to interfere in the internal affairs of Afghanistan and always hopes for its progress and advancement.

Kabul, Eighth of Jaddi, 1317

Royal Afghan Minister
of Foreign Affairs

Ambassador of the
Imperial Government of Iran

First Project of Declaration

The Royal Afghan Government declares that it has no idea to interfere with the supply of water to Seistan while preserving its full right to use water of the Helmand River above Band-i-Kamal Khan for development of agriculture and irrigation of the country as stipulated in Section 1 of the Agreement. No steps will be taken below Band-i-Kamal Khan which may result in reduction of the share of Iran and consequent damage to the agriculture and irrigation of Seistan.

The Imperial Government of Iran declares that it does not consider in any case the use of water of the Helmand River above Band-i-Kamal Khan for agriculture and irrigation of lands of Afghanistan to constitute interference with the supply of water to Seistan.

Second Project of Declaration

The Royal Afghan Government declares that it has no idea to interfere with the supply of water to Seistan while preserving its full right to use water of the Helmand River above Band-i-Kamal Khan for development of agriculture and irrigation of the country as specified and stipulated in Section 1 of the Agreement. No steps will be taken below Band-i-Kamal Khan which may result in reduction of the share of Iran and consequent damage to the agriculture and irrigation of Seistan.

The Imperial Government of Iran declares that its object under this Agreement is agriculture and irrigation of Seistan from the specified share of water for Iran from Band-i-Kamal Khan as specified in Section 1 of the Agreement so that farmers may not be in difficulty and distress on this account. It further declares that it does not consider in any case the use of water of the Helmand River above Band-i-Kamal Khan for the improvement of agriculture and betterment of irrigation of territory of Afghanistan as constituting interference with the supply of water to Seistan.

Third Project of Declaration

If the Imperial Government of Iran on the approval of the Majlis Shora Meli* is insistent on the non-amendment of the former declaration and desires its renewal, it is alternatively proposed that by letter the Ambassador of the Imperial Government in Kabul or the Minister of Foreign Affairs of the Imperial Government will officially interpret and comment on the former declaration as follows:

I assure you that the use of water of the Helmand River above Band-i-Kamal Khan for development of agriculture and irrigation of Afghanistan will not at all be considered in the opinion of the Imperial Government of Iran as interference with the supply of water to Seistan.

* National Assembly

Temporary Agreement for Distribution
of Water

In accordance with instructions from their Governments, the Representatives of the Imperial Government of Iran and of the Royal Afghan Government having met on 11/7/1316 (11th Mizan 1316) at Band-i-Kohak and after measuring the quantity of water for canals of both countries and measuring the water falling into Band-i-Kamal Khan, it was decided that half of the water from Band -i-Kamal Khan be left to Lakhshak according to the protocol dated 15/6/1315 (15th Shahriwar 1315)* corresponding to 12th Sumbola, 1315.* The protocol was agreed to by the representatives of the Royal Afghan Government and of the Imperial Government of Iran on 15/7/1316 (15th Mehr 1316)** corresponding to 13th Mizan 1316**, at Chakhansur and copies were exchanged between them.

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Kabul, Eighth of Jadda (Dey) 1317*

Royal Afghan Minister
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* December 29, 1938

DECLARATION

In view of the sincere friendly and brotherly relations which happily exist between the Royal Afghan Government and the Imperial Government of Iran, on this occasion when the Agreement for the distribution of Helmand River water is being signed by the Plenipotentiaries of the Contracting Parties and in order that there may not remain any anxiety or misunderstanding between the inhabitants of Chakhansur and Siestan and the two Governments, and so that the inhabitants of both sides can with great sincerity and with confidence in their reciprocal friendship cooperate with and trust one another, the Plenipotentiaries have signed the following joint declaration and annexed it to the Agreement for the distribution of Helmand River water of today's date.

1. The Royal Afghan Government hereby declares that it has no object or intention whatsoever to interfere with the supply of water to Seistan and therefore will not allow any action which may result in a reduction of the share of Iran from Band-i-Kamal Khan (as specified in Section 1 of the Agreement) that would cause damage and loss to the Agriculture and irrigation of Seistan.
2. The Imperial Government of Iran hereby declares that its sole object under this Agreement is agriculture and irrigation of Seistan so that farmers may not be in difficulty and distress, and has no idea to find any pretext to interfere in the internal affairs of Afghanistan and always hopes for its progress and advancement.

Kabul, Eighth of Jaddi, 1317

Royal Afghan Minister
of Foreign Affairs

Ambassador of the
Imperial Government of Iran

First Project of Declaration

The Royal Afghan Government declares that it has no idea to interfere with the supply of water to Seistan while preserving its full right to use water of the Helmand River above Band-i-Kamal Khan for development of agriculture and irrigation of the country as stipulated in Section 1 of the Agreement. No steps will be taken below Band-i-Kamal Khan which may result in reduction of the share of Iran and consequent damage to the agriculture and irrigation of Seistan.

The Imperial Government of Iran declares that it does not consider in any case the use of water of the Helmand River above Band-i-Kamal Khan for agriculture and irrigation of lands of Afghanistan to constitute interference with the supply of water to Seistan.

Second Project of Declaration

The Royal Afghan Government declares that it has no idea to interfere with the supply of water to Seistan while preserving its full right to use water of the Helmand River above Band-i-Kamal Khan for development of agriculture and irrigation of the country as specified and stipulated in Section 1 of the Agreement. No steps will be taken below Band-i-Kamal Khan which may result in reduction of the share of Iran and consequent damage to the agriculture and irrigation of Seistan.

The Imperial Government of Iran declares that its object under this Agreement is agriculture and irrigation of Seistan from the specified share of water for Iran from Band-i-Kamal Khan as specified in Section 1 of the Agreement so that farmers may not be in difficulty and distress on this account. It further declares that it does not consider in any case the use of water of the Helmand River above Band-i-Kamal Khan for the improvement of agriculture and betterment of irrigation of territory of Afghanistan as constituting interference with the supply of water to Seistan.

Third Project of Declaration

If the Imperial Government of Iran on the approval of the Majlis Shora Meli* is insistent on the non-amendment of the former declaration and desires its renewal, it is alternatively proposed that by letter the Ambassador of the Imperial Government in Kabul or the Minister of Foreign Affairs of the Imperial Government will officially interpret and comment on the former declaration as follows:

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* National Assembly

BRIEF MEMORANDUM -- 1938 AGREEMENT

Notes on Material Examined at State Department, by
Monroe Leigh, Dated February 1, 1950.

Iranian Draft. In 1314 (1935-1936), Iran proposed the draft treaty which became the basis of a 1938 Agreement. Article VIII of this draft read as follows:

"The two governments agreed not to undertake any action along the River in their respective territories which would result in a diminution of the share of the waters to either of the countries."

(Article 8 of the agreement that was signed reads as follows:

"The two Governments undertake not to indulge into any actions or operation from Band-e-Kamal Khan up to Band-e-Doost Mohamad Khan and Sikhsar, where the last water-bed is situated, which would diminish the share of water on each side!")

Because the Afghan Government objected to the clause of the draft agreement, the substance of that clause was embodied in the declaration annexed to the agreement. [The second paragraph of the declaration states that the Afghan Government will not permit "such steps which would cause any shortage in the share of the water of Iran from Band-e-Kamal Khan (as expressed in the first Article of this Agreement) or any damage to the irrigation and plantation of Seistan area." Article 1 of the signed agreement states that "any quantity of Helmand water reaching Band-e-Kamal Khan (will) be equally divided between Iran and Afghanistan from Band-e-Kamal Khan downwards."]

BRIEF MEMORANDUM -- 1938 AGREEMENT

Notes on Material Examined at State Department, by
Monroe Leigh, Dated February 1, 1950.

Iranian Draft. In 1314 (1935-1936), Iran proposed the draft treaty which became the basis of a 1938 Agreement. Article VIII of this draft read as follows:

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BRIEF MEMORANDUM -- 1938 TREATY DECLARATION

Appendix No. 3 Iran Rep.

Text of Declaration. In the second clause of the declaration the Afghan Government declared that they will not permit "any shortage in the share of the water of Iran from Band-e-Kamal Khan (as explained in the first Article of this Agreement) or any damage to the irrigation and plantation of Seistan area."

Date. The date of the declaration, according to Appendix No. 3, is the same as that of the treaty, namely, 6th Bahman (Dalv) 1317 (January 1939). According to our notebook copy of the agreement, the date was 8th Yadda (Dey) 1317 (December 29, 1938).

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BRIEF MEMORANDUM -- 1938 AGREEMENT

Appendix No. 3 Iran Rep., Text of Agreement.

Article 1 provides that "any quantity of Helmand water reaching Band-e-Kamal Khan be equally divided between Iran and Afghanistan from Band-e-Kamal Khan downwards."

Article 2 provides that Afghanistan will not dig or repair any canal "other than those already in use" "between Charburjak Village to Band-e-Kamal Khan", "in order that no excess water to what is actually drawn is consumed."

Article 3 provides for joint determination of the quantity of water reaching Band-e-Kamal Khan in autumn and of the quantity to be drawn by each side from Band-e-Kamal Khan to Sikhsar, and for adjustment of the takings of water to effect an overall equal division.

Article 4 provides for installations for measurement of the flow, and for regulation of the course of the river between Band-e-Kohak and Sikhsar.

Article 5 provides for the construction within each country of permanent watersheds below Band-e-Kamal Khan "in proportion to the quantity of water which they draw, after having duly agreed to the plans thereof."

Article 6 provides for the construction of tamarisk weirs.

Article 7 provides that each Government shall construct "proper masonry heads" for the mouths of the tributaries below Band-e-Kamal Khan within four years from the date of the agreement.

Article 8 forbids any actions between Band-e-Kamal Khan and Sikhsar "which would diminish the share of water on each side."

Article 9 provides for entry of personnel and materials into each other's territory for work on canals and weirs pursuant to the agreement.

Article 10 provides that, "should the Helmand river be transferred to a new bed from above Band-e-Kamal Khan, the provisions of the Article 1 of this Agreement shall be carried out in another suitable point in Chakansur area instead of Band-e-Kamal Khan and the watershed would also be transferred accordingly. Similarly, if the river is transferred to a new bed from below Band-e-Kamal Khan, or the present bed become so deep as to make irrigation in Seistan impossible, the two Governments agree to enter into new arrangements with each other, under separate terms, with a view to providing Seistan with its share of water as stipulated in Article 1."

Article 11 provides procedure in the event of disputes arising under the agreement.

Article 12 provides for prosecution of nationals disturbing the treaty arrangements.

Article 13 provides for publication of the arrangements made under the treaty.

Article 14 provides for appointment of a representative to execute the treaty provisions.

Article 15 provides for ratification and exchange of instruments of ratification in Kabul.

Article 16 provides that the treaty shall become effective "upon the exchange of the instrument of ratification."

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BRIEF MEMORANDUM -- 1938 AGREEMENT

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Ratification of Agreement. "In view of the Afghanistan Government rejecting the attached declaration the said agreement was not exchanged and the long-standing controversy between the two Parties yet remained unsettled." (Article 15 of the agreement provides for the exchange of instruments of ratification in Kabul. Article 16 provides that the agreement shall become effective upon exchange of the instruments of ratification. It would appear, therefore, that the agreement never became effective because of the non-exchange of instruments of ratification.)

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BRIEF MEMORANDUM -- 1938 TREATY

Undated Cablegram from Teheran (to Embassy in United States?)

Context of Iranian and Afghan Notes of August 1947.

The Iranians had proposed "the dispatch of a mixed commission composed of technical men of both sides to the spot, with a view to investigating and submitting a report aiming at the solution of the question. The Afghans contended that this would constitute interference in the internal affairs of Afghanistan. They, however, requested that an Afghan commission should, for the present, go to Sistan to examine the situation and to make a report to the Afghan Government for their study."

"In reply to the Afghan telegram to the effect that the Iranian Government should either accept the 1317 treaty without the declaration, or permit the Afghan commission to go to Sistan to investigate water requirements, the Iranian Government replied that inasmuch as the treaty and the declaration were jointly approved by the Madjless, it finds itself unable to accept the treaty and disregard the declaration, which forms an unalienable part of the treaty."

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Notes on Material Examined at State Department, by Monroe Leigh,
Dated February 1, 1950.

Iranian Note. On August 3, 1947, the Iranian Foreign Office instructed its Ambassador at Kabul to inform the Afghan Government that Iran considered the 1938 Agreement and the declaration attached thereto as inseparable documents.

The note also stated that inspection of the Helmand Basin within Afghanistan was implicit in the Goldsmid award. It also demanded that water be delivered within fifteen days or Iran would be forced to take action and hold Afghanistan responsible for the damage.

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