

Title: Exchange of notes constituting an agreement between the government of the United States and the Government of Canada relating to addition...

Parties: Canada, United States

Basin: Niagara

Date: 11/27/1941

No. 314. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND CANADA RELATING TO ADDITIONAL TEMPORARY DIVERSION FOR POWER PURPOSES OF WATERS OF THE NIAGARA RIVER ABOVE NIAGARA FALLS. WASHINGTON, 27 OCTOBER AND 27 NOVEMBER

I

The Secretary of State to the Canadian Minister

DEPARTMENT OF STATE

WASHINGTON

October 27, 1941

Sir:

I have the honor to refer to the exchange of notes of May 20, 1941² regarding increased diversions of water for power purposes at Niagara Falls, and to conversations that have recently taken place between officials of the Governments of the United States and Canada regarding the urgent need for additional power in the Niagara Falls area.

In my note of May 20, with which you agreed on behalf of the Canadian Government, I said, in part :

“In view of the above, and having in mind assurances of engineers that there will be no material adverse effect to the scenic beauty of the Falls I propose through this exchange of notes that for the duration of the emergency and in all events subject to reconsideration by both Governments on October 1, 1942, an additional diversion for power purposes of 5,000 cubic feet per second be utilized on the United States side of the Niagara River above the Falls. In making this proposal this Government is prepared to give assurances that no objection will be raised to an additional diversion of 3,000 cubic feet per second on the Canadian side of the Niagara River above the Falls. It is also proposed that the engineers of the two Governments be instructed to take such steps as may be necessary with a view to initiating forthwith the construction of works designed to distribute the flow of waters over the Falls in such a manner as to preserve their scenic beauty.

“Moreover, the American Government proposes that upon the entry into effect of the Agreement for the Utilization of the Water in the Great Lakes-St. Lawrence Basin signed on March 19, 1941³, the foregoing arrangements will be subject to the provisions of Article IX of the Agreement, and that it will be open to the Commission appointed under provisions of the Agreement and carrying out the duties

imposed upon it, to take such action as may be necessary, and as may come within the scope of the Agreement with regard to diversions at Niagara.”

I am advised by the defense authorities of this Government and by the Federal Power Commission that, notwithstanding the additional diversions authorized in May, there is now a gravely urgent need for more power in the Niagara Falls area for manufacturing vitally necessary to the United States National Defense and Lease-Lend Programs. I understand that a similar need exists on the Canadian side.

On the United States side in this area there is idle equipment which could at once utilize an additional diversion for power purposes of 7,500 cubic feet per second. I understand that, on the Canadian side, the existing equipment is in the course of normal operations fully used only in daytime hours and that, if fully used during the night hours, it could utilize an additional diversion amounting, in the daily aggregate, to 6,000 cubic feet per second.

I propose therefore that, for the duration of the emergency and in any event subject to reconsideration on October 1, 1942:-

1. The Canadian Government will raise no objection to an additional diversion for power purposes of 7,500 cubic feet per second, in terms of the daily aggregate, through existing facilities, on the United States side of the Niagara River above the Falls, and
2. The United States Government will raise no objection to an additional diversion for power purposes of 6,000 cubic feet per second, in terms of the daily aggregate, through existing facilities, on the Canadian side of the Niagara River above the Falls.

These diversions would be subject to an operating margin of one percent of the total diversions whether authorized by this agreement or otherwise, and could be exceeded to that extent in order to provide for small excesses which may occur at times in the interest of efficient operation.

Upon acceptance of these proposals by your Government, it will be even more important than it was earlier in the year to proceed with the construction, in the 1942 open season, of remedial works. The United States-St. Lawrence Basin Advisory Committee and the Canadian Temporary Great Lakes-St. Lawrence Basin Committee (created pursuant to the Exchange of Notes of October 14, 1940)⁴ should be instructed immediately by the respective Governments, concert for the purpose of jointly recommending to the two Governments - (1) the exact nature and design of the works that should be constructed in 1942, and (2) the allocation of the task of construction as between the two Governments. Upon the recommendations being accepted by the two Governments, and the acceptance notified to each other, the construction would be undertaken pursuant to the recommendations. The total cost of the works would be divided equally between the two Governments regardless of the allocation of construction.

The United States Government proposes further that upon the entry into effect of the Agreement for the Utilization of the Water in the Great Lakes-St. Lawrence Basin signed on March 19, 1941, the foregoing arrangements will be subject to the provisions of Article IX of the Agreement, and that it will be open to the Commission appointed under the provisions of the Agreement and carrying out the duties imposed upon it, to take such action as may be necessary, and as may come within the scope of the Agreement with regard to diversions at Niagara.

If the foregoing is acceptable to the Government of Canada, this note and your reply thereto, when approved by the Senate, will be regarded as placing on record the agreement of the two Governments concerning this matter.

Accept, Sir, the renewed assurances of my highest consideration.

For the Secretary of State:

A. A. BERLE,

The Honorable Leighton McCarthy, K.C.

Minister of Canada

¹Came into force on 27 November 1941, by the exchange of the said notes.

²League of Nations, *Treaty Series*, Vol. CCIV, p. 199.

³United States: H. Doc. 153, 77th Cong., 1st sess.