

Title: Treaty between the United States of America and Canada relating to the uses of the waters of the Niagara River

Parties: Canada, United States

Basin: Niagara

Date: 2/27/1950

No. 1762. TREATY¹ BETWEEN THE UNITED STATES AMERICA AND CANADA RELATING TO THE USES THE WATERS OF THE NIAGARA RIVER. SIGNED WASHINGTON, ON 27 FEBRUARY 1950

The United States of America and Canada, recognizing their primary obligation to preserve and enhance the scenic beauty of the Niagara Falls and River and, consistent with that obligation, their common interest in providing beneficial use of the waters of that River,

Considering that the quantity of water which may be diverted from the Niagara River for power purposes is at present fixed by Article V of the treaty with respect to the boundary waters between the United States of America and Canada, signed at Washington, January 11, 1909,² between the United States of America and Great Britain, and by notes exchanged between the Government of the United States of America and the Government of Canada in 1940,³ 1941,⁴ 1948⁵ authorizing for emergency purposes temporary additional diversions,

Recognizing that the supply of low-cost power in northeastern United States and southeastern Canada is now insufficient to meet existing and potential requirements and considering that the water resources of the Niagara River may be more fully and efficiently used than is now permitted by international agreement.

Desiring to avoid a continuing waste of a great natural resource and to make it possible for the United States of America and Canada to develop, for the benefit of their respective peoples, equal shares of the waters of the Niagara River available for power purposes, and,

Realizing that any redevelopment of the Niagara River for power in the United States of America and Canada is not advisable until the total diversion of water which may be made available for power purposes is authorized permanently and any restrictions on the use thereof are agreed upon,

Have resolved to conclude a treaty in furtherance of these ends and for that purpose have appointed as their plenipotentiaries:

The United States of America:

Dean Acheson, Secretary of State of the United States of America, and

Canada:

H.H. Wrong, Ambassador Extraordinary and Plenipotentiary of to the United States of America,
Who, after having communicated to one another their full powers, found in good and due form, have agreed upon the following articles

Article I

This Treaty shall terminate the third, fourth, and fifth paragraphs of Article V of the treaty between the United States of America and Great Britain relating to boundary waters and questions arising between the United States of America and Canada dated January 11, 1909, and the provisions embodied in the notes exchanged between the Government of the United States of America and the Government of Canada at Washington on May 20, 1941,¹ October 27, 1941⁶ November 27,

1941,⁷ and December 23, 1948 regarding temporary diversions of water of the Niagara River for power purposes.

Article II

The United States of America and Canada agree to complete in accordance with the objectives envisaged in the final report submitted to the United States of America and Canada on December 11, 1929, by the Special International Niagara Board,⁸ the remedial works which are necessary to enhance the beauty of the Falls by distributing the waters so as to produce an unbroken crestline on the Falls. The United States of America and Canada shall request the International Joint Commission to make recommendations as to the nature and design of such remedial works and the allocation of the task of construction as between the United States of America and Canada. Upon approval by the United States of America and Canada of such recommendations the construction shall be undertaken pursuant thereto under the supervision of the International Joint Commission and shall be completed within four years after the date upon which the United States of America and Canada shall have approved the said recommendations. The total cost of the works shall be divided equally between the United States of America and Canada.

Article III

The amount of water which shall be available for the purposes included in Articles IV and V of this Treaty shall be the total outflow from Lake Erie to the

Welland Canal and the Niagara River (including the Black Rock Canal) less the amount of water used and necessary for domestic and sanitary purposes and for the service of canals for the purposes of navigation. Waters which are being diverted into the natural drainage of the Great Lakes System through the existing Long Lac-Ogoki works shall continue to be governed by the notes exchanged between the Government of the United States of America and the Government of Canada at Washington on October 14 and 31 and November 7, 1940,⁹ and shall not be included in the waters allocated under the provisions of this Treaty.

Article IV

In order to reserve sufficient amounts of water in the in the Niagara River for scenic purposes, no diversions of the water specified in Article III of this Treaty shall be made for power purposes which will reduce the flow over Niagara Falls to less than one hundred thousand cubic feet per second each day between the hours of eight a.m., E.S.T., and ten p.m., E.S.T., during the period of each year beginning April 1 and ending September 15, both dates inclusive, or to less than one hundred thousand cubic feet per second each day between the hours of eight a.m., E.S.T., and eight p.m., E.S.T., during the period of each year beginning September 16 and ending October 31, both dates inclusive, or to less than fifty thousand cubic feet per second at any other time; the minimum rate of fifty thousand cubic feet per second to be increased when additional water is required for flushing ice above the Falls or through the rapids below the Falls. No diversion of the amounts of water, specified in this Article to flow over the Falls, shall be made for power purposes between the Falls and Lake Ontario.

Article V

All water specified in Article III of this Treaty in excess of water for scenic purposes in Article IV may be diverted for power purposes.

Article VI

The waters made available for power purposes by the provisions of this shall be divided equally between the United States of America and Canada.

Article VII

The United States of America and Canada shall each designate a representative who, acting jointly, shall ascertain and determine the amounts of water available for the purposes of this Treaty, and shall record the same, and shall also record the amounts of water used for power diversions.

Article VIII

Until such time as there are facilities in the territory of one party to use its full share of the diversions of water for power purposes agreed upon in this Treaty, the other party may use the portion of that share for the use of which facilities are not available.

Article IX

Neither party shall be responsible for physical injury or damage to persons or property in the territory of the other which may be caused by any act authorized or provided for by this Treaty.

Article X

This Treaty shall be ratified and the instruments of ratification exchanged at Ottawa. The Treaty shall come into force upon the date of the exchange of ratifications and continue in force for a period of fifty years and thereafter until one year from the day on which either party shall give notice to the other party of its intention of terminating the Treaty.

IN WITNESS WHEREOF, the undersigned plenipotentiaries have signed this Treaty.
DONE in duplicate at Washington this twenty-seventh day of February, 1950.

For the United States of America
Dean Acheson

For Canada:
H. H. Wrong

No. 1762. TREATY BETWEEN THE UNITED STATES OF AMERICA AND, CANADA RELATING TO THE USES OF THE WATERS OF THE NIAGARA RIVER. SIGNED AT WASHINGTON, ON 27 FEBRUARY 1950¹⁰

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹¹ RELATING TO THE CONSTRUCTION OF REMEDIAL WORKS AT NIAGARA FALLS. OTTAWA, 13 SEPTEMBER 1954

Official text: English.

Registered by the United States of America on 26 April 1956.

The Canadian Secretary of State for External Affairs to the American Charge d'Affairs ad interim

DEPARTMENT OF EXTERNAL AFFAIRS

CANADA

No. X-233

Ottawa, September 13, 1954

Sir:

I have the Honour to refer to recent conversations between representatives of our two Governments with respect to the construction of remedial works at Niagara Falls. As Article 11 of the Convention between the United States and Canada signed on February 27, 1950, concerning uses of the waters of the Niagara River provides that "the total cost of the works shall be divided equally between the United States of America and Canada", the Government of Canada and the Government of the United States consider it desirable that 50 per cent of the cost of the remedial works at Niagara falls completed by or on behalf of the other Government shall be paid by or on behalf of such other Government as work progresses.

I have the honour to propose, therefore, that our two Governments agree as follows:

(a) The Government of Canada and the Government of the United States shall each bear 50 per cent of the cost of the remedial works at Niagara Falls done by or on behalf of the other Government as work progresses. Monthly statements of expenditures and payments to cover them in the funds of the country performing the work shall be exchanged between the agents of the two countries as indicated below. Adjustments will be made from time to time as required.

(b) In order to facilitate administration, payments by the United States Government shall be made directly to The Hydro-Electric Power Commission of Ontario, through the office of the Project Manager, Sir Adam Beck-Niagara Generating Station No. 2.

Niagara Falls, Ontario, acting on behalf of the Government of the Province of Ontario which, under an Agreement dated March 27, 1950, made between the Government of Canada and the Government of Ontario, has assumed the obligations of the Government of Canada in respect of the Canadian share of the cost of the remedial works to be constructed pursuant to Article 11 of the Niagara Treaty. Payments to the United States Government by The Hydro-Electric Power Commission Ontario shall be made to "The Treasurer of the United States" and be forwarded to the District Engineer, Buffalo, New York, District of the Corps of Engineers. In order to comply with the provisions of Article 11 of the Niagara Treaty, the receipts to be given for each payment made by The Hydro-Electric Power Commission of Ontario to the United States Corps of Engineers, and *vice versa*, shall constitute a full and sufficient discharge of the financial obligations of the two Governments under the Treaty in respect of each such payment. In addition a final discharge of financial obligations shall be made between the Government of Canada and the Government of the United States when payments for all costs of the remedial works have been completed.

(c) Data in support of claims for reimbursements incurred for the period covered shall be made available by the Government of the United States through the District Office of the United States Corps

of Engineers in Buffalo, New York, and by the Government of Canada through The Hydro-Electric Power Commission of Ontario, Office of the Project Manager, Sir Adam Beck-Niagara Generating Station No. 2 Niagara Falls, Ontario.

(d) This arrangement shall remain in force until all payments have been completed and the final discharge of financial obligations referred to above has been made by an exchange of notes. It is understood that the arrangements herein set forth for the procedure respecting payment of amounts due Canada are subject to the appropriation by the Congress of the funds required to pay such disbursements.

If the Government of the United States is agreeable to the foregoing proposals, I suggest that the present Note and your reply to that effect should constitute an agreement between our two Governments which shall take effect this day.

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

L. B. PEARSON
Secretary of State for External Affairs

Don C. Bliss, Esq.
Charge d' Affairs a.i.
Embassy of the United States of America
Ottawa

II

The American Charge d'Affairs ad interim to the Canadian Secretary of State for External Affairs

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA

UNITED STATES EMBASSY

No. 48

Ottawa, September 13, 1954

Sir:

I have the honor to acknowledge receipt of your note No. X-233 of September 13 1954, in which you make proposals concerning the procedure to be followed in the payment of expenditures incurred by or on behalf of the respective Governments for work performed at Niagara Falls pursuant to Article II of the convention between the United States and Canada signed on February 27, 1950 concerning the uses of the waters of the Niagara River.

I have the honor to state that the Government of the United States concurs in then proposals and agrees that your note and the present reply shall constitute an agreement between our Governments establishing procedures to be followed with respect to disbursement of funds in payment for expenditures on construction of remedial works at Niagara Falls.

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

Don C. Bliss

The Honorable Lester B. Pearson

Secretary of State for External Affairs

Ottawa

¹ Came into force on 10 October 1950 by the exchange of the instruments of ratification at Ottawa, in accordance with article X.

² De Martens: *Nouveau Recueil general de Traites*, troisieme serie, tome IV, p. 208.

³ League of Nations, *Treaty Series*, Vol. CCIII, p. 267.

⁴ League of Nations, *Treaty Series*, Vol. CCIV, p. 199.

⁵ United States of America: Department of State *Bulletin*, Jan. 16, 1949, p. 85.

⁶ League of Nations, *Treaty Series*, Vol. CCIV, p. 199.

⁷ United Nations, *Treaty Series*, Vol. 103, p. 193.

⁸ United States of America: Senate Doc. No. 128, 71st Cong., 2d Sess.

⁹ League of Nations, *Treaty Series*, Vol. CCIII, p. 267.

¹⁰ United Nations, *Treaty Series*, Vol. 132, p. 223.

¹¹ Came into force on 13 September 1954 by the exchange of the said notes.