

Treaty Between Canada and the United States of America Concerning the Diversion of the Niagara River

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Canada and the United States of America, 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 for the most 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 Canada and the United States of America, signed at Washington January 11, 1909, between Great Britain and the United States of America, and by notes exchanged between the Government of Canada and the Government of the United States of America in 1940, 1941, and 1948, 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 Canada and the United States of America 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 Canada and the United States of America 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:

Canada:

H. H. Wrong, Ambassador Extraordinary and Plenipotentiary of Canada to the United States of America, and

The United States of America:

Dean Acheson, Secretary of State of 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 Great Britain and the United States of America relating to boundary waters and questions arising between Canada and the United States of America dated January 11, 1909, and the provisions embodied in the notes exchanged between the Government of Canada and the Government of the United States of America at Washington on May 20, 1941, October 27, 1941, November 27, 1941, and December 23, 1948 regarding temporary diversions of water of the Niagara River for power purposes.

Article II

Canada and the United States of America agree to complete in accordance with the objectives envisaged in the final report submitted to Canada and the United States of America on December 11, 1929, by the Special International Niagara Board, 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. Canada and the United States of America 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 Canada and the United States of America. Upon approval by Canada and the United States of America 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 Canada and the United States of America shall have approved the said recommendations. The total cost of the works shall be divided equally between Canada and the United States of America.

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 Canada and the Government of the United States of America at Washington on October 14 and 31 and November 7, 1940, 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 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 am, E.S.T., and eight pm, 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 reserved 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 Treaty shall be divided equally between Canada and the United States of America.

Article VII

Canada and the United States of America 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 thereof 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.

H. H. Wrong
FOR CANADA

Dean Acheson
FOR THE UNITED STATES OF AMERICA

AGREEMENT BETWEEN CANADA AND ONTARIO

Agreement made this twenty-seventh day of March, 1950 between the Government of Canada, herein represented by the Right Honourable Louis S. St-Laurent of the First Part and the Government of Ontario, herein represented by the Honourable Leslie M. Frost of the Second Part.

WHEREAS a treaty hereinafter referred to as the Niagara Diversion Treaty has now been signed by the Government of Canada and the Government of the United States of America to supplement the Boundary Waters Treaty of 1909 and amend Article V of that Treaty with respect to the diversion of water from the Niagara River and the division of diverted water between the United States of America and Canada; and

WHEREAS it is desirable that an Agreement be made between Canada and Ontario in respect of the utilization of the flow of the waters of the Niagara River to be in accordance with the Niagara Diversion Treaty:

Now THEREFORE This Agreement Witnesseth:

Article I

This Agreement is conditional upon the ratification of the Niagara Diversion Treaty by Canada and the United States of America.

Article II

Ontario undertakes to construct the Canadian portion of such remedial works in the Niagara River as may be agreed upon by Canada and the United States of America pursuant to Article II of the Niagara Diversion Treaty and to pay the Canadian share of the cost of the remedial works constructed pursuant to that Article. Canada undertakes to consult Ontario before giving approval to such recommendations as the International Joint Commission may make as to the nature and design of such remedial works.

Article III

Canada, without delay, will authorize and make available to Ontario such diversions of the water specified in Article III of the Niagara Diversion Treaty, for power purposes, as Canada is from time to time enabled to authorize under the terms of said Treaty.

Article IV

Ontario undertakes to make provision for the disposition of claims and for the satisfaction of any valid claims arising out of the damage or injury to persons or property occurring in Canadian territory in connection with the construction and operation of any of the works authorized or provided for by this Agreement.

Article V

This Agreement is made subject to its approval by the Parliament of Canada and by the Legislature of the Province of Ontario. If, however, the Niagara Diversion Treaty has not come into force within two years from the date of this Agreement, either party hereto may by written notice to the other, forthwith cancel this Agreement.

IN WITNESS WHEREOF the Right Honourable Louis S. St-Laurent has hereunto set his hand on behalf of Canada and the Honourable Leslie M. Frost has hereunto set his hand on behalf of Ontario;

Both upon the twenty-seventh day of March, in the year of Our Lord one thousand nine hundred and fifty.

Louis S. St-Laurent

Leslie M. Frost

**DEPARTMENT OF EXTERNAL AFFAIRS
CANADA**

PROTOCOL OF EXCHANGE

The undersigned, having met together for the purpose of exchanging the Instruments of Ratification of the Niagara Diversion Treaty between Canada and the United States of America, concerning uses of the waters of the Niagara River, signed at Washington on February 27, 1950 and the respective Instruments of Ratification of the aforesaid Treaty having been carefully compared, it is observed that the United States Instrument of Ratification contains the following reservation:

“The United States on its part expressly reserves the right to provide by Act of Congress for re-development, for the public use and benefit, of the United States’ share of the waters of the Niagara River made available by the provisions of the Treaty, and no project for re-development of the United States’ share of such waters shall be undertaken until it be specifically authorized by Act of Congress.”

Canada accepts the above-mentioned reservation because its provisions relate only to the internal application of the treaty within the United States and do not affect Canada’s rights or obligations under the Treaty.

Therefore, the Instruments of Ratification found to be conformable in all other respects, the said Exchange took place this day in the usual form.

IN WITNESS WHEREOF they have signed the present Protocol of Exchange and have affixed thereto their seals.

DONE at Ottawa, this 10th day of October, 1950.

Louis S. St-Laurent
FOR CANADA

Stanley Woodward
FOR THE UNITED STATES OF AMERICA