

## DIVERSION OF WATERS OF NIAGARA RIVER

*Exchange of notes at Washington October 27 and November 27, 1941,  
supplementing agreement of May 20, 1941*

*Senate advice and consent to ratification November 27, 1941, sub-  
ject to elimination of paragraph relating to article IX of agree-  
ment of March 19, 1941*

*Approved by the President of the United States, subject to elimination  
of above-mentioned paragraph, November 27, 1941*

*Entered into force November 27, 1941*

*Terminated October 10, 1950, by treaty of February 27, 1950*<sup>1</sup>

55 Stat. 1380; Executive Agreement Series 223

*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, 1941<sup>2</sup> 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 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 pre-

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<sup>1</sup> 1 UST 694; TIAS 2130.

<sup>2</sup> EAS 209, *ante*, p. 217.

pared 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, 1941,<sup>3</sup> 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.”

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.

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<sup>3</sup> An agreement signed at Ottawa Mar. 19, 1941, was not perfected.

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 Advisory Committee and the Canadian Temporary Great Lakes—St. Lawrence Basin Committee (created pursuant to the Exchange of Notes of October 14, 1940) <sup>4</sup> should be instructed immediately by the respective Governments to 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 the task 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.<sup>5</sup>

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, Jr.

The Honorable

LEIGHTON McCARTHY, K.C.,

*Minister of Canada.*

<sup>4</sup> EAS 187, *ante*, p. 199.

<sup>5</sup> The Senate of the United States gave its advice and consent to the ratification of the arrangement subject to the elimination of this paragraph.

*The Canadian Minister to the Secretary of State*

CANADIAN LEGATION  
 WASHINGTON  
 October 27th, 1941

No. 651

SIR :

I have the honour to inform you that the Canadian Government concurs in the proposals set forth in your note of October 27th, 1941, regarding the utilization of water for power purposes at Niagara Falls.

I have the honour to be, with the highest consideration, Sir,  
 Your most obedient, humble servant,

H. H. WRONG  
*For the Minister*

The Hon. CORDELL HULL,  
*Secretary of State of the United States,  
 Washington, D.C.*

*The Secretary of State to the Canadian Minister*

DEPARTMENT OF STATE  
 WASHINGTON  
 November 27, 1941

SIR :

I have the honor to refer to the exchange of notes between the Department of State and your Legation on October 27, 1941, regarding the temporary diversion at Niagara Falls of additional quantities of water for reasons of national defense.

On November 27, 1941, the Senate gave its advice and consent to ratification of this exchange of notes subject to the elimination from my note of October 27, 1941, of the paragraph reading as follows:

“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.”

It is requested that you inform me whether the Canadian Government has any objection to the elimination of the above-mentioned paragraph.

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

For the Secretary of State:  
ADOLF A. BERLE, Jr.

The Honorable  
LEIGHTON MCCARTHY, K.C.,  
*Minister of Canada.*

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*The Canadian Minister to the Secretary of State*

CANADIAN LEGATION  
WASHINGTON  
*November 27th, 1941*

No. 722

SIR:

With reference to your note of November 27th, 1941, concerning the Exchange of Notes regarding the temporary diversion at Niagara Falls of additional quantities of water for reasons of national defence, I have the honour to inform you that the Canadian Government has no objection to the elimination of the paragraph in question from your note of October 27th, 1941.

I have the honour to be, with the highest consideration, Sir,

Your most obedient, humble servant,

H. H. WRONG  
*For the Minister*

The Hon. CORDELL HULL,  
*Secretary of State of the United States,*  
*Washington, D.C.*