

Canada - B.C. Agreement

8th JULY, 1963

This Agreement made this 8th day of July, 1963 between the Government of Canada, herein referred to as "Canada", and the Government of British Columbia, herein referred to as "British Columbia",

WHEREAS as a Treaty between Canada and the United States of America relating to Cooperative Development of the water resources of the Columbia River Basin has been signed on the 17th day of January 1961; and

WHEREAS it is desirable that an Agreement be made between Canada and British Columbia concerning implementation of the Treaty and disposal of benefits arising thereunder:

Now therefore This Agreement witnesseth:

1. In this Agreement

"Treaty" means "The Treaty between Canada and the United States of America relating to cooperative development of the Water Resources of the Columbia River Basin" signed at Washington, District of Columbia, United States of America on the 17th day of January, 1961 together with any protocol or exchange of notes relating thereto.

2. All proprietary rights, title and interests arising under the Treaty and particularly those with respect to

- (a) downstream power benefits accruing to Canada,
- (b) proceeds from the sale of downstream power benefits in the United States of America,
- (c) monies payable and electric power accruing to Canada in return for flood control,
- (d) the stand-by transmission services rendered by transmission grids in the United States of America,
- (e) benefits arising in Canada from any dam constructed pursuant to the Treaty,
- (f) rights of water diversion granted to Canada by Article XIII of the Treaty, and
- (g) monies paid to Canada by the United States of America in settlement of any claim made by Canada under the Treaty which relates in any way to the obligations of British Columbia under this Agreement

belong to British Columbia absolutely for its own use.

3. British Columbia shall at its own expense;

- (a) construct or arrange for the construction of all the dams and operate or arrange for the operation of all the storages as required by Articles II and IV of the Treaty;
 - (b) not operate and prevent the operation of any storage in British Columbia in the manner prohibited by Article IV(5) of the Treaty;
 - (c) prepare and make available for flooding the land in Canada required for the purposes of any dam constructed by the United States of America under Article XII of the Treaty;
 - (d) not make and prevent the making of any diversion of water prohibited by Article XIII of the Treaty;
 - (e) carry out or arrange for the carrying out of any variation in operation of any Kootenay River diversion agreed upon pursuant to Article XIII(6) of the Treaty;
 - (f) abide and carry out or arrange for the carrying out of any decisions made pursuant to article XVI of the Treaty which relate in any way to the obligations of British Columbia under this Agreement;
 - (g) pay to Canada, upon demand therefor, all costs incurred by Canada in connection with proceedings under Article XVI of the Treaty which relate in any way to the obligations of British Columbia under this Agreement;
 - (h) carry out or arrange for the carrying out of anything required to be done by Canada under Article XVIII(3) of the Treaty;
 - (i) carry out and give full force and effect to all conditions, provisions, orders and decisions imposed or made by the Permanent Engineering Board established by the Treaty; and
 - (j) generally do all those things which constitutionally it is capable of doing to ensure that Canada is not in default under the Treaty and not do and so far as it is constitutionally capable prevent any person from doing anything which Canada has under the Treaty undertaken to refrain from doing.
4. (1) It is acknowledged and agreed that Canada has the right and obligation to do all things which the Treaty requires Canada to do that British Columbia has not undertaken to do by this Agreement.
- (2) Notwithstanding subsection (1) of this section Canada shall obtain the concurrence of British Columbia before;
- (a) confirming by exchange of notes any operating plan pursuant to Article IV of the Treaty;
 - (b) making any election pursuant to Article VI(5) of the Treaty relating to payment for flood control;
 - (c) agreeing to any variation of entitlement to downstream power benefits pursuant to Article IX of the Treaty;
 - (d) confirming any electrical coordination arrangement made pursuant to the Treaty;
 - (e) agreeing to any diversion of water by the United States of America pursuant to Article XIII of the Treaty;

- (f) agreeing, as provided for in Article XIII(6) of the Treaty, to any variation in the use of water diverted by British Columbia pursuant to that Article;
 - (g) charging the entities designated pursuant to Article XIV of the Treaty with any new power or duty; and
 - (h) terminating the Treaty.
5. Canada shall, if requested by British Columbia, endeavour to obtain the agreement of the United States of America with respect to;
- (a) any variation of the operation of any dam constructed under Article XII of the Treaty;
 - (b) any modification of the area of land in Canada required for the purposes of any dam constructed under Article XII of the Treaty;
 - (c) any diversion of water not provided for by the Treaty;
 - (d) any new power or duty which British Columbia wishes to impose upon the entities designated under Article XIV of the Treaty;
 - (e) any direction which British Columbia of Canada wishes given to the Permanent Engineering Board established by the Treaty; and
 - (f) any proposal relating to the Treaty which Canada and British Columbia agree is in the public interest.

6. (1) Canada shall designate the British Columbia Hydro and Power Authority as the Canadian entity for the purposes of Article XIV of the Treaty and British Columbia shall ensure that the British Columbia Hydro and Power Authority fulfills the obligations imposed on the Canadian entity by the Treaty.

(2) British Columbia may nominate one of the two persons to be appointed to the Permanent Engineering Board established by the Treaty and Canada shall upon such nomination appoint the nominee to that Board.

7. (1) Canada shall do whatever is reasonably possible to ensure compliance with the Treaty by the United States of America and shall not waive any default or breach by the United States of America without having consulted British Columbia.

(2) Canada shall, at the request of British Columbia, present any claim deemed reasonable by Canada arising under the Treaty which British Columbia wishes made against the United States of America.

(3) Canada shall establish any arbitration tribunal necessary to settle differences under the Treaty and shall, after consultation with British Columbia, defend or prosecute, as the case may be, all differences submitted to such tribunal or to the International Joint Commission under the Treaty.

8. (1) British Columbia shall indemnify and save harmless Canada from and in respect to any liability of Canada to the United States of America arising under the Treaty.

(2) British Columbia shall not be required to indemnify Canada pursuant to subsection (1) of this section in respect of any liability to the United States of America directly attributable to any action or failure to take action by Canada.

(3) Canada shall not discharge any liability in respect of which it is indemnified pursuant to subsection (1) of this section without having consulted with British Columbia.

9. British Columbia shall maintain or arrange for the maintenance of complete accounts and records relating to;

- (a) the discharge of the obligations of British Columbia under this Agreement;
- (b) the receipt and ultimate disposal of all monies derived from the sale in the United States of America of any downstream power benefits arising under the Treaty;
- (c) the receipt and ultimate disposal of all monies and other compensation derived from the provision of flood control under the Treaty; and

shall comply with or arrange for compliance with any reasonable request for disclosure of any such account or record made by Canada of the Permanent Engineering Board established by the Treaty.

10. (1) Canada shall transfer to British Columbia the administration and control of any unimproved lands in Canada belonging to Canada which are required for the construction and operation of the dams and storages which British Columbia is obligated by this Agreement to construct or operate.

(2) For the purposes of subsection (1) of this section the expression "lands" does not include lands forming part of an Indian Reserve.

11. (1) As soon as may be convenient after execution of this Agreement, Canada shall undertake negotiations with the United States of America with a view to entering into a protocol to the Treaty embodying certain matters agreed to by Canada and British Columbia and Canada shall thereafter with due diligence proceed toward ratification of the Treaty.

(2) Any protocol entered into pursuant to subsection (1) of this section shall be attached to this Agreement as Schedule A and shall form part of this Agreement.

12. (1) Canada agrees that the downstream power benefits arising in the United States of America under the Treaty may be sold in the United States of America subject to terms that are acceptable to both Canada and British Columbia and that will ensure that the proceeds of the sale will contribute to savings in the cost of electric power in the Province of British Columbia.

(2) Any agreement concluded under subsection (1) of this section with respect to the sale of downstream power benefits shall be attached to this Agreement as Schedule B and shall form part of the Agreement.

(3) British Columbia will finance the Treaty projects by use of the funds derived from the sale of downstream power benefits arising in the United States of America, from the flood control benefits and from other sources as required, so that Canada shall have no obligation for the financing of these Treaty projects.

13. (1) The construction of the dams and operation of the storages required by the Treaty shall be carried out in accordance with all laws in force from time to time whether to those of Canada or British Columbia.

(2) British Columbia shall take whatever steps are necessary to amend or repeal any law, permit or regulation and shall not enact any new law or regulation or issue any permit which may operate to frustrate, hamper or interfere with the carrying out of any undertaking in the territory of Canada provided for by the Treaty.

(3) Canada shall do everything possible to expedite the issue of all licences and permits required under the laws of Parliament by either British Columbia or the British Columbia Hydro and Power Authority in order for them to carry out and perform their obligations under this Agreement, including Schedules A and B.

14. Canadian labour and material shall be used in all construction or operation of the dams and storages constructed or operated pursuant to this Agreement to the full extent to which they are procurable, consistent with proper economy and the expeditious carrying out of the construction and operation and no person shall be discriminated against in the course of the construction and operation by reason of his race, colour, religion or political affiliation.

15. (1) Canada and British Columbia will consult as required on technical and other matters of mutual interest with a view to facilitating the implementation of the Treaty, avoiding disputes and carrying out this Agreement.

(2) In particular a Liaison Committee shall be established consisting of senior representatives of Canada and British Columbia.

(3) If differences or questions arise or allegations are made as to loss arising out of any action or failure to take action by either Canada or British Columbia which cannot be resolved through consultation they shall be submitted to the Exchequer Court of Canada for decision and that Court has jurisdiction to determine the rights and liabilities of either party under this Agreement.

(4) British Columbia shall, in respect of itself, procure the enactment of whatever legislation is necessary to implement subsection (3) of this section.

16. (1) British Columbia agrees that generators will be installed in the dam at Mica Creed as soon as economically feasible.

(2) Subject to the requirements of British Columbia, British Columbia will make available to other provinces of Canada, through a national grid or otherwise, on a first call basis, electric power from the Columbia River and other power developments in the Province of British Columbia at prices not higher than those

obtainable by British Columbia from time to time from the United States of America for any comparable British Columbia entity electric power exported thereto.

17. This Agreement binds Canada and British Columbia from the date of the Agreement and thereafter so long as any obligation or right of either the United States of America or Canada exists under the Treaty or any part thereof.

IN WITNESS WHEREOF THE UNDERSIGNED, DULY AUTHORIZED BY THEIR RESPECTIVE GOVERNMENTS HAVE SIGNED AND DELIVERED THIS AGREEMENT,

For the Government of Canada on the 8th day of July, 1963.

.....**"L.B. Pearson"**.....

.....*Prime Minister*.....

.....**"Paul Martin"**.....

.....*Secretary of State
for External Affairs*.....

For the Government of British Columbia on the 8th day of July, 1963.

.....**"W.A.C. Bennett"**.....

.....*Premier and President of the
Executive Council*.....

.....**"R.G. Williston"**.....

.....*Minister of Lands, Forests
and Water Resources*.....