

18-19 GEORGE V.

CHAP. 32.

An Act to facilitate the provision of storage in Lac Seul in the Province of Ontario, and to repeal the Lake of the Woods Regulation Act, 1921.

[Assented to 11th June, 1928.]

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as *The Lac Seul Conservation Act, 1928*. **Short title**
2. The agreement between the Dominion of Canada, the Province of Ontario and the Province of Manitoba, in the terms set out in the schedule hereto, shall be as binding on the Dominion of Canada as if the provisions thereof had been set forth in an Act of this Parliament, and the Governor in Council is hereby authorized to carry out the provisions of the said agreement. **Agreement binding, and Governor in Council authorized to carry out its provisions**
3. *The Lake of the Woods Regulation Act, 1921*, chapter thirty-eight of the statutes of 1921, is repealed. **Repeal**
4. Section two of this Act shall come into force on a day to be named by the Governor General by his proclamation. **Date of operation of section 2**
5. Section three of this Act shall come into force on the day upon which the Lieutenant-Governor of the Province of Ontario shall bring into force by his proclamation *The Lake of the Woods Control Board Act, 1922*, chapter twenty-one of the statutes of Ontario, 1922. **Date of operation of section 3**

SCHEDULE

SCHEDULE.

Agreement made this 28th day of February, A.D. 1928.

BETWEEN:

THE GOVERNMENT OF THE DOMINION OF CANADA, herein represented by the Honourable Charles Stewart, Minister of Interior for the said Dominion of Canada, hereinafter referred to as "Canada",

of the first part,

THE GOVERNMENT OF THE PROVINCE OF ONTARIO, herein represented by the Honourable William Finlayson, Minister of Lands and Forests for the said Province of Ontario, hereinafter referred to as "Ontario",

of the second part,

AND

THE GOVERNMENT OF THE PROVINCE OF MANITOBA, herein represented by the Honourable John Bracken, Prime Minister of the Province of Manitoba, hereinafter referred to as "Manitoba",

of the third part.

Whereas the Crown in the right of the Province of Ontario is the owner of the lands under and bordering on Lac Seul in the District of Kenora in the Province of Ontario and also of all ungranted lands under and bordering on the rivers and waters flowing into and out of said lake in the Province of Ontario, and the water powers and water power sites connected therewith;

And whereas the Crown in the right of the Dominion of Canada is the owner of all ungranted lands under the waters of the Winnipeg River in the Province of Manitoba and the water powers and water power sites connected therewith and has leased certain of such power sites to companies and others who have developed the same in whole or in part;

And whereas there are a number of water powers and water power sites at the outlet of Lac Seul and upon the English and Winnipeg Rivers between that lake and the Provincial Boundary between the Provinces of Ontario and Manitoba, all of which powers are vested in the Crown in the right of the Province of Ontario and none of which has as yet been developed;

And whereas it is desirable to construct a regulating dam at Lower Ear Falls at the outlet of Lac Seul for the purpose of increasing the capacity of the power plants already erected and that may hereafter be erected on the Winnipeg River in the Province of Manitoba;

And whereas the erection of a dam at Lower Ear Falls will facilitate the development of power at that point, and be of advantage in the development of power at other power sites on the waters flowing out of Lac Seul between Lower Ear Falls and said Provincial Boundary;

And whereas Canada has requested Ontario to erect a dam at the location and for the purposes aforesaid, and has offered to contribute towards the cost of the construction and maintenance of the

same, and Ontario has agreed so to do subject to the terms, stipulations, conditions and reservations hereinafter contained;

Now therefore this Agreement witnesseth:

1. In this agreement unless there is something in the context or subject inconsistent therewith the expressions following shall have the following meanings, namely:

“Capital Cost” shall mean and include:

(a) The cost of all works of every character and kind whatsoever in connection with the construction of said dam;

(b) The cost of acquiring flooding privileges or other necessary easements;

(c) Compensation for timber, buildings and improvements, including Ontario Crown Lands, Indian Lands and lands owned by private individuals taken or in any way injuriously affected in connection with the proposed work;

(d) Cost of surveys and all engineering work connected with the undertaking;

(e) Cost of providing means of communication by telephone or otherwise with said dam;

(f) Cost of providing the necessary transportation facilities required for the construction, maintenance and operation of said dam;

(g) Cost of the necessary houses and buildings required for those employed in the care and operation of said dam;

(h) Cost of equipment for operating and repairing said dam;

(i) Interest during construction;

(j) The sum of \$50,000.00 in respect of flooding Pelican Falls in Ontario;

(k) All other costs and expenses of every character and kind whatsoever, whether similar to or different from those above enumerated that may properly be incurred in the construction of said work that are usually or may properly be considered capital.

“Cost of Maintenance” shall mean and include all cost and expenses necessary to keep said dam and appurtenances thereto in good repair and condition and fit for the purposes of a control or regulating dam.

“Cost of Operation” shall mean and include salaries and wages of men in charge of said dam and all costs and all expenses in connection with the operation thereof and the control of the water passing through or over the same, including such remuneration as may be paid or provided for the members of the Board of Control hereinafter mentioned.

“Provincial Boundary” shall mean the boundary between the Provinces of Ontario and Manitoba.

“Concurrent Legislation” shall mean the Act of the Dominion of Canada known as *The Lake of the Woods Control Board Act, 1921*, being Chapter 10 of 11-12 George V, and the Act of the Province of Ontario, known as *The Lake of the Woods Control Board Act, 1922*, being Chapter 21 of 12 George V.

“Engineer” shall mean an engineer or engineers appointed by the Province of Ontario.

“Said Waters” shall mean waters in the Province of Ontario flowing out of Lac Seul, between and including Lower Ear Falls and the Provincial Boundary.

2. Ontario shall construct a dam for the purposes of conservation, regulation and power at Lower Ear Falls at the outlet of Lac Seul on lands owned by the Crown in the right of the Province of Ontario which said dam shall be absolutely owned, controlled and operated by Ontario and neither of the other parties hereto shall have any ownership in, title to or authority or control over it.

3. The said dam shall be of concrete construction with proper stop logs or other control and so designed as to permit a storage range in Lac Seul of approximately twelve feet or such reasonable variation therefrom as the Engineer shall determine.

4. The said dam shall be constructed in accordance with plans and specifications prepared by the Engineer, and a certificate of the Engineer that said dam has been constructed in accordance with the provisions hereof shall be conclusive evidence of such fact. Upon the giving of such certificate, Ontario shall be released from all liability in respect of such construction.

5. Three-fifths of the capital cost of said dam shall be paid and borne by Canada and two-fifths by Ontario, said proportions being approximately equivalent to the difference in the mean water elevation between said Provincial Boundary and Lake Winnipeg, and between the present mean water level of Lac Seul and the said Provincial Boundary.

6. All capital cost as herein defined payable by Canada shall be advanced to Ontario monthly or otherwise as may be agreed upon on certificates furnished by the Engineer.

7. After the said dam has been completed and put in operation the total interest on the capital cost apportioned to and contributed by Ontario under the provisions of paragraph 5 hereof shall be paid annually at the rate of five per centum per annum by Canada to Ontario, subject to the provision in the next succeeding paragraph hereof contained.

8. From time to time as the powers on said waters are developed and used Canada shall be relieved from payment of interest on that proportion of the capital cost contributed by Ontario that the amount of head so developed and used bears to the total developable head on said waters; and when and so soon as the total developable head on said waters shall have been developed and used, Canada shall be relieved altogether from payment of interest on Ontario's share of the capital cost. In computing the developable head at Lower Ear Falls the storage range provided by said dam shall not be taken into consideration.

9. At the end of every five years from the date of the completion of said dam as fixed by the Engineer under paragraph 17 hereof, an account shall be taken of the interest payable by Canada to Ontario in respect of Ontario's share of the said capital cost and proper adjustments made in accordance with the provisions hereinbefore set forth.

10. The cost of maintenance and operation of said dam shall be wholly paid by Canada until powers on said waters have been developed and put to use. As such powers are developed and put to use, Ontario shall pay that proportion of two-fifths of the cost of such maintenance and operation that the head so developed and used on said waters bears to the total developable head thereon. When and so soon as the total developable head on said waters has been fully developed and put to use, Canada shall bear three-fifths and Ontario two-fifths of the cost of said maintenance and operation.

11. At the end of every five-year period an account shall be taken of the amount payable by Canada and Ontario respectively for the cost of maintenance and operation, computed in the manner aforesaid, and proper adjustments made in respect thereof.

12. As soon as the lands over which flooding or other privileges are required have been determined, Ontario shall withdraw the same from sale, location or staking under *The Public Lands Act* or *The Mining Act of Ontario* or otherwise, but nothing herein contained shall limit or restrict the right of Ontario to develop or grant such lands or utilize or deal with the same in any manner that may be thought proper, provided the storage and regulation of water by said dam is not improperly interfered with.

13. Any capital cost incurred in the construction of said dam by reason of making provision for works for the development of power, over and above the cost that would necessarily have been incurred in the construction of said dam for conservation and regulation purposes only shall be paid by the Province of Ontario.

14. After said dam has been completed the amount, if any, payable by Ontario under the provisions of the next preceding paragraph hereof shall be determined by two engineers, one appointed by Canada and one by Ontario. Should the engineers so appointed fail to agree the matter shall be referred to an engineer to be appointed by the Chief Justice of Ontario whose decision shall be final and binding upon the parties.

15. Should said dam after the completion thereof be destroyed by the act of God, or otherwise without the consent or approval of Ontario or should it become physically impossible for any reason to operate the same in the manner intended all parties hereto shall be relieved from all liability hereunder, other than and except the liability of Canada to pay to Ontario such sums of money as may be then due and payable by Canada to Ontario under the provisions of this agreement.

16. Nothing herein contained shall by implication or otherwise be considered as a covenant or guarantee by Ontario, with reference to the level at which said waters will be kept or the flow thereof or that said dam will control or regulate the flow of said waters as intended and neither Canada or Manitoba shall have any recourse or claim for damages against Ontario by reason or on account of the construction of said dam or the operation thereof or anything done or attempted by virtue hereof. It being distinctly declared and agreed that Ontario shall incur no liability whatever hereunder either by reason of negligence, non-feasance or mis-feasance of its officials, representatives, servants or agents or otherwise howsoever.

17. The said dam shall for the purpose of this agreement be deemed to be completed at a date to be fixed by the Engineer, and after such date the provisions hereof with reference to maintenance and operation shall become applicable. The fixing of such date of completion shall not interfere with the contribution to and adjustment of capital expenditure by and between Canada and Ontario as herein provided for.

18. Notwithstanding anything herein contained the Lake of the Woods Control Board, appointed under the concurrent legislation shall have full power and authority to regulate and control the outflow of Lac Seul by means of said dam in accordance with the principles laid down in the concurrent legislation relating to the regulation and control of the outflow of the waters of Lac Seul.

19. The members of said Board of Control appointed by Canada shall be paid such remuneration as may from time to time be fixed by the Minister of the Interior for Canada and the members of said Board of Control appointed by Ontario shall be paid such remunerations as may from time to time be fixed by the Minister of Lands and Forests for Ontario.

20. It is understood and declared that all contributions by Canada hereunder, whether for capital cost, interest, or cost of maintenance and operation are subject to the right of Canada to be reimbursed therefor by tolls or dues levied or imposed on water powers developed or hereafter developed in Manitoba.

21. When and so soon as this agreement has become effective in accordance with the provisions of paragraph 23 hereof Ontario shall proceed with all reasonable and convenient dispatch to make the necessary engineering investigations and studies to acquire the requisite rights and easements and to perform all other acts necessary for the complete construction of said dam and appurtenances.

22. Manitoba hereby concurs in and approves of all the terms and conditions herein contained. It is understood however that neither this concurrence and approval nor the execution of this agreement by Manitoba shall in any way be construed as an admission express or implied in respect to the rights of the Province or shall in any way prejudice or affect those rights.

23. This agreement shall not become valid and effective until it has been confirmed by an Act of the Parliament of Canada and an Act of the legislature of Ontario nor until the Act of the Parliament of Canada, entitled *The Lake of the Woods Regulation Act, 1921*, being Chapter 38 of 11-12 George V has been repealed. Upon such repeal, everything necessary shall be done to bring said concurrent legislation into effect.

In witness whereof the parties hereto have executed these presents the day and year first above written.

WITNESS:

THE GOVERNMENT OF THE DOMINION OF CANADA,
By CHAS. STEWART,
Minister of Interior.

THE GOVERNMENT OF THE PROVINCE OF ONTARIO,
By W. FINLAYSON,
Minister of Lands and Forests.

THE GOVERNMENT OF THE PROVINCE OF MANITOBA,
By JOHN BRACKEN,
Prime Minister.

NOTE:

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