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CONVENTION AND PROTOCOL

Between

HIS BRITANNIC MAJESTY
IN RESPECT OF THE DOMINION OF CANADA

AND THE UNITED STATES

For Regulating the Level of the Lake of the Woods,
and of Identical Letters of Reference Submitting to
the International Joint Commission certain
Questions as to the Regulation of the Levels of
Rainy Lake and other Upper Waters

Signed at Washington, the 24th day of February, 1925

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Canadian
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Original

OTTAWA

1925

CONVENTION AND PROTOCOL

Between His Britannic Majesty in respect of the Dominion of Canada, and the United States, for regulating the level of the Lake of the Woods, and of identical letters of reference submitting to the International Joint Commission certain questions as to the regulation of the levels of Rainy lake and other upper waters.

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, in respect of the Dominion of Canada, and the United States of America,

Desiring to regulate the level of Lake of the Woods in order to secure to the inhabitants of Canada and the United States the most advantageous use of the waters thereof and of the waters flowing into and from the Lake on each side of the boundary between the two countries; and

Accepting as a basis of agreement the recommendations made by the International Joint Commission in its final report of May 18th, 1917, on the Reference concerning Lake of the Woods submitted to it by the Governments of Canada and the United States of America,

Having resolved to conclude a Convention for that purpose and have accordingly named as their plenipotentiaries:—

His Britannic Majesty, in respect of the Dominion of Canada: The Honourable Ernest Lapointe, K.C., a Member of His Majesty's Privy Council for Canada and Minister of Justice in the Government of that Dominion; and

The President of the United States of America: Charles Evan Hughes, Secretary of State of the United States;

Who, after having communicated to each other their full powers, found in good and due form, have agreed as follows:—

Article 1

In the present Convention, the term "level of Lake of the Woods" or "level of the lake" means the level of the open lake unaffected by wind or currents.

The term "Lake of the Woods watershed" means the entire region in which the waters discharged at the outlets of Lake of the Woods have their natural source.

The term "sea-level datum" means the datum permanently established by the International Joint Commission at the town of Warroad, Minnesota, of which the description is as follows:—

"Top of copper plug in concrete block carried below frost line, and located near fence in front of and to the west of new schoolhouse. Established October 3, 1912. Elevation, sea-level datum, 1068.797."

"The International Joint Commission" means the Commission established under the Treaty signed at Washington on the 11th day of January, 1909, between His Britannic Majesty and the United States of America, relating to boundary waters and questions arising between the United States and Canada.

Article 2

The level of Lake of the Woods shall be regulated to the extent and in the manner provided for in the present Convention, with the object of securing to the inhabitants of Canada and the United States the most advantageous use of the waters thereof and of the waters flowing into and from the Lake on each side of the boundary between the two countries for domestic and sanitary purposes, for navigation purposes, for fishing purposes, and for power, irrigation and reclamation purposes.

Article 3

The Government of Canada shall establish and maintain a Canadian Lake of the Woods Control Board, composed of engineers, which shall regulate and control the outflow of the waters of Lake of the Woods.

There shall be established and maintained an International Lake of the Woods Control Board composed of two engineers, one appointed by the Government of Canada and one by the Government of the United States from their respective public services, and whenever the level of the lake rises above elevation 1061 sea-level datum or falls below elevation 1056 sea-level datum the rate of total discharge of water from the lake shall be subject to the approval of this Board.

Article 4

The level of Lake of the Woods shall ordinarily be maintained between elevations 1056 and 1061.25 sea-level datum, and between these two elevations the regulation shall be such as to ensure the highest continuous uniform discharge of water from the lake.

During periods of excessive precipitation the total discharge of water from the lake shall, upon the level reaching elevation 1061 sea-level datum, be so regulated as to ensure that the extreme high level of the lake shall at no time exceed elevation 1062.5 sea-level datum.

The level of the lake shall at no time be reduced below elevation 1056 sea-level datum except during periods of low precipitation and then only upon the approval of the International Lake of the Woods Control Board and subject to such conditions and limitations as may be necessary to protect the use of the waters of the lake for domestic, sanitary, navigation and fishing purposes.

Article 5

If in the opinion of the International Lake of the Woods Control Board the experience gained in the regulation of the lake under Articles 3 and 4, or the provision of additional facilities for the storage of waters tributary to the lake, demonstrates that it is practicable to permit the upper limit of the ordinary range in the levels of the lake to be raised from elevation 1061.25 sea-level datum to a higher level and at the same time to prevent during periods of excessive precipitation the extreme high level of the lake from exceeding elevation 1062.5 sea-level datum, this shall be permitted under such conditions as the International Lake of the Woods Control Board may prescribe. Should such permission be granted, the level at which under Article 3 the rate of total discharge of water from the lake becomes subject to the approval of the International Lake of the Woods Control Board may, upon the recommendation of the Board and with the approval of the International Joint Commission, be raised from elevation 1061 sea-level datum to a correspondingly higher level.

Article 6

Any disagreement between the members of the International Lake of the Woods Control Board as to the exercise of the functions of the Board under Articles 3, 4 and 5 shall be immediately referred by the Board to the International Joint Commission whose decision shall be final.

Article 7

The outflow capacity of the outlets of Lake of the Woods shall be so enlarged as to permit the discharge of not less than forty-seven thousand cubic feet of water per second (47,000 c.f.s.) when the level of the lake is at elevation 1061 sea-level datum.

The necessary works for this purpose, as well as the necessary works and dams for controlling and regulating the outflow of the water, shall be provided for at the instance of the Government of Canada, either by the improvement of existing works and dams or by the construction of additional works.

Article 8

A flowage easement shall be permitted up to elevation 1064 sea-level datum upon all lands bordering on Lake of the Woods in the United States, and the United States assumes all liability to the owners of such lands for the costs of such easement.

The Government of the United States shall provide for the following protective works and measures in the United States along the shores of Lake of the Woods and the banks of Rainy River, in so far as such protective works and measures may be necessary for the purposes of the regulation of the level of the lake under the present Convention; namely, the removal or protection of buildings injuriously affected by erosion, and the protection of the banks at the mouth of Warroad River where subject to erosion, in so far in both cases as the erosion results from fluctuations in the level of the lake; the alteration of the railway embankment east of the town of Warroad, Minnesota, in so far as it may be necessary to prevent surface flooding of the higher lands in and around the town of Warroad; the making of provision for the increased cost, if any, of operating the existing sewage system of the town of Warroad, and the protection of the waterfront at the town of Baudette, Minnesota.

Article 9

The Dominion of Canada and the United States shall each on its own side of the boundary assume responsibility for any damage or injury which may have heretofore resulted to it or to its inhabitants from the fluctuations of the level of Lake of the Woods or of the outflow therefrom.

Each shall likewise assume responsibility for any damage or injury which may hereafter result to it or to its inhabitants from the regulation of the level of Lake of the Woods in the manner provided for in the present Convention.

Article 10

The Governments of Canada and the United States shall each be released from responsibility for any claims or expenses arising in the territory of the other in connection with the matters provided for in Articles 7, 8 and 9.

In consideration, however, of the undertakings of the United States as set forth in Article 8, the Government of Canada shall pay to the Government of the United States the sum of two hundred and seventy-five thousand dollars (\$275,000) in currency of the United States. Should this sum prove insufficient to cover the cost of such undertakings one-half of the excess of such cost over the said sum shall, if the expenditure be incurred within five years of the coming into force of the present Convention, be paid by the Government of Canada.

Article 11

No diversion shall henceforth be made of any waters from the Lake of the Woods watershed to any other watershed except by authority of the United States or the Dominion of Canada within their respective territories and with the approval of the International Joint Commission.

Article 12

The present Convention shall be ratified in accordance with the constitutional methods of the High Contracting Parties and shall take effect on the exchange of the ratification, which shall take place at Washington or Ottawa as soon as possible.

In faith whereof the above named Plenipotentiaries have signed the present Convention and affixed their respective seals.

Done in duplicate at Washington, the 24th day of February, 1925.

(Seal) ERNEST LAPOINTE.

(Seal) CHARLES EVANS HUGHES.

PROTOCOL ACCOMPANYING CONVENTION TO REGULATE THE LEVEL OF LAKE OF THE WOODS

At the moment of signing the Convention between His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, in respect of the Dominion of Canada, and the United States of America, regarding the regulation of the level of Lake of the Woods, the undersigned Plenipotentiaries have agreed as follows:—

1.

The plans of the necessary works for the enlargement of the outflow capacity of the outlets of Lake of the Woods provided for in Article 7 of the Convention, as well as of the necessary works and dams for controlling and regulating the outflow of the water, shall be referred to the International Lake of the Woods Control Board for an engineering report upon their suitability and sufficiency for the purpose of permitting the discharge of not less than forty-seven thousand cubic feet of water per second (47,000 c.f.s.) when the level of the lake is at elevation 1061 sea-level datum. Any disagreement between the members of the International Lake of the Woods Control Board in regard to the matters so referred shall be immediately submitted by the Board to the International Joint Commission whose decision shall be final.

2.

Should it become necessary to set up a special tribunal to determine the cost of the acquisition of the flowage easement in the United States provided for in Article 8 of the Convention, the Government of Canada shall be afforded an opportunity to be represented thereon. Should the cost be determined by means of the usual judicial procedure in the United States, the Government of Canada shall be given the privilege of representation by counsel in connection therewith.

3.

Since Canada is incurring extensive financial obligations in connection with the protective works and measures provided for in the United States along the shores of Lake of the Woods and the banks of Rainy River, under Article 8 of the Convention, the plans, together with the estimates of cost, of all such protective works and measures as the Government of the United States may propose to construct or provide for within five years of the coming into force of the Convention shall be referred to the International Lake of the Woods Control Board for an engineering report upon their suitability and sufficiency for the purpose of the regulation of the level of the lake under the Convention. Any disagreement between the members of the International Lake of the Woods Control Board in regard to the matters so referred shall be immediately submitted by the Board to the International Joint Commission whose decision shall be final.

4.

In order to ensure the fullest measure of co-operation between the International Lake of the Woods Control Board and the Canadian Lake of the Woods Control Board provided for in Article 3 of the Convention, the Government of Canada will appoint one member of the Canadian Board as its representative on the International Board.

5.

Until the outlets of Lake of the Woods have been enlarged in accordance with Article 7 of the Convention, the upper limit of the ordinary range in the levels of the lake provided for in Article 4 of the Convention shall be elevation 1060.5 sea-level datum, and the International Lake of the Woods Control Board may advise the Canadian Lake of the Woods Control Board in respect of the rate of total discharge of water from the lake which may be permitted.

In faith whereof the undersigned Plenipotentiaries have signed the present Protocol and affixed thereto their respective seals.

Done in duplicate at Washington the 24th day of February, 1925.

(Seal) ERNEST LAPOINTE.

(Seal) CHARLES EVANS HUGHES.

At the moment of signing the Convention and Protocol between His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, in respect of the Dominion of Canada, and the United States of America regarding the regulation of the level of Lake of the Woods, the undersigned Plenipotentiaries have agreed that the Government of the Dominion of Canada and the Government of the United States shall, without

delay, address to the International Joint Commission identic letters of reference relating to Rainy lake and other upper waters of the Lake of the Woods watershed as follows:—

“I have the honour to inform you that, in pursuance of Article 9 of the Treaty of the 11th January, 1909, between Great Britain and the United States, the Governments of Canada and the United States have agreed to refer to the International Joint Commission the following questions for examination and report, together with such conclusions and recommendations as may be deemed appropriate:—

“*Question 1.* In order to secure the most advantageous use of the waters of Rainy lake and of the boundary waters flowing into and from Rainy lake, for domestic and sanitary purposes, for navigation purposes, for fishing purposes, and for power, irrigation and reclamation purposes; and in order to secure the most advantageous use of the shores and harbours of both Rainy lake and the boundary waters flowing into and from the lake, is it, from an economic standpoint, now practicable and desirable, having regard for all or any of the interests affected thereby, or under what conditions will it become thus practicable and desirable:—

“(a) To regulate the level of Rainy lake in such a manner as to permit the upper limit of the ordinary range of the levels to exceed elevation 1108.61 sea-level datum?

“(b) To regulate the level of Namakan lake and the waters controlled by the dams at Kettle falls in such a manner as to permit the upper limit of the ordinary range of the levels to exceed elevation 1120.11 sea-level datum?

“(c) To provide storage facilities upon all or any of the boundary waters above Namakan lake?

“*Question 2.* If it be found practicable and desirable thus (1) to regulate the level of Rainy lake, and/or (2) to regulate the level of Namakan lake and the waters controlled by the dams at Kettle falls, and/or (3) to provide storage facilities upon all or any of the boundary waters above Namakan lake:—

“(a) What elevations are recommended?

“(b) To what extent will it be necessary to acquire lands and to construct works in order to provide for such elevations and/or storage, and what will be their respective costs?

“(c) What interests on each side of the boundary would be benefited? What would be the nature and extent of such benefit in each case? How should the cost be apportioned among the various interests so benefited?

“*Question 3.* What methods of control and operation would be feasible and advisable in order to regulate the volume, use and outflow of the waters in each case in accordance with such recommendations as may be made in answer to questions 1 and 2?

“*Question 4.* What interests on each side of the boundary are benefited by the present storage on Rainy lake and on the waters controlled by the dams at Kettle falls? What are the nature and extent of such benefits in each case? What is the cost of such storage and how should such cost be apportioned among the various interests so benefited?

“Each Government will appoint from its public service such engineering and other technical assistance as may be necessary to enable the Commission to make the desired examination and to submit their report.”

In witness whereof the undersigned have signed this Agreement at Washington this 24th day of February, 1925.

ERNEST LAPOINTE,
*Minister of Justice in the Government of the
Dominion of Canada.*

CHARLES EVANS HUGHES,
Secretary of State of the United States of America.

NOTES:

- 1) The format of this copy is similar to the version printed by: F.A. Acland, Printer to the King's Most Excellent Majesty, Ottawa, 1925.
- 2) This Convention and Protocol was put in force in Canada on July 17, 1925. In the United States, this Convention and Protocol was put into effect by an Act of Congress approved on May 22, 1926. This US Act was subsequently amended in 1928 to address details pertaining to the acquisition of the required flowage easement in the United States.
- 3) The benchmark described in Article 1 of the Convention as the datum for Lake of the Woods levels was destroyed. In 1978, upon the recommendation of the Boards, the International Joint Commission recommended to the governments of Canada and the United States that United States Coast and Geodetic Survey benchmark C-209, established in 1935 and located near the CNR station in Warroad, be designated in place of the original as the official datum for Lake of the Woods levels. This amendment was agreed to and put in force by an Exchange of Notes between Canada and the United States on June 19, 1979.