

No. 2786

**UNITED STATES OF AMERICA
and
CANADA**

**Exchange of notes (with annexes) constituting an agreement
relating to the Haines-Fairbanks oil pipeline installation.
Ottawa, 30 June 1953**

Official text: English.

Registered by the United States of America on 3 March 1955.

**ÉTATS-UNIS D'AMÉRIQUE
et
CANADA**

**Échange de notes (avec annexes) constituant un accord
relatif à l'installation d'un pipe-line entre Haines et
Fairbanks. Ottawa, 30 juin 1953**

Texte officiel anglais.

Enregistré par les États-Unis d'Amérique le 3 mars 1955.

No. 2786. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND CANADA RELATING TO THE HAINES-FAIRBANKS OIL PIPELINE INSTALLATION. OTTAWA, 30 JUNE 1953

I

The American Chargé d'Affaires ad interim to the Canadian Secretary of State for External Affairs

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA
EMBASSY OF THE UNITED STATES OF AMERICA

No. 288

Ottawa, June 30, 1953

Excellency :

I have the honor to refer to discussions which have taken place in the Permanent Joint Board on Defense, and subsequently between representatives of our Governments, concerning a proposal for an oil pipeline installation from Haines to Fairbanks, Alaska, passing through northwestern British Columbia and Yukon Territory, to be constructed, owned and operated by the Government of the United States of America in the mutual defense interests of both countries.

Upon instructions from my Government, I propose that the Government of Canada grant permission to the Government of the United States of America to construct, own and operate a pipeline from Haines to Fairbanks, passing through Canada, on the terms and conditions which have been arranged in recent discussions between our Governments, and which are set forth in the annex to this note.

Accept, Excellency, the assurances of my highest consideration.

Don C. BLISS

Enclosure : Annex

His Excellency The Honorable Lester B. Pearson
Secretary of State for External Affairs
Ottawa

¹ Came into force on 30 June 1953 by the exchange of the said notes.

ANNEX TO NOTE NO. 288, FROM THE EMBASSY OF THE UNITED STATES OF AMERICA,
JUNE 30, 1953

(In this annex, unless the context otherwise requires, "Canada" means the Government of Canada, and "United States" means the Government of the United States of America.)

1. *Right-of-Way*

All land or interest in land required for the right-of way of the pipeline and appurtenances including any pumping stations (hereinafter referred to as the pipeline unless otherwise specified), and for access roads, will be acquired by and remain in the title of Canada. Any expense incurred in the acquisition of such land shall be assumed by Canada. The United States will be granted without charge an easement for the pipeline for such time and upon such conditions as may be agreed pursuant to paragraph 3 of this Agreement. The United States shall have free of charge the use of access roads to the pipeline under such reasonable conditions as shall be mutually agreed upon.

2. *Plans*

In order to safeguard Canadian interests, the detailed plans, description of the route and access roads, and specifications of the pipeline will require the approval of the appropriate Canadian authorities in advance of construction, and Canadian officials shall have the right of inspection during construction.

3. *Tenure*

It is mutually agreed that the common defense interests of the two countries will require continuance of the pipeline for a minimum period of twenty years. At the expiration of this period, in the event that either Government wishes to discontinue the arrangement, the question of continuing need will be referred to the Permanent Joint Board on Defense. In considering the question of need, the PJBD will take into account the relationship of the pipeline and related facilities to the defense installations in Alaska. Following consideration by the PJBD as provided above, either Government may terminate the arrangement, in which case that Government shall give due consideration in any subsequent operation of the pipeline to the defense needs of the other country.

4. *Title*

Ownership of the pipeline and auxiliary installations shall remain with the United States pending any termination of the arrangement pursuant to paragraph 3, at which time the United States may remove the pipeline from the right-of-way, restoring the right-of-way to its original condition as far as it is practicable and reasonable so to do in the opinion of Canada. Such removal of the pipeline and restoration of the right-of-way shall be completed within two years of the effective date of the termination of the arrangement.

5. *Use of the Pipeline to Meet Canadian Requirements*

The United States will connect the Haines-Fairbanks pipeline to the three-inch Whitehorse-Fairbanks pipeline at a point near Haines Junction. The United States

will permit additional connections to be made to both the Haines-Fairbanks and the three-inch pipeline within Canada on reasonable terms and conditions as shall be mutually agreed upon. For the period of operation by the United States of the Haines-Fairbanks pipeline, the United States, if requested by Canada, will continue to operate and maintain the three-inch pipeline between the point of connection referred to above and Whitehorse. In the operation of both the Haines-Fairbanks pipeline, and the three-inch pipeline between the point of connection and Whitehorse, and the storage facilities at Whitehorse, the United States undertakes :

(a) to give assurance of equal consideration to Canadian defense requirements with those of the United States ;

(b) to make available at the request of Canada, on reasonable terms to be mutually agreed upon, the use of these installations to meet Canadian civil needs as military requirements permit.

6. *Understanding regarding Disposition of Title to Rights in Existing Pipelines in Northern British Columbia and Yukon Territory*

Nothing in this Agreement shall add to, or subtract from, the existing agreements between Canada and the United States regarding the disposition of existing pipelines (see below) except as provided in paragraphs 5 and 7 of this Agreement.

Note : Exchange of Notes of June 27 and 29, 1942 ;¹ Exchange of Notes of August 14 and 15, 1942 ;² Exchange of Notes of June 7, 1944 ;³ Exchange of Notes of February 26, 1945 ;⁴ Exchange of Notes of December 21, 1945 and January 3, 1946.⁵

7. *Disposition of Four-inch Pipeline from Skagway to Whitehorse*

In the event that notice is given by the United States of the termination of operation of the existing four-inch pipeline between Skagway and Whitehorse, the United States will transfer to Canada, if requested by Canada, without compensation, any equity which it may have in that part of the pipeline located in Canada and, to the extent that it lies within the power of the United States, will undertake under such terms and conditions as shall be mutually agreed upon, to make available for use by Canada that part of the four-inch pipeline from the Canadian border to Skagway as well as the terminal and pumping facilities at that port.

8. *Construction*

(a) Canadian contractors will be extended equal consideration with United States contractors in the awarding of contracts, and Canadian contractors and United States contractors shall have equal consideration in the procurement of materials, equipment and supplies in either Canada or the United States.

(b) Any contractors awarded a contract for construction in Canada will be required to give preference to qualified Canadian labor for such construction in Canada. The

¹ United Nations, *Treaty Series*, Vol. 99, p. 223.

² United Nations, *Treaty Series*, Vol. 99, p. 233.

³ United Nations, *Treaty Series*, Vol. 99, p. 259.

⁴ United Nations, *Treaty Series*, Vol. 99, p. 273.

⁵ United Nations, *Treaty Series*, Vol. 6, p. 279.

rates of pay and working conditions for all labor employed in such construction will be set after consultation with the Canadian Federal Labor Department and will be not less than in accordance with the Canadian Fair Wages and Hours of Labor Act of 1935.

(c) Canadian materials will be used on the Canadian portion of the line as far as feasible.

(d) Canadian law (e.g., tax laws, labor laws, workmen's compensation, unemployment insurance, etc.) will apply.

(e) Subject to the agreement of the appropriate Canadian authorities, the United States may be granted permission to use, without charge, timber, gravel, and other construction material on Federal Crown lands; these materials to be used only for construction in Canada.

(f) The United States will be responsible for the satisfactory disposal of any construction camps and materials abandoned in Canada after completion of the pipeline.

(g) Canada will take the necessary steps to facilitate the admission into the territory of Canada of such United States citizens as may be employed on the construction or maintenance of the pipeline, it being understood that the United States will undertake to repatriate at its expense any such persons if the contractors fail to do so.

9. *Maintenance*

Qualified Canadian civilian labor will be used as far as feasible for the maintenance by the United States of the section of the Haines-Fairbanks pipeline within Canada.

10. *Non-transferability of Rights*

Rights granted by Canada under this Agreement are granted to the United States and may not be transferred or alienated by the United States to any person or corporation without the express consent of Canada in advance in writing.

11. *Supplementary Arrangements and Administrative Agreements*

Supplementary arrangements or administrative agreements between authorized agencies of the two Governments may be made from time to time for the purpose of carrying out the intent of this Agreement.

12. *Telephone and Telegraph Facilities*

This Agreement contemplates that communications facilities may be erected, operated and maintained at the expense of the United States, located within or reasonably near the right-of-way, under terms and conditions to be mutually agreed, for use solely in the construction and operation of the pipeline.

13. *Claims*

The United States undertakes to make reasonable provision for the disposition of claims and for the satisfaction of any proper claims arising out of damage or injury to persons or property occurring in the territory of Canada in the course of, or in connection with, the construction, maintenance or operation by the United States of the pipeline or of any of the works herein provided for.

II

*The Canadian Secretary of State for External Affairs to the
American Chargé d'Affaires ad interim*

DEPARTMENT OF EXTERNAL AFFAIRS

CANADA

N° D-180

Ottawa, June 30, 1953

Sir,

I have the honour to acknowledge receipt of your note No. 288 of June 30, 1953, proposing certain conditions which should govern the installation on Canadian territory of a section of an oil pipeline from Haines to Fairbanks, Alaska, passing through Northwestern British Columbia and the Yukon Territory, to be constructed, owned, and operated by the Government of the United States of America in the mutual defence interest of both countries.

I am pleased to inform you that my Government approves the United States proposal for constructing the pipeline on the terms and conditions annexed to your note, and the granting, for this purpose, of an easement for the pipeline through Canadian territory. To facilitate the carrying out of this proposal, the Government of British Columbia, by Order-in-Council No. 1071 of May 2, 1953 (copy of which is attached), has made available by transfer to the Government of Canada the administration and control of the land required for the right-of-way of the pipeline through that Province. The Canadian Government, for its part, has approved, by Order-in-Council No. P.C. 1953/763 of May 13, 1953 (a copy of which is attached), the transfer of administration and control of this land subject to the conditions stipulated by the Government of British Columbia, and at the same time has given the Government of British Columbia an undertaking, in a letter dated May 16, 1953 (a copy of which is attached), to carry out a subsequent survey to comply with the Land Registry Act of British Columbia.

Accordingly, in agreeing to the conditions proposed in your note, my Government stipulates that this Agreement is governed by the conditions prescribed by the Government of British Columbia in Order-in-Council No. 1071 of May 2, 1953, with respect to the land required for the right-of-way through that Province, and that all obligations incurred by the Government of Canada towards the Government of British Columbia in accepting responsibility for the administration and control of the land in British Columbia shall be fulfilled by the United States Government as the user of the land, with the exception of that set forth in paragraph 7 of the British Columbia Order-in-Council. It is not at present apparent what financial responsibility may be assumed by the Government of Canada in making an exception regarding paragraph 7 of the British Columbia Order-in-Council,

but, in the event that liability should be incurred, the Government of Canada would expect sympathetic consideration by the Government of the United States of any representations regarding reimbursement.

I propose that your note No. 288 of June 30, 1953, this reply, and your note accepting the above stipulations with respect to the section of the pipeline passing through British Columbia, shall be considered by our Governments to constitute an agreement to be known as the "United States-Canada Haines-Fairbanks Pipeline Agreement" stipulating the conditions of the construction, ownership and operation by the United States of the section of the pipeline within Canada.

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

L. B. PEARSON
Secretary of State for External Affairs

Don C. Bliss, Esquire
Chargé d'Affaires, a.i.
Embassy of the United States of America
Ottawa

1071

I hereby certify that the following is a true copy of a Minute of the Honourable the Executive Council of the Province of British Columbia, approved by His Honour the Lieutenant-Governor on the 2nd day of May, A. D. 1953.

(Signed) R. A. PENNINGTON
Deputy Provincial Secretary

To His Honour the Lieutenant-Governor in Council :

The Undersigned has the honour to recommend that by and pursuant to subsection two of section sixty-six of the "Land Act", c. 175 of the Revised Statutes of British Columbia, 1948, the administration, control and benefit of certain Crown lands required for the works and undertaking hereinafter referred to, namely,

All those certain parcels or tracts of land situate in that part of Cassiar Land District lying between the Yukon and Alaska boundaries described as :

- (1) A strip of land extending twenty-five feet on each side of the centre line of the proposed pipeline as indicated in red on the attached plan and shown in greater detail on the plan on file in the Department of Resources and Development at Ottawa, and in the Department of Lands and Forests at Victoria, entitled Products Pipeline System, Haines to Fairbanks Alaska, drawings Numbers 78-15-01 purporting to have been made by the Fluor Corporation Ltd., of Los Angeles, California, and drawn by Frank Morejohn on April 30, 1952 for the United States Department of the Army, Corps of Engineers, and approved by the Chief Engineering Division on June 13, 1952.
- (2) All that land described within the following boundary : From Mile Post 48, Haines Cut-Off Highway S. 57° - 06' E, a distance of 270', to a point of beginning ; thence N. 32° - 54' E, a distance of 800' to a point ; thence N. 57° - 06' W, a distance of 1300'

to a point ; thence S. 32° - 54' W, to the East Bank of the Klehini River ; thence S. E. along said bank a distance of 1300' more or less to a point formed by the intersection of a line S. 32° - 54' W from the point of beginning and the N. E. Bank of the Klehini River ; thence N. 32° - 54' to the point of beginning ; EXCEPTING therefrom all that portion within the Right-of-Way for the Haines Cut-Off Highway,

be transferred to Her Majesty the Queen in right of Canada, subject to the following provisions and restrictions :

- (1) The said lands are to be used by the Government of Canada, its licensees or grantees, for the laying down, construction, operation, maintenance, inspection, alteration, removal, replacement, reconstruction and repair of one or more pipelines, together with all works necessary for an undertaking for the carriage, storage and handling of oil and by-products thereof, including without limiting the generality thereof, all such pumping and other stations, structures, communication systems, pole-lines, drips, valves, fittings and meters as may be necessary or convenient in connection therewith (all of which pipeline works and other things are hereinafter referred to as installations.)
- (2) The Government of Canada, its licensees and grantees shall have the right of ingress and egress to and from the said lands over other Crown lands as long as they are not sold or otherwise disposed of for all purposes necessary or incidental to the undertaking.
- (3) The said lands shall be used by the Government of Canada, its licensees and grantees for the purposes set out in paragraph one hereof and for no other purpose.
- (4) The administration, control and benefit of the said lands shall be retransferred to the Government of British Columbia two years after the said lands have ceased to be used by the Government of Canada, its licensees or grantees for the purposes set out in paragraph one hereof.
- (5) Subject to the rights hereby transferred, the Government of British Columbia shall, at all times, be entitled to the administration, control and benefit of the aforesaid lands and to dispose of the aforesaid lands.
- (6) The said pipelines shall be buried, insofar as it is practicable and reasonable so to do, where they cross highways, traverse settlements or interfere with drainage or ordinary cultivation of the land and, in particular and without restricting the generality of the foregoing, shall be buried as specified on the plan on file in the Department of Resources and Development at Ottawa, and in the Department of Lands and Forests at Victoria, entitled Products Pipeline System, Haines to Fairbanks Alaska, drawings Number 78-15-01 purporting to have been made by the Fluor Corporation Ltd., of Los Angeles, California and drawn by Frank Morejohn on April 30, 1952, for the United States Department of the Army, Corps of Engineers, and approved by the Chief Engineering Division on June 13, 1952 : Provided that the Minister of Lands and Forests of British Columbia may at any time require the Government of Canada, its licensees or grantees at their own cost to bury the remainder of the said pipeline or any part thereof when in the opinion of the Minister it is necessary for, or by reason of, the development of the adjoining areas.

- (7) The Government of Canada shall at all times wholly indemnify the Government of British Columbia from all loss, damage, injury and expense to which the Government of British Columbia may be put by reason of any damage or injury to persons or property caused by pipes or works belonging to the Government of Canada, its licensees or grantees, or by any oil or any other substance being carried in the said pipes or works, as well as against any damage or injury resulting from the imprudence, neglect or want of skill of any agent of the Government of Canada, its licensees or grantees, in connection with the laying, maintenance, renewal or repair of the said pipes or the use thereof, unless the cause of such loss, cost, damage, injury or expense can be traced elsewhere.
- (8) At any time before the administration, control and benefit of the said lands are retransferred to the Government of British Columbia, as required by paragraph four hereof, the Government of Canada, its licensees and grantees may remove the installations from the said lands, restoring the premises to their original condition as far as practicable in the opinion of the Minister of Lands and Forests. Any installation which is not removed prior to the said retransfer shall become the property of Her Majesty in right of British Columbia.
- (9) The Government of Canada, its licensees and grantees performing and complying with the provisions and restrictions hereof, shall hold and enjoy the rights, liberties, privileges hereby provided for without hindrance, molestation or protestation on the part of the Government of British Columbia, subject, however, to all provisions and restrictions herein contained.
- (10) Nothing herein contained shall be deemed to vest in the Government of Canada, its licensees or grantees, any right to timber, minerals, ores, metals, coal, slate, oil, gas or gases, or other minerals in, on or under the aforesaid lands except only the parts thereof that are necessary to be dug, carried away or used in the construction of the works of the Government of Canada, its licensees and grantees.
- (11) Crown timber on the aforesaid lands used or destroyed by the Government of Canada, its licensees or grantees, shall be paid for at a stumpage rate to be fixed by the Minister of Lands and Forests : Provided, however, that notwithstanding the foregoing the Government of British Columbia may dispose of timber on the aforesaid lands under the provisions of the "Forest Act".
- (12) This transfer is made and accepted subject to prior rights existing in favour of third parties, if any.
- (13) The Minister of Lands and Forests of British Columbia may at any time require the Government of Canada its licensees or grantees, to relocate the said pipelines to facilitate the construction, reconstruction or relocation of any work provided, however, that the cost of relocating the said pipelines shall be borne by the Government of British Columbia, such costs to be determined by the Minister of Public Works of British Columbia, and provided further that such relocation will not unreasonably interfere with or impede essential military operations or maintenance of the pipeline.

- (14) The Minister of Public Works of British Columbia may at any time direct and require the Government of Canada, its licensees or grantees, to permit construction upon, along or across the pipelines, of any highway, private road, railway, irrigation ditch, drain, telegraph, telephone or electric power line or any pipeline provided such construction will not unreasonably interfere with or impede essential military operations or maintenance of the pipelines.
- (15) The Minister of Lands and Forests of British Columbia, or any person authorized by him, may at all reasonable times, until the administration, control and benefit of the said lands are retransferred to the Government of British Columbia, enter upon the said lands to determine that the provisions and restrictions herein before set forth are being fully complied with.

The undersigned further has the honour to recommend that the Order-in-Council of October 7, 1952, purporting to grant a right-of-way easement to Her Majesty in right of Canada under section seventy-one of the "Lands Act" be revoked and that a certified copy of the Minute, if approved, be forwarded to the Registrar, Land Registry Office, Prince Rupert, British Columbia, and the Minister of Resources and Development of Canada.

COPY

P.C. 1953-763

PRIVY COUNCIL

CANADA

At the Government House at Ottawa
Wednesday, the 13th day of May, 1953

PRESENT :

His Excellency The Governor General in Council,

His Excellency the Governor General in Council, on the recommendation of the Minister of Resources and Development, is pleased to accept and doth hereby accept on behalf of Her Majesty in right of Canada the administration, control and benefit of those certain parcels or tracts of land situate in the Cassiar Land District of the Province of British Columbia more particularly described in the annexed copy of an Order of the Lieutenant-Governor in Council of the Province of British Columbia numbered 1071 and dated May 2, 1953, the said administration, control and benefit of the said parcels or tracts of land having been transferred to Her Majesty in right of Canada by the said Order of the Lieutenant-Governor in Council subject to the provisions and restrictions set forth therein, the present acceptance being also subject to the said provisions and restrictions.

(Signed) J. W. PICKERSGILL
Clerk of the Privy Council

The Minister of Resources & Development

Ottawa, May 16, 1953

Honourable W. A. C. Bennett
Premier of British Columbia
Victoria, B.C.

Dear Mr. Bennett,

By virtue of the provisions of British Columbia Order in Council P.C. 1071 of May 2, 1953, the administration, control and benefit of certain parcels of land described in paragraphs 1 and 2 on page 1 of the above-mentioned Order in Council were transferred to Canada subject to certain provisions and restrictions.

As requested by the Province of British Columbia, the Government of Canada undertakes to deposit a plan in the proper Land Registry Office of the rights of way for the pipeline and the station at Mile Post 48, based upon a survey made in accordance with the Land Registry Act and the regulations of the Surveyor General of British Columbia. Such plan and the survey upon which it is based will redefine the lands granted by P.C. 1071 and the description therein made will in all respects thereafter establish, govern and define the rights of way whether or not the boundaries and lines fixed by the survey and plan coincide with the description of the land as defined in P.C. 1071.

It is understood that the survey will be made and the plan deposited within one year after completion of the pipeline, and that as soon as practicable thereafter the Government of British Columbia will by Order in Council substitute for the definition given in P.C. 1071 paragraphs 1 and 2 of page 1, the description of the land as defined by the survey and plan.

Yours sincerely,

Robert H. WINTERS

III

*The American Chargé d'Affaires ad interim to the Canadian
Secretary of State for External Affairs*

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA

EMBASSY OF THE UNITED STATES OF AMERICA

No. 289

Ottawa, June 30, 1953

Excellency :

I have the honor to refer to my note No. 288 of June 30, 1953 and to your note No. D-180 of June 30, 1953 in reply, concerning the proposal for the construction by the Government of the United States of America of an oil pipeline installation from Haines to Fairbanks, Alaska. I am pleased to inform you that my Government accepts the stipulations stated in your note with respect to the section of the right-of-way for the pipeline passing through British Columbia.

My Government further agrees with your proposal that my note No. 288 of June 30, 1953, your reply of June 30, 1953, and this note, should be considered by our Governments to constitute an agreement to be known as the "United States-Canada Haines-Fairbanks Pipeline Agreement" covering the conditions of construction, ownership and operation by the United States of the section of the pipeline within Canada.

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

Don C. BLISS

His Excellency The Honorable Lester B. Pearson
Secretary of State for External Affairs
Ottawa