

No. 4873

**UNITED STATES OF AMERICA
and
CANADA**

**Exchange of notes (with attached plan and a note of
19 May 1955) constituting an agreement relating to
the Saint Lawrence Seaway. Ottawa, 27 February 1959**

Official text: English.

Registered by the United States of America on 14 September 1959.

**ÉTATS-UNIS D'AMÉRIQUE
et
CANADA**

**Échange de notes (avec, en annexe, un plan et une note du
19 mai 1955) constituant un accord relatif à la Voie
maritime du Saint-Laurent. Ottawa, 27 février 1959**

Texte officiel anglais.

Enregistré par les États-Unis d'Amérique le 14 septembre 1959.

No. 4873. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND CANADA RELATING TO THE SAINT LAWRENCE SEAWAY. OTTAWA, 27 FEBRUARY 1959

I

The Canadian Secretary of State for External Affairs to the American Ambassador

DEPARTMENT OF EXTERNAL AFFAIRS
CANADA

No. 48

The Secretary of State for External Affairs presents his compliments to His Excellency the Ambassador of the United States of America and has the honour to refer to Note No. 235 of May 19, 1955² from the Embassy and subsequent exchanges of correspondence in connection with a project involving the dredging and disposal of spoil in the St. Clair River and Lake St. Clair for the purpose of deepening the Great Lakes connecting channels in those areas.

The Canadian Government agrees, subject to the terms and conditions listed in paragraph 3 below, to the construction and dredging of a new cut-off channel for two-way traffic, 700 feet wide and about six miles long, with a depth of 27.1 feet below low water datum plus one foot of over-depth, or a total of 28.1 feet, requiring a right-of-way for the channel and for adjacent spoil disposal areas 5,700 feet in width, almost all in Canada, such as is more completely described in the plan prepared by the United States Army Corps of Engineers and communicated to the Canadian Government under cover of Note No. 235 of May 19, 1955.

The terms and conditions mentioned in paragraph 2 are as follows :

(a) That the final plans and specifications for the construction of the channel, including those for spoil disposal areas, shall be approved by the Canadian Government.

(b) That dredging and excavations and the deposit of dredged and excavated materials shall not be carried out on Canadian territory until a date to be fixed by the Canadian Government. In this way, the Canadian Government will have such time as it may require to make all necessary arrangements to permit the dredging to be started, such

¹ Came into force on 27 February 1959 by the exchange of the said notes.

² See p. 10 of this volume.

as acquiring the property concerned and removing all structures and equipment located on such property. As soon as these arrangements have been completed, the United States Embassy will be informed of the date on which operations may commence.

(c) That the United States Government will ensure, in a manner satisfactory to the Canadian Government, that the contractor or contractors for this work will as a matter of contract responsibility be required to (i) perform and complete the work in accordance with the plans and specifications as duly approved by the Canadian authorities; (ii) be responsible for all damages to persons or property that occur as a result of their fault or negligence in connection with the prosecution of the work; (iii) carry adequate insurance commensurate with the responsibility; and (iv) satisfy the requirements of all applicable Canadian law.

(d) Neither party shall be responsible for physical injury or damage to persons or property in the territory of the other which may be caused by any act authorized or provided for by this Note.

(e) That during the progress of the work, and subsequent thereto, such soundings, gaugings and meterings shall be carried out by the United States authorities as the Canadian authorities may require, and the Government of Canada kept informed of the results obtained. Authorized Canadian Government representatives shall be free at all times to inspect the works during progress, and to make such check surveys with soundings, meterings and gaugings, in any part of the St. Clair River as may be considered desirable at any time.

(f) That any machine, plant, vessel, barge or the operators or crews thereof, used on these works, shall not be permitted to tie up, discharge ashes, fuel oil, waste oil, etc., in a manner prejudicial to the health, well-being and activities of the owners and/or users of land or water areas, or to commit any other nuisance in Canadian territory during the progress of, or subsequent to, the carrying out of these works. The attention of the United States Government is also drawn to Section 33 of the Fisheries Act of Canada and Section 40 of the Regulations under the Migratory Birds Convention Act which refer to the pollution of waters with special reference to the effect upon fish and migratory birds.

(g) That the works carried out in Canadian territory shall be without prejudice to the sovereign rights of Canada.

(h) That Canadian contractors shall be given an equal opportunity with United States contractors to bid on any portion of the work; that, regardless of the nationality of the successful contracting firm, Canadian and United States labour shall, to the extent available, be employed in approximately equal numbers; that clearance of United States workers be made through the Immigration Branch of the Department of Citizenship and Immigration and the National Employment Service of Canada; and that wage rates and other working conditions shall be in accordance with the Canadian Fair Wages and Hours of Labour Act.

(i) That the appropriate customs procedure to be followed concerning dredging equipment materials and consumable items will be drawn up when the general conditions of contracting and employment have been ascertained by the two Governments.

(j) That the Unemployment Insurance Act of Canada, and regulations thereunder, will apply to any Canadian workmen who may be employed on the project and also to United States workmen employed on the project if they are employed on Canadian territory by a contractor (not by the United States Army Corps of Engineers) and cannot be

covered under any employment insurance law of the United States; if any Canadian workmen are employed directly by the United States Army Corps of Engineers, the arrangement whereby the United States Armed Forces will insure Canadian employees from July 1, 1956,¹ will apply.

(k) That the United States Government will ensure that the necessary arrangements are made with the authorities of the Province of Ontario concerning the Workmen's Compensation Act of that province.

(l) Administrative arrangements concerning this project may be made from time to time between authorized agencies of the two Governments.

These terms and conditions are subject to the further understanding that :

(a) Canada will retain title to all its territory required for the channel. At the same time, the Government of Canada will grant and assure the United States, without charge, such rights and access, use and occupancy as may be required for the construction of the new cut.

(b) Canada will be responsible for acquiring all the land in Canada through which the proposed new channel shall pass, and any interests required for spoil disposal area.

(c) The spoil dredged from the new channel shall be deposited on the Canadian side of the International Boundary and placed in areas A, B, C and D marked on the attached plan² and in accordance with the plans and specifications to be approved as provided for in paragraph 3 (a) herein.

(d) Canada will be responsible for the administration and maintenance of the completed channel.

(e) And finally, in addition to the foregoing conditions respecting the application during the construction period of the laws of Canada and the Province of Ontario in respect to unemployment insurance and of Workmen's Compensation, Canadian Law shall be applied at all times in Canada provided that, if in unusual circumstances its application may lead to unreasonable delay or difficulty in the construction of the channel, the United States Government may request the assistance of the Canadian Government in seeking appropriate alleviation. In order to facilitate the construction of the new channel, the Canadian Government will give sympathetic consideration to any such request submitted by the United States Government.

If the conditions outlined above meet with the approval of the United States Government it is proposed that this Note and the Ambassador's reply, together with the United States Embassy's Note No. 235 of May 19, 1955, shall constitute a special agreement between our two Governments under Article III of the Boundary Waters Treaty of January 11, 1909.³

Ottawa, February 27, 1959

S. E. S.

¹ United Nations, *Treaty Series*, Vol. 300, p. 29.

² See insert between pp. 14 and 15 of this volume.

³ De Martens, *Nouveau Recueil général de Traités*, troisième série, tome IV, p. 208.

II

The American Ambassador to the Canadian Secretary of State for External Affairs

No. 197

The Ambassador of the United States of America presents his compliments to the Secretary of State for External Affairs and has the honor to refer to Note No. 48 of February 27, 1959, from the Department of External Affairs, approving on behalf of the Canadian Government, subject to certain conditions, the proposed construction and dredging of a new cut-off channel in the Saint Clair River Section of the Great Lakes Connecting Channels.

The Ambassador has the honor to confirm the acceptance by the Government of the United States of America of the conditions set forth by the Canadian Government in Note No. 48. That Note and this reply thereto, together with the United States Embassy's Note No. 235 of May 19, 1955, shall constitute a special agreement between our two Governments under Article III of the Boundary Waters Treaty of January 11, 1909.

R. B. W.

Embassy of the United States of America
Ottawa, February 27, 1959

NOTE OF 19 MAY 1955

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

No. 235

The Chargé d'Affaires ad interim of the United States of America presents his compliments to the Secretary of State for External Affairs and has the honor to solicit the Canadian Government's views respecting a project involving the dredging and disposal of spoil in the St. Clair River and Lake St. Clair for the purpose of deepening Great Lakes connecting channels in those areas.

The project would be undertaken in the interest of the growing needs of commerce and to insure the safe operation of iron ore vessels and other commerce. To fulfill these needs, it is considered necessary either to widen and deepen the existing channel at Southeast Bend or to construct a cut-off channel, as indicated on the attached map (enclosure 1), through the marshy area on the Canadian side of the river. This channel,

which would be for two-way traffic, would be 700 feet wide and about 6 miles long, with a depth of 27.1 feet below low water datum plus 1 foot of overdepth, or a total of 28.1 feet. The width of the right-of-way required for the channel and for adjacent spoil disposal areas would be 5,700 feet, all in Canadian waters.

The proposed channel through Canadian Indian lands has been informally discussed with the District Engineer, Department of Public Works, London, Ontario, by Colonel Arthur C. Nauman, District Engineer, Corps of Engineers, Detroit, Michigan, who is prepared to furnish any additional information the Canadian authorities may desire.

The deepening of Great Lakes connecting channels is provided for in a report of the Board of Engineers for Rivers and Harbors and the proposed report of the Chief of Engineers, Corps of Engineers, prepared pursuant to Congressional authority. The Department of the Army's proposals would be carried out in part as a result of pending legislation introduced in the Senate by the Honorable Alexander Wiley (S. 171) and in the House of Representatives by the Honorable Alvin E. O'Konski (H.R. 158). Single copies of these bills are enclosed as enclosures 2 and 3, respectively.

It is recognized that the project is in a preliminary status. However, it is the desire of the United States authorities to inform the Canadian Government of the Department of the Army's proposals and to elicit the Canadian Government's views on the project in advance of the time when it will be submitted for Congressional approval.

For convenient reference in the consideration of the present request, there are enclosed copies of notes received from the Department of External Affairs relating to previous similar requests of the United States Government for authority to conduct dredging operations in Canadian waters in the St. Clair River and the Detroit River.

The Chargé d'Affaires hopes that he may receive an expression of the Canadian Government's views on this project, which would be of benefit to shipping and other interests of Canada as well as the United States, at as early a date as may be convenient.

Em.

Enclosures :¹

1. U.S. Corps of Engineers, Detroit District, map of proposed improvements;
2. One copy of S. 171;
3. One copy of H.R. 158;
4. One photostatic copy of Note No. 35 from Department of External Affairs, Ottawa, March 24, 1932;
5. One photostatic copy of Note No. 27 from Department of External Affairs, March 21, 1933;
6. One photostatic copy of Note No. 68 from Department of External Affairs, June 10, 1933;
7. One photostatic copy of Note No. 4 from Department of External Affairs, January 10, 1934;
8. One photostatic copy of Despatch No. 518 from U.S. Legation, Ottawa, April 11, 1934 with enclosure of one photostatic copy of Note No. 25 from Department of External Affairs, Ottawa, April 10, 1934.

Embassy of the United States of America
Ottawa, May 19, 1955

¹ United States of America : *Treaties and Other International Acts Series 4199.*