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No. 6102

**UNITED STATES OF AMERICA
and
CANADA**

Exchange of notes (with enclosed maps) constituting an agreement relating to channel improvements in Lake Erie (Pelee Passage). Ottawa, 8 June 1959 and 17 October 1961

Official text: English.

Registered by the United States of America on 2 April 1962.

**ÉTATS-UNIS D'AMÉRIQUE
et
CANADA**

Échange de notes (avec plans joints) constituant un accord relatif à des travaux d'amélioration du chenal dans le lac Érié (passage Pelée). Ottawa, 8 juin 1959 et 17 octobre 1961

Texte officiel anglais.

Enregistré par les États-Unis d'Amérique le 2 avril 1962.

No. 6102. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND CANADA RELATING TO CHANNEL IMPROVEMENTS IN LAKE ERIE (PELEE PASSAGE). OTTAWA, 8 JUNE 1959 AND 17 OCTOBER 1961

I

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

No. 297

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 navigation improvements being carried out in the St. Mary River, St. Clair River and Detroit River Sections of the Great Lakes connecting channels as a result of agreements between the United States and Canada.

In addition to these projects, the United States Government is now desirous of the authorization of the Canadian Government in order to make channel improvements in Canadian waters along the sailing courses in Lake Erie, east of the Detroit River navigation light and through the Pelee Passage.

Work on the connecting channels, of which the Lake Erie-Pelee Passage project would be a part, was authorized on the United States side by Public Law 434, 84th Congress, March 21, 1956.

The work would consist of the removal of shoals and rock obstacles from the sailing courses shown on the attached maps² in order to ensure the safe operation of deep draft vessels. The authorized project depth is 28.5 feet below low water datum. An additional depth of 1 foot would be provided in the rock areas. The excavated materials would be deposited below a depth of 25 feet in the areas shown on the maps. The maps also indicate the area needed for disposal of material to be dredged from the channel at the mouth of the Detroit River. The total work area will be about two miles wide and twenty miles long.

¹ Came into force on 17 October 1961 by the exchange of the said notes.

² These maps are not reproduced herein for technical reasons. However, duly certified copies have been transmitted by the registering party and remain on file with the Secretariat of the United Nations.

The United States Government would appreciate the consideration of the Canadian Government with a view to granting its permission for this project in Lake Erie.

R. B. W.

Enclosures :

Two Maps of the Pelee Passage Area of Lake Erie, prepared by the United States Army Corps of Engineers (one copy each).¹

Embassy of the United States of America
Ottawa, June 8, 1959

II

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

DEPARTMENT OF EXTERNAL AFFAIRS
CANADA

N° 167

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 the Ambassador's Note No. 297 of June 8, 1959, concerning proposed channel improvements to be undertaken in Canadian waters along the sailing courses in Lake Erie, east of the Detroit River navigation light and through the Pelee Passage.

It is noted that the work would consist of the removal of shoals and rock obstacles from the sailing courses shown on the maps attached to the Note under reference in order to ensure the safe operation of deep draft vessels. The authorized project depth is 28.5 feet below low water datum. An additional depth of one foot would be provided in the rock areas. The excavated materials would be deposited below a depth of 25 feet in the areas shown on the attached map.² It is noted further that the project area will be approximately twenty miles long and two miles wide.

The Canadian Government agrees to the above-noted proposals subject to the following terms and conditions :

- a) That Canada will be responsible for providing the dumping grounds shown on the attached map in accordance with the conditions outlined in paragraph (2) above.
- b) That the final plans and specifications for the improvement of the channel, including those for spoil disposal areas, shall be approved by the Canadian Government.

¹ See footnote 2, p. 102 of this volume.

² This map is not reproduced herein for technical reasons. However, a duly certified copy has been transmitted by the registering party and remains on file with the Secretariat of the United Nations.

- c) 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. As soon as these arrangements have been completed, the United States Embassy will be informed of the date on which operations may commence.
- d) 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.
- e) That 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.
- f) 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 area affected by the project as may be considered desirable at any time.
- g) 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.
- h) That the works carried out in Canadian territory shall be without prejudice to the sovereign rights of Canada.
- i) That Canadian contractors shall be given an equal opportunity with United States contractors to bid on any portion of the work proposed for accomplishment by contract; that, regardless of the nationality of the successful contracting firm, Canadian and United States labour shall, to the extent available, be employed on such contracts 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.
- j) That customs duties and Federal sales and excise taxes shall be remitted on equipment, materials and supplies used or consumed for and in connection with the

project. This remission shall not extend to items for personal use, including tobacco, food and beverages actually landed in Canada.

- k) That the Canadian Coasting Regulations, where necessary, will be waived with respect to dredges, barges, tow-boats and other similar equipment employed on the project.
- l) 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, will apply.
- m) 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.
- n) That administrative arrangements concerning this project may be made from time to time between authorized agencies of the two Governments.
- o) That each party to this agreement undertakes that all requests received by its supervisory personnel connected with the project from authorities within its jurisdiction for information concerning personnel employed upon the project, when such information is not related to the employment of such personnel upon the project, shall be brought to the attention of the other party. The party from whom the information is requested will give due consideration to the position which the other party may take with regard to the provision of such information.

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 Ambassador's Note No. 297 of June 8, 1959, shall constitute a special agreement between our two Governments under Article III of the Boundary Waters Treaty of January 11, 1909.¹

H. C. G.

Ottawa, October 17, 1961

III

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

No. 88

The Charge 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 refer to Note No. 167 of October 17, 1961 from the Secretary of State for Ex-

¹ De Martens, *Nouveau Recueil général de traités, troisième série*, tome IV, p. 208.

ternal Affairs approving on behalf of the Canadian Government, subject to certain conditions, proposed channel improvements to be undertaken in Canadian waters along the sailing courses in Lake Erie, east of the Detroit River navigation light and through the Pelee Passage.

The Charge d’Affaires ad interim of the United States of America 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 its Note No. 167. That note and this reply thereto, together with the Ambassador’s note No. 297 of June 8, 1959, shall constitute a special agreement between the two Governments under Article III of the Boundary Waters Treaty of January 11, 1909.

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Embassy of the United States of America
Ottawa, October 17, 1961
