

1965

International Joint Commission

UNITED STATES AND CANADA

RULES OF PROCEDURE AND TEXT OF TREATY

OTTAWA, CANADA-WASHINGTON, D.C.

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TREATY OF JANUARY 11, 1909, BETWEEN UNITED STATES AND
GREAT BRITAIN

Signed at Washington.....	January 11, 1909
Ratification advised by the Senate.....	March 3, 1909
Ratified by Great Britain.....	March 31, 1910
Ratified by the President	April 1, 1910
Ratifications exchanged at Washington.....	May 5, 1910
Proclaimed.....	May 13, 1910

INTERNATIONAL JOINT COMMISSION.

Members appointed on part of United States.....	March 9, 1911
Members appointed on part of Canada.....	November 10, 1911
Meeting of Commission for organization under Article XII of the treaty, at Washington.....	January 10, 1912
Adoption and publication of Rules of Procedure in accordance with Article XII.....	February 2, 1912
	Revised December 2, 1964

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
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RULES OF PROCEDURE

OF THE

INTERNATIONAL JOINT COMMISSION

The International Joint Commission, by virtue of the provisions of Article XII of the Treaty between the United States of America and His Majesty the King, dated the 11th day of January, 1909, hereby revokes the Rules of Procedure which it adopted on the 2nd day of February, 1912, as subsequently amended, and, in their place and stead, adopts the following Rules of Procedure:

PART I—GENERAL

DEFINITIONS

1.(1) In the construction of these rules, unless the context otherwise requires, words importing the singular number shall include the plural and words importing the plural number shall include the singular, and:

(2) "applicant" means the Government or person on whose behalf an application is presented to the Commission in accordance with Rule 12;

(3) "Government" means the Government of Canada or the Government of the United States of America;

(4) "person" includes Province, State, department or agency of a Province or State, municipality, individual, partnership, corporation and association, but does not include the Government of Canada or the Government of the United States of America;

(5) "oath" includes affirmation;

(6) "reference" means the document by which a question or matter of difference is referred to the Commission pursuant to Article IX of the Treaty;

(7) "the Treaty" means the Treaty between the United States of America and His Majesty the King, dated the 11th day of January, 1909;

(8) "Canadian section" consists of the commissioners appointed by Her Majesty on the recommendation of the Governor in Council of Canada;

(9) "United States section" consists of the commissioners appointed by the President of the United States.

CHAIRMEN

2.(1) The commissioners of the United States section of the Commission shall appoint one of their number as chairman, to be known as the Chairman of the United States Section of the International Joint Commission, and he shall act as chairman at all meetings of the Commission held in the United States and in respect to all matters required to be done in the United States by the chairman of the Commission.

(2) The commissioners of the Canadian section of the Commission shall appoint one of their number as chairman, to be known as the Chairman of the Canadian Section of the International Joint Commission, and he shall act as

chairman at all meetings of the Commission held in Canada and in respect to all matters required to be done in Canada by the chairman of the Commission.

(3) In case it shall be impracticable for the chairman of either section to act in any matter, the commissioner of such section who is senior in order of appointment shall act in his stead.

PERMANENT OFFICES

3. The permanent offices of the Commission shall be at Washington, in the District of Columbia, and at Ottawa, in the Province of Ontario, and, subject to the directions of the respective chairmen acting for their respective sections, the secretaries of the United States and Canadian sections of the Commission shall have full charge and control of said offices, respectively.

DUTIES OF SECRETARIES

4.(1) The secretaries shall act as joint secretaries at all meetings and hearings of the Commission. The secretary of the section of the Commission of the country in which a meeting or hearing is held shall prepare a record thereof and each secretary shall preserve an authentic copy of the same in the permanent offices of the Commission.

(2) Each secretary shall receive and file all applications, references and other papers properly presented to the Commission in any proceeding instituted before it and shall number in numerical order all such applications and references; the number given to an application or reference shall be the primary file number for all papers relating to such application or reference.

(3) Each secretary shall forward to the other for filing in the office of the other copies of all official letters, documents, records or other papers received by him or filed in his office, pertaining to any proceeding before the Commission, to the end that there shall be on file in each office either the original or a copy of all official letters and other papers, relating to the said proceeding.

(4) Each secretary shall also forward to the other for filing in the office of the other copies of any letters, documents or other papers received by him or filed in his office which are deemed by him to be of interest to the Commission.

MEETINGS

5.(1) Subject at all times to special call or direction by the two Governments, meetings of the Commission shall be held at such times and places in the United States and Canada as the Commission or the Chairmen may determine and in any event shall be held each year at Washington in April and at Ottawa in October, beginning ordinarily on the first Tuesday of the said months.

(2) If the Commission determines that a meeting shall be open to the public, it shall give such advance notices to this effect as it considers appropriate in the circumstances.

SERVICE OF DOCUMENTS

6.(1) Where the secretary is required by these rules to give notice to any person, this shall be done by delivering or mailing such notice to the person at the address for service that the said person has furnished to the Commission, or if no such address has been furnished, at the dwelling house or usual place of abode or usual place of business of such person.

(2) Where the secretary is required by these rules to give notice to a Government, this shall be done by delivering or mailing such notice to the

Secretary of State for External Affairs of Canada or to the Secretary of State of the United States of America, as the case may be.

(3) Service of any document pursuant to Rule 22 shall be by delivering a copy thereof to the person named therein, or by leaving the same at the dwelling house or usual place of abode or usual place of business of such person. The person serving the notice or request shall furnish an affidavit to the secretary stating the time and place of such service.

CONDUCT OF HEARINGS

7. Hearings may be conducted, testimony received and arguments thereon heard by the whole Commission or by one or more Commissioners from each section of the Commission, designated for that purpose by the respective sections or the Chairmen thereof.

DECISION BY THE WHOLE COMMISSION

8. The whole Commission shall consider and determine any matter or question which the Treaty or any other treaty or international agreement, either in terms or by implication, requires or makes it the duty of the Commission to determine. For the purposes of this rule and Rule 7, "the whole Commission" means all of the commissioners appointed pursuant to Article VII of the Treaty whose terms of office have not expired and who are not prevented by serious illness or other circumstances beyond their control from carrying out their functions as commissioners. In no event shall a decision be made without the concurrence of at least four commissioners.

SUSPENSION OR AMENDMENT OF RULES

9. The Commission may suspend, repeal, or amend all or any of the Rules of Procedure at any time, with the concurrence of at least four commissioners. Both Governments shall be informed forthwith of any such action.

GENERAL RULE

10. The Commission may, at any time, adopt any procedure which it deems expedient and necessary to carry out the true intent and meaning of the Treaty.

AVAILABILITY OF RECORDS

11.(1) The following items in the official records of the Commission shall be available for public information at the permanent offices of the Commission:

- Applications
- References
- Public Notices
- Press Releases
- Statements in Response
- Statements in Reply
- Records of hearings, including exhibits filed
- Briefs and formal Statements submitted at hearings or at other times

(2) Decisions rendered and orders issued by the Commission and formal opinions of any of the Commissioners with relation thereto, shall be available similarly for public information after duplicate originals of the decisions or orders have been transmitted to and filed with the Governments pursuant to Article XI of the Treaty.

(3) Copies of reports submitted to one or both of the Governments pursuant to the Treaty shall be available similarly for public information only with the consent of the Government or Governments to whom the reports are addressed.

(4) Reports, letters, memoranda and other communications addressed to the Commission, by boards or committees created by or at the request of the Commission, are privileged and shall become available for public information only in accordance with a decision of the Commission to that effect.

(5) Except as provided in the preceding paragraphs of this rule, records of deliberations, and documents, letters, memoranda and communications of every nature and kind in the official records of the Commission, whether addressed to or by the Commission, commissioners, secretaries, advisers or any of them, are privileged and shall become available for public information only in accordance with a decision of the Commission to that effect.

(6) A copy of any document, report, record or other paper which under this rule is available for public information may be furnished to any person upon payment of any cost involved in its reproduction.

PART II-APPLICATIONS

PRESENTATION TO COMMISSION

12.(1) Where one or the other of the Governments on its own initiative seeks the approval of the Commission for the use, obstruction or diversion of waters with respect to which under Articles III or IV of the Treaty the approval of the Commission is required, it shall present to the Commission an application setting forth as fully as may be necessary for the information of the Commission the facts upon which the application is based and the nature of the order of approval desired.

(2) Where a person seeks the approval of the Commission for the use, obstruction or diversion of waters with respect to which under Articles III or IV of the Treaty the approval of the Commission is required, he shall prepare an application to the Commission and forward it to the Government within whose jurisdiction such use, obstruction or diversion is to be made, with the request that the said application be transmitted to the Commission. If such Government transmits the application to the Commission with a request that it take appropriate action thereon, the same shall be filed by the Commission in the same manner as an application presented in accordance with paragraph (1) of this rule. Transmittal of the application to the Commission shall not be construed as authorization by the Government of the use, obstruction or diversion proposed by the applicant. All applications by persons shall conform, as to their contents, to the requirements of paragraph (1) of this rule.

(3) Where the Commission has issued an Order approving a particular use, obstruction or diversion, in which it has specifically retained jurisdiction over the subject matter of an application and has reserved the right to make further orders relating thereto, any Government or person entitled to request the issuance of such further order may present to the Commission a request, setting forth the facts upon which it is based and the nature of the further order desired. On receipt of the request, the Commission shall proceed in accordance with the terms of the Order in which the Commission specifically retained jurisdiction. In each case the secretaries shall notify both Governments and invite their comments before the request is complied with.

COPIES REQUIRED

13.(1) Subject to paragraph (3) of this rule, two duplicate originals and fifty copies of the application and of any supplemental application, statement in response, supplemental statement in response, statement in reply and supplemental statement in reply shall be delivered to either secretary. On receipt of such documents, the secretary shall forthwith send one duplicate original and twenty-five copies to the other secretary.

(2) Subject to paragraph (3) of this rule, two copies of such drawings, profiles, plans of survey, maps and specifications as may be necessary to illustrate clearly the matter of the application shall be delivered to either secretary and he shall send one copy forthwith to the other secretary.

(3) Notwithstanding paragraphs (1) and (2) of this rule, such additional copies of the documents mentioned therein as may be requested by the Commission shall be provided forthwith.

AUTHORIZATION BY GOVERNMENT

14.(1) Where the use, obstruction or diversion of waters for which the Commission's approval is sought has been authorized by or on behalf of a Government or by or on behalf of a State or Province or other competent authority, two copies of such authorization and of any plans approved incidental thereto shall accompany the application when it is presented to the Commission in accordance with Rule 12.

(2) Where such a use, obstruction or diversion of waters is authorized by or on behalf of a Government or by or on behalf of a State or Province or other competent authority after an application has been presented to the Commission in accordance with Rule 12, the applicant shall deliver forthwith to the Commission two copies of such authorization and of any plans approved incidental thereto.

NOTICE OF PUBLICATION

15.(1) As soon as practicable after an application is presented or transmitted in accordance with Rule 12, the secretary of the section of the Commission appointed by the other Government shall send a copy of the application to such Government.

(2) Except as otherwise provided pursuant to Rule 19, the secretaries, as soon as practicable after the application is received, shall cause a notice to be published in the Canada Gazette and the Federal Register and once each week for three successive weeks in two newspapers, published one in each country and circulated in or near the localities which, in the opinion of the Commission, are most likely to be affected by the proposed use, obstruction or diversion. Subject to paragraph (3) of this rule, the notice shall state that the application has been received, the nature and locality of the proposed use, obstruction or diversion, the time within which any person interested may present a statement in response to the Commission and that the Commission will hold a hearing or hearings at which all persons interested are entitled to be heard with respect thereto.

(3) If the Commission so directs, the notice referred to in paragraph (2) of this rule, appropriately modified, may be combined with the notice of hearing referred to in Rule 24 and published accordingly.

STATEMENT IN RESPONSE

16.(1) Except as otherwise provided pursuant to Rule 19, a Government and any interested person, other than the applicant, may present a statement in response to the Commission within thirty days after the filing of an application. A statement in response shall set forth facts and arguments bearing on the subject matter of the application and tending to oppose or support the application, in whole or in part. If it is desired that conditional approval be granted, the statement in response should set forth the particular condition or conditions desired. An address for service of documents should be included in the statement in response.

(2) When a statement in response has been filed, the secretaries shall send a copy forthwith to the applicant and to each Government except the Government which presented the said statement in response. If so directed by the Commission, the secretaries shall inform those who have presented statements in response, of the nature of the total response.

STATEMENT IN REPLY

17.(1) Except as otherwise provided pursuant to Rule 19, the applicant and, if he is a person, the Government which transmitted the application on his behalf, one or both may present a statement or statements in reply to the Commission within thirty days after the time provided for presenting statements in response. A statement in reply shall set forth facts and arguments bearing upon the allegations and arguments contained in the statements in response.

(2) When a statement in reply has been filed, the secretary shall send a copy forthwith to each Government except the Government which presented the said statement in reply, and to all persons who presented statements in response.

SUPPLEMENTAL OR AMENDED APPLICATIONS AND STATEMENTS

18.(1) If it appears to the Commission that either an application, a statement in response or a statement in reply is not sufficiently definite and complete, the Commission may require a more definite and complete application, statement in response or statement in reply, as the case may be, to be presented.

(2) Where substantial justice requires it, the Commission with the concurrence of at least four Commissioners may allow the amendment of any application, statement in response, statement in reply and any document or exhibit which has been presented to the Commission.

REDUCING OR EXTENDING TIME AND DISPENSING WITH STATEMENTS

19. In any case where the Commission considers that such action would be in the public interest and not prejudicial to the right of interested persons to be heard in accordance with Article XII of the Treaty, the Commission may reduce or extend the time for the presentation of any paper or the doing of any act required by these rules or may dispense with the presentation of statements in response and statements in reply.

INTERESTED PERSONS AND COUNSEL

20. Governments and persons interested in the subject matter of an application, whether in favour of or opposed to it, are entitled to be heard in person or by counsel at any hearing thereof held by the Commission.

CONSULTATION

21. The Commission may meet or consult with the applicant, the Governments and other persons or their counsel at any time regarding the plan of hearing, the mode of conducting the inquiry, the admitting or proof of certain facts or for any other purpose.

ATTENDANCE OF WITNESSES AND PRODUCTION OF DOCUMENTS

22.(1) Requests for the attendance and examination of witnesses and for the production and inspection of books, papers and documents may be issued over the signature of the secretary of the section of the Commission of the country in which the witnesses reside or the books, papers or documents may be, when so authorized by the Chairman of that section.

(2) All applications for subpoena or other process to compel the attendance of witnesses or the production of books, papers and documents before the Commission shall be made to the proper courts of either country, as the case may be, upon the order of the Commission.

HEARINGS

23.(1) The time and place of the hearing or hearings of an application shall be fixed by the Chairmen of the two sections.

(2) The secretaries shall forthwith give written notice of the time and place of the hearing or hearings to the applicant, the Governments and all persons who have presented statements in response to the Commission. Except as otherwise provided by the Commission, the secretaries shall also cause such notice to be published in the Canada Gazette and the Federal Register and once each week for three successive weeks in two newspapers, published one in each country and circulated in or near the localities which, in the opinion of the Commission, are most likely to be affected by the proposed use, obstruction or diversion of water.

(3) All hearings shall be open to the public.

(4) The applicant, the Governments and persons interested are entitled to present oral and documentary evidence and argument that is relevant and material to any issue that is before the Commission in connection with the application.

(5) The presiding chairman may require that evidence be under oath.

(6) Witnesses may be examined and cross-examined by the Commissioners and by counsel for the applicant, the Governments and the Commission. With the consent of the presiding chairman, counsel for a person other than the applicant may also examine or cross-examine witnesses.

(7) The Commission may require further evidence to be given and may require printed briefs to be submitted at or subsequent to the hearing.

(8) The Commissioners shall be free to determine the probative value of the evidence submitted to it.

(9) A verbatim transcript of the proceedings at the hearing shall be prepared.

(10) The hearing of the application, when once begun, shall proceed at the times and places determined by the Chairmen of the two sections to ensure the greatest practicable continuity and dispatch of proceedings.

EXPENSES OF PROCEEDINGS

24.(1) The expenses of those participating in any proceeding under Part II of these rules shall be borne by the participants.

(2) The Commission, after due notice to the participant or participants concerned, may require that any unusual cost or expense to the Commission shall be paid by the person on whose behalf or at whose request such unusual cost or expense has been or will be incurred.

GOVERNMENT BRIEF RE NAVIGABLE WATERS

25. When in the opinion of the Commission it is desirable that a decision should be rendered which affects navigable waters in a manner or to an extent different from that contemplated by the application and plans presented to the Commission, the Commission will, before making a final decision, submit to the Government presenting or transmitting the application a draft of the decision, and such Government may transmit to the Commission a brief or memorandum thereon which will receive due consideration by the Commission before its decision is made final.

PART III—REFERENCES

PRESENTATION TO COMMISSION

26.(1) Where a question or matter of difference arising between the two Governments involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other along the common frontier between the United States of America and Canada is to be referred to the Commission under Article IX of the Treaty, the method of bringing such question or matter to the attention of the Commission and invoking its action ordinarily will be as set forth in this rule.

(2) Where both Governments have agreed to refer such a question or matter to the Commission, each Government will present to the Commission, at the permanent office in its country, a reference in similar or identical terms setting forth as fully as may be necessary for the information of the Commission the question or matter which it is to examine into and report upon and any restrictions or exceptions which may be imposed upon the Commission with respect thereto.

(3) Where one of the Governments, on its own initiative, has decided to refer such a question or matter to the Commission, it will present a reference to the Commission at the permanent office in its country. All such references should conform, as to their contents, to the requirements of paragraph (2) of this rule.

(4) Such drawings, plans of survey and maps as may be necessary to illustrate clearly the question or matter referred should accompany the reference when it is presented to the Commission.

NOTICE AND PUBLICATION

27.(1) The secretary to whom a reference is presented shall receive and file the same and shall send a copy forthwith to the other secretary for filing in the office of the latter. If the reference is presented by one Government only, the other secretary shall send a copy forthwith to his Government.

2. Subject to any restrictions or exceptions which may be imposed upon the Commission by the terms of the reference, and unless otherwise provided by the Commission, the secretaries, as soon as practicable after the reference is received, shall cause a notice to be published in the Canada Gazette, the Federal Register and in two newspapers, published one in each country and circulated in or near the localities which, in the opinion of the Commission, are most likely to be interested in the subject matter of the reference. The notice shall describe the subject matter of the reference in general terms, invite interested persons to inform the Commission of the nature of their interest and state that the Commission will provide convenient opportunity for interested persons to be heard with respect thereto.

ADVISORY BOARDS

28.(1) The Commission may appoint a board or boards, composed of qualified persons, to conduct on its behalf investigations and studies that may be necessary or desirable and to report to the Commission regarding any questions or matters involved in the subject matter of the reference.

(2) Such board ordinarily will have an equal number of members from each country.

(3) The Commission ordinarily will make copies of the main or final report of such board or a digest thereof available for examination by the Governments and interested persons prior to holding the final hearing or hearings referred to in Rule 29.

HEARINGS

29.(1) A hearing or hearings may be held whenever in the opinion of the Commission such action would be helpful to the Commission in complying with the terms of a reference. Subject to any restrictions or exceptions which may be imposed by the terms of the reference, a final hearing or hearings shall be held before the Commission reports to Governments in accordance with the terms of the reference.

(2) The time, place and purpose of the hearing or hearings on a reference shall be fixed by the Chairmen of the two sections.

(3) The secretaries shall forthwith give written notice of the time, place and purpose of the hearing or hearings to each Government and to persons who have advised the Commission of their interest. Unless otherwise directed by the Commission, the secretaries shall also cause such notice to be published in the Canada Gazette, the Federal Register and once each week for three successive weeks in two newspapers, published one in each country and circulated in or near the localities which, in the opinion of the Commission, are most likely to be interested in the subject matter of the reference.

(4) All hearings shall be open to the public, unless otherwise determined by the Commission.

(5) At a hearing, the Governments and persons interested are entitled to present, in person or by counsel, oral and documentary evidence and argument that is relevant and material to any matter that is within the published purpose of the hearing.

(6) The presiding chairman may require that evidence be under oath.

(7) Witnesses may be examined and cross-examined by the Commissioners and by counsel for the Governments and the Commission. With the consent of the presiding chairman, counsel for any interested person may also examine or cross-examine witnesses.

(8) The Commission may require further evidence to be given and may require printed briefs to be submitted at or subsequent to the hearing.

(9) A verbatim transcript of the proceedings at the hearing shall be prepared.

PROCEEDINGS UNDER ARTICLE X

30. When a question or matter of difference arising between the two Governments involving the rights, obligations or interests of either in relation to the other or to their respective inhabitants has been or is to be referred to the Commission for decision under Article X of the Treaty, the Commission, after consultation with the said Governments, will adopt such rules of procedures as may be appropriate to the question or matter referred or to be referred.

Adopted: December 2, 1964.

TREATY
BETWEEN THE UNITED STATES AND GREAT BRITAIN
RELATING TO BOUNDARY WATERS, AND QUESTIONS
ARISING BETWEEN THE UNITED STATES AND CANADA.

The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being equally desirous to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise, have resolved to conclude a treaty in furtherance of these ends, and for that purpose have appointed as their respective plenipotentiaries:

The President of the United States of America, Elihu Root, Secretary of State of the United States; and

His Britannic Majesty, the Right Honourable James Bryce, O.M., his Ambassador Extraordinary and Plenipotentiary at Washington;

Who, after having communicated to one another their full powers, found in good and due form, have agreed upon the following articles:

PRELIMINARY ARTICLE

For the purposes of this treaty boundary waters are defined as the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary.

ARTICLE I

The High Contracting Parties agree that the navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free navigation and applying equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries.

It is further agreed that so long as this treaty shall remain in force, this same right of navigation shall extend to the waters of Lake Michigan and to all canals connecting boundary waters, and now existing or which may hereafter be constructed on either side of the line. Either of the High Contracting Parties may adopt rules and regulations governing the use of such canals within its own territory and may charge tolls for the use thereof, but all such rules and regulations and all tolls charged shall apply alike to the subjects or citizens of the High Contracting Parties and the ships, vessels, and boats of both of the High Contracting Parties, and they shall be placed on terms of equality in the use thereof.

ARTICLE II

Each of the High Contracting Parties reserves to itself or to the several State Governments on the one side and the Dominion or Provincial Governments on the other as the case may be, subject to any treaty provisions now existing with respect thereto, the exclusive jurisdiction and control over the use and diversion, whether temporary or permanent, of all waters on its own side of the line which in their natural channels would flow across the boundary or into boundary waters; but it is agreed that any interference with or diversion from their natural channel of such waters on either side of the boundary, resulting in any injury on the other side of the boundary, shall give rise to the same rights and entitle the injured parties to the same legal remedies as if such injury took place in the country where such diversion or interference occurs; but this provision shall not apply to cases already existing or to cases expressly covered by special agreement between the parties hereto.

It is understood, however, that neither of the High Contracting Parties intends by the foregoing provision to surrender any right, which it may have, to object to any interference with or diversions of waters on the other side of the boundary the effect of which would be productive of material injury to the navigation interests on its own side of the boundary.

ARTICLE III

It is agreed that, in addition to the uses, obstructions, and diversions heretofore permitted or hereafter provided for by special agreement between the Parties hereto, no further or other uses or obstructions or diversions, whether temporary or permanent, of boundary waters on either side of the line, affecting the natural level or flow of boundary waters on the other side of the line shall be made except by authority of the United States or the Dominion of Canada within their respective jurisdictions and with the approval, as hereinafter provided, of a joint commission, to be known as the International Joint Commission.

The foregoing provisions are not intended to limit or interfere with the existing rights of the Government of the United States on the one side and the Government of the Dominion of Canada on the other, to undertake and carry on governmental works in boundary waters for the deepening of channels, the construction of breakwaters, the improvement of harbours, and other governmental works for the benefit of commerce and navigation, provided that such works are wholly on its own side of the line and do not materially affect the level or flow of the boundary waters on the other, nor are such provisions intended to interfere with the ordinary use of such waters for domestic and sanitary purposes.

ARTICLE IV

The High Contracting Parties agree that, except in cases provided for by special agreement between them, they will not permit the construction or maintenance on their respective sides of the boundary of any remedial or protective works or any dams or other obstructions in waters flowing from boundary waters or in waters at a lower level than the boundary in rivers flowing across the boundary, the effect of which is to raise the natural level of waters on the other side of the boundary unless the construction or maintenance thereof is approved by the aforesaid International Joint Commission.

It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.

ARTICLE V

The High Contracting Parties agree that it is expedient to limit the diversion of waters from the Niagara River so that the level of Lake Erie and the flow of the stream shall not be appreciably affected. It is the desire of both Parties to accomplish this object with the least possible injury to investments which have already been made in the construction of power plants on the United States side of the river under grants of authority from the State of New York, and on the Canadian side of the river under licences authorized by the Dominion of Canada and the Province of Ontario.

So long as this treaty shall remain in force, no diversion of the waters of the Niagara River above the Falls from the natural course and stream thereof shall be permitted except for the purposes and to the extent hereinafter provided.

The United States may authorize and permit the diversion within the State of New York of the waters of said river above the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of twenty thousand cubic feet of water per second.

The United Kingdom, by the Dominion of Canada, or the Province of Ontario, may authorize and permit the diversion within the Province of Ontario of the waters of said river above the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of thirty-six thousand cubic feet of water per second.

The prohibitions of this article shall not apply to the diversion of water for sanitary or domestic purposes, or for the service of canals for the purposes of navigation.

NOTE: The third, fourth and fifth paragraphs of Article V were terminated by the Canada-United States Treaty of February 27, 1950 concerning the diversion of the Niagara River.

ARTICLE VI

The High Contracting Parties agree that the St. Mary and Milk Rivers and their tributaries (in the State of Montana and the Provinces of Alberta and Saskatchewan) are to be treated as one stream for the purposes of irrigation and power, and the waters thereof shall be apportioned equally between the two countries, but in making such equal apportionment more than half may be taken from one river and less than half from the other by either country so as to afford a more beneficial use to each. It is further agreed that in the division of such waters during the irrigation season, between the 1st of April and 31st of October, inclusive, annually, the United States is entitled to a prior appropriation of 500 cubic feet per second of the waters of the Milk River, or so much of such amount as constitutes three-fourths of its natural flow, and that Canada is entitled to a prior appropriation of 500 cubic feet per second of the flow of St. Mary River, or so much of such amount as constitutes three-fourths of its natural flow.

The channel of the Milk River in Canada may be used at the convenience of the United States for the conveyance, while passing through Canadian territory, of waters diverted from the St. Mary River. The provisions of Article II of this treaty shall apply to any injury resulting to property in Canada from the conveyance of such waters through the Milk River.

The measurement and apportionment of the water to be used by each country shall from time to time be made jointly by the properly constituted reclamation officers of the United States and the properly constituted irrigation officers of His Majesty under the direction of the International Joint Commission.

ARTICLE VII

The High Contracting Parties agree to establish and maintain an International Joint Commission of the United States and Canada composed of six commissioners, three on the part of the United States appointed by the President thereof, and three on the part of the United Kingdom appointed by His Majesty on the recommendation of the Governor in Council of the Dominion of Canada.

ARTICLE VIII

This International Joint Commission shall have jurisdiction over and shall pass upon all cases involving the use or obstruction or diversion of the waters with respect to which under Articles III and IV of this Treaty the approval of this Commission is required, and in passing upon such cases the Commission shall be governed by the following rules or principles which are adopted by the High Contracting Parties for this purpose:

The High Contracting Parties shall have, each on its own side of the boundary, equal and similar rights in the use of the waters hereinbefore defined as boundary waters.

The following order of precedence shall be observed among the various uses enumerated hereinafter for these waters, and no use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it in this order of precedence:

- (1) Uses for domestic and sanitary purposes;
- (2) Uses for navigation, including the service of canals for the purposes of navigation;
- (3) Uses for power and for irrigation purposes.

The foregoing provisions shall not apply to or disturb any existing uses of boundary waters on either side of the boundary.

The requirement for an equal division may in the discretion of the Commission be suspended in cases of temporary diversions along boundary waters at points where such equal division can not be made advantageously on account of local conditions, and where such diversion does not diminish elsewhere the amount available for use on the other side.

The Commission in its discretion may make its approval in any case conditional upon the construction of remedial or protective works to compensate so far as possible for the particular use or diversion proposed, and in such cases may require that suitable and adequate provision, approved by the Commission, be made for the protection and indemnity against injury of any interests on either side of the boundary.

In cases involving the elevation of the natural level of waters on either side of the line as a result of the construction or maintenance on the other side of remedial or protective works or dams or other obstructions in boundary waters or in waters flowing therefrom or in waters below the boundary in rivers flowing across the boundary, the Commission shall require, as a condition of its approval thereof, that suitable and adequate provision, approved by it, be made for the protection and indemnity of all interests on the other side of the line which may be injured thereby.

The majority of the Commissioners shall have power to render a decision. In case the Commission is evenly divided upon any question or matter presented to it for decision, separate reports shall be made by the Commissioners on each side to their own Government. The High Contracting Parties shall thereupon endeavour to agree upon an adjustment of the question or matter of difference, and if an agreement is reached between them, it shall be reduced

to writing in the form of a protocol, and shall be communicated to the Commissioners, who shall take such further proceedings as may be necessary to carry out such agreement.

ARTICLE IX

The High Contracting Parties further agree that any other questions or matters of difference arising between them involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along the common frontier between the United States and the Dominion of Canada, shall be referred from time to time to the International Joint Commission for examination and report, whenever either the Government of the United States or the Government of the Dominion of Canada shall request that such questions or matters of difference be so referred.

The International Joint Commission is authorized in each case so referred to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

Such reports of the Commission shall not be regarded as decisions of the questions or matters so submitted either on the facts or the law, and shall in no way have the character of an arbitral award.

The Commission shall make a joint report to both Governments in all cases in which all or a majority of the Commissioners agree, and in case of disagreement the minority may make a joint report to both Governments, or separate reports to their respective Governments.

In case the Commission is evenly divided upon any question or matter referred to it for report, separate reports shall be made by the Commissioners on each side to their own Government.

ARTICLE X

Any questions or matters of difference arising between the High Contracting Parties involving the rights, obligations, or interests of the United States or of the Dominion of Canada either in relation to each other or to their respective inhabitants, may be referred for decision to the International Joint Commission by the consent of the two Parties, it being understood that on the part of the United States any such action will be by and with the advice and consent of the Senate, and on the part of His Majesty's Government with the consent of the Governor General in Council. In each case so referred, the said Commission is authorized to examine into and report upon the facts and circumstances of the particular questions any matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

A majority of the said Commission shall have power to render a decision or finding upon any of the questions or matters so referred.

If the said Commission is equally divided or otherwise unable to render a decision or finding as to any questions or matters so referred, it shall be the duty of the Commissioners to make a joint report to both Governments, or separate reports to their respective Governments, showing the different conclusions arrived at with regard to the matters or questions so referred, which questions or matters shall thereupon be referred for decision by the High Contracting Parties to an umpire chosen in accordance with the procedure prescribed in the fourth, fifth and sixth paragraphs of Article XLV of the Hague Convention for the pacific settlement of international disputes, dated

October 18, 1907. Such umpire shall have power to render a final decision with respect to those matters and questions so referred on which the Commission failed to agree.

ARTICLE XI

A duplicate original of all decisions rendered and joint reports made by the Commission shall be transmitted to and filed with the Secretary of State of the United States and the Governor General of the Dominion of Canada, and to them shall be addressed all communications of the Commission.

ARTICLE XII

The International Joint Commission shall meet and organize at Washington promptly after the members thereof are appointed, and when organized the Commission may fix such times and places for its meetings as may be necessary, subject at all times to special call or direction by the two Governments. Each Commissioner upon the first joint meeting of the Commission after his appointment, shall, before proceeding with the work of the Commission, make and subscribe a solemn declaration in writing that he will faithfully and impartially perform the duties imposed upon him under this treaty, and such declaration shall be entered on the records of the proceedings of the Commission.

The United States and Canadian sections of the Commission may each appoint a secretary, and these shall act as joint secretaries of the Commission at its joint sessions, and the Commission may employ engineers and clerical assistants from time to time as it may deem advisable. The salaries and personal expenses of the Commission and of the secretaries shall be paid by their respective Governments, and all reasonable and necessary joint expenses of the Commission, incurred by it, shall be paid in equal moieties by the High Contracting Parties.

The Commission shall have power to administer oaths to witnesses, and to take evidence on oath whenever deemed necessary in any proceeding, or inquiry, or matter within its jurisdiction under this treaty, and all parties interested therein shall be given convenient opportunity to be heard, and the High Contracting Parties agree to adopt such legislation as may be appropriate and necessary to give the Commission the powers above mentioned on each side of the boundary, and to provide for the issue of subpoenas and for compelling the attendance of witnesses in proceedings before the Commission. The Commission may adopt such rules of procedure as shall be in accordance with justice and equity, and may make such examination in person and through agents or employees as may be deemed advisable.

ARTICLE XIII

In all cases where special agreements between the High Contracting Parties hereto are referred to in the foregoing articles, such agreements are understood and intended to include not only direct agreements between the High Contracting Parties, but also any mutual arrangement between the United States and the Dominion of Canada expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of the Dominion.

ARTICLE XIV

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty. The ratifications shall be exchanged at Washington as soon as possible and the treaty shall take effect on the date of the exchange

of its ratifications. It shall remain in force for five years, dating from the day of exchange of ratifications, and thereafter until terminated by twelve months' written notice given by either High Contracting Party to the other.

In faith whereof the respective plenipotentiaries have signed this treaty in duplicate and have hereunto affixed their seals.

Done at Washington the 11th day of January, in the year of our Lord one thousand nine hundred and nine.

(Signed) ELIHU ROOT [SEAL]

(Signed) JAMES BRYCE [SEAL]

AND WHEREAS the Senate of the United States by their resolution of March 3, 1909, (two-thirds of the Senators present concurring therein) did advise and consent to the ratification of the said Treaty with the following understanding, to wit:

"Resolved further, as a part of this ratification, That the United States approves this treaty with the understanding that nothing in this treaty shall be construed as affecting, or changing, any existing territorial or riparian rights in the water, or rights of the owners of lands under water, on either side of the international boundary at the rapids of the St. Mary's river at Sault Ste. Marie, in the use of the waters flowing over such lands, subject to the requirements of navigation in boundary waters and of navigation canals, and without prejudice to the existing right of the United States and Canada, each to use the waters of the St. Mary's river, within its own territory, and further, that nothing in this treaty shall be construed to interfere with the drainage of wet swamp and overflowed lands into streams flowing into boundary waters, and that this interpretation will be mentioned in the ratification of this treaty as conveying the true meaning of the treaty, and will, in effect, form part of the treaty;"

AND WHEREAS the said understanding has been accepted by the Government of Great Britain, and the ratifications of the two Governments of the said treaty were exchanged in the City of Washington, on the 5th day of May, one thousand nine hundred and ten;

Now, THEREFORE, be it known that I, William Howard Taft, President of the United States of America, have caused the said treaty and the said understanding, as forming a part thereof, to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this thirteenth day of May in the year of our Lord one thousand nine hundred and ten,

[SEAL] and of the Independence of the United States of America the one hundred and thirty-fourth.

Wm H Taft

By the President:

P C Knox

Secretary of State.

PROTOCOL OF EXCHANGE.

On proceeding to the exchange of the ratifications of the treaty signed at Washington on January 11, 1909, between the United States and Great Britain, relating to boundary waters and questions arising along the boundary between the United States and the Dominion of Canada, the undersigned plenipotentiaries, duly authorized thereto by their respective Governments, hereby declare that nothing in this treaty shall be construed as affecting, or changing, any existing territorial, or riparian rights in the water, or rights of the owners of lands under water, on either side of the international boundary at the rapids of the St. Mary's River at Sault Ste. Marie, in the use of the waters flowing over such lands, subject to the requirements of navigation in boundary waters and of navigation canals, and without prejudice to the existing right of the United States and Canada, each to use the waters of the St. Mary's River, within its own territory; and further, that nothing in this treaty shall be construed to interfere with the drainage of wet, swamp, and overflowed lands into streams flowing into boundary waters, and also that this declaration shall be deemed to have equal force and effect as the treaty itself and to form an integral part thereto.

The exchange of ratifications then took place in the usual form.

In witness whereof, they have signed the present Protocol of Exchange and have affixed their seals thereto.

DONE at Washington this 5th day of May, one thousand nine hundred and ten.

PHILANDER C KNOX [SEAL]

JAMES BRYCE [SEAL]

LAWS OF THE DOMINION OF CANADA

LEGISLATION ENACTED BY THE PARLIAMENT OF THE DOMINION FOR THE PURPOSE OF CARRYING INTO EFFECT THE PROVISIONS OF THE TREATY OF JANUARY 11, 1909, CREATING THE INTER- NATIONAL JOINT COMMISSION.

[1-2 George V.]

CHAP. 28—AN ACT Relating to the establishment and expenses of the International Joint Commission under the waterways treaty of January the eleventh, nineteen hundred and nine.

[Assented to 19 May, 1911.]

[Amended 1914 Ch 5. 4-5 Geo V.]

[Amended 1952 Ch 43. 1 Elizabeth II.]

[Amended 1963 Ch 41. 12 Elizabeth II.]

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

1. The treaty relating to the boundary waters and to questions arising along the boundary between Canada and the United States made between His Majesty and the said United States, signed at Washington the eleventh day of January, one thousand nine hundred and nine, and the protocol of the fifth day of May, one thousand nine hundred and ten, in the schedule to this act, are hereby confirmed and sanctioned.

2. The laws of Canada and of the several Provinces thereof are hereby amended and altered so as to permit, authorize, and sanction the performance of the obligations undertaken by His Majesty in and under the said treaty; and so as to sanction, confer, and impose the various rights, duties and disabilities intended by the said treaty to be conferred or imposed or to exist within Canada.

3. Any interference with or diversion from their natural channel of any waters in Canada, which in their natural channels would flow across the boundary between Canada and the United States or into boundary waters (as defined in the said treaty) resulting in any injury on the United States side of the boundary, shall give the same rights and entitle the injured parties to the same legal remedies as if such injury took place in that part of Canada where such diversion or interference occurs; but this section shall not apply to cases existing on the eleventh day of January, one thousand nine hundred and nine, or to cases expressly covered by special agreement between His Majesty and the Government of the United States.

4. The exchequer court of Canada shall have jurisdiction at the suit of any injured party or person claiming under this act in all cases in which it is sought to enforce or determine as against any person any right or obligation arising or claimed under or by virtue of this act.

5. The International Joint Commission, when appointed and constituted pursuant to the said treaty shall have power, when holding joint sessions in

Canada, to take evidence on oath and to compel the attendance of witnesses by application to a judge of a superior court of the Province within which such session is held, and such judge is hereby authorized and directed to make all orders and issue all processes necessary and appropriate to that end.

6. (1) The members of the Canadian Section of the Commission shall be paid such salaries as are fixed by the Governor in Council, but the salary of the Chairman shall not exceed twenty thousand dollars per annum and the salary of each of the other members shall not exceed twelve thousand dollars per annum.

(2) A Secretary of the Canadian section of the Commission and such other officers, clerks and employees as are required for the purposes of this Act may be employed under the provisions of the Civil Service Act.

7. All expenses incurred in carrying out the provisions of this Act and the said Treaty shall be paid out of money appropriated by Parliament for the purpose.

8. This Act shall be administered by the Secretary of State for External Affairs.

