

## THE COLUMBIA RIVER TREATY\*

The Columbia River Treaty, signed in January 1961, but not, as yet, ratified by the Canadian Parliament, expresses the will of Canada and the United States of America to cooperate on the development of the Columbia River Basin, in order to attain the greatest mutual benefit from these vast potential hydro-electric resources.

### *General Terms of the Treaty*

In effect Canada binds herself to two main obligations. She is required to make readily available a certain quantity of water storage at certain specific places and, secondly, to ensure flood control by the use of dams (which are mainly beneficial to the U.S.A.). On the other hand, the U.S.A. agrees to maintain and operate the hydro-electric facilities, to indemnify Canada for her costs of flood control, and to deliver to Canada the amount of hydro-electric energy to which she is entitled under the treaty.

### *Rights and Duties of Canada*

#### *A. Rights of Canada*

The rights of Canada are concurrent with the duties of the U.S.A., but they are more specifically dealt with in Arts. V, VI, and XIII (3) and (5).

Art. V entitles Canada to one half of the downstream power benefits determined under Art. VII and Annex B. By Art. VI Canada has the right to compensation for the economic loss arising directly from foregoing alternative uses of storage used to provide flood control in the U.S.A. This compensation can be received in electric power if Canada so elects. Canada also acquires through Art. XIII (3) and (5) the right to divert water from the Kootenay and Columbia Rivers after a certain time.

#### *B. Duties of Canada*

The principal duties of Canada are set out in Arts. II, IV, X, XII (4) and XIII.

The first commitment of Canada is found in Art. II: She has the duty to provide a specific area of water storage in the Columbia River Basin. The construction of the dams required for this work must start as soon as possible after the ratification of the Treaty.

The second obligation of Canada, stated in Art. IV, is to operate these dams for the purpose of generating hydro-electric power in Canada and the U.S.A.; to ensure flood control; and to provide any additional storage when-

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\*A *précis* by Philippe R. de Massy, of the Junior Board of Editors, McGill Law Journal; second year law student.

ever called upon to do so by an entity designated by the U.S.A. The full operation of Canadian water storage shall commence within nine years of the ratification date.

Canada also binds herself to refrain from any development of water resources after the ratification which will adversely affect the stream-flow of the Columbia River thereby reducing flood control and hydro-electric power benefits.

By Art. V Canada is bound to pay in cash for the dependable hydro-electric capacity transmitted by the U.S.A. on a line to be constructed with U.S. funds, from Oliver to Vancouver, B.C.

Art. XII stipulates that if the U.S.A. takes option to build Libby Dam, Canada must prepare and make available for flooding the land in Canada necessary for the storage reservoir.

Finally, in Art. XII (1), Canada binds herself not to divert from its natural channel, in a way that alters the flow as it crosses the Canadian-American border in the Columbia River Basin, any water, for a use other than consumption, without the consent of the U.S.A.

### ***Rights and Duties of the U.S.A.***

#### ***A. Rights of the U.S.A.***

Few rights of the U.S.A. are specifically enumerated in the treaty as they are naturally correlated with Canada's duties.

Art. IX gives the U.S.A. the right to ask for a modification in the downstream power benefits, if she considers that the costs involved would not justify the construction and operation of the project.

Art. XII specifies that the U.S.A. has an option to commence, within five years of the ratification date of the treaty, the construction of a dam on the Kootenay River near Libby, Montana. This right of option is forfeited after the period stated above expires.

#### ***B. Duties of the U.S.A.***

The duties of the U.S.A. are contained in Arts. III, V, VI and X.

The first duty, laid out in Art. III, is to maintain and develop hydro-electric facilities included in the base system, and any additional hydro-electric facilities, in the most effective way. Art. V maintains that the U.S.A. must also bind herself to deliver to Canada at a point near Oliver, B.C., her share of downstream power benefits.

Under Art. VI, the U.S.A. must pay Canada in cash for flood control facilities which she provides.

As set out in Art. X, the U.S.A. must provide East-West standby transmission service adequate to safeguard the transmission of power owing to Canada from Oliver to Vancouver, B.C.

### **General Provisions**

The last eight articles apply to both Canada and the U.S.A. and provide for the technical problems arising out of the implementation of the treaty. The arrangements for the implementation of the treaty are detailed in Art. XIV, which stipulates the nomination by Canada and the U.S.A. of one or more entities whose duties are set out later in the article.

Arts. XV and XVI detail the setting-up of an engineering board and the settlement of differences.

Art. XVII calls for the restoration of the pre-treaty *status quo* and the continuing validity of the Boundary Waters Treaty, 1909, upon expiration of the present treaty.

Liability for damages, the duration of the treaty, ratification and registration with the U.N. make up the last four articles.

### **Annexes**

The treaty terminates with two annexes which describe in further detail the operation of the Canadian water storage, flood control, and the determination of downstream power benefits.

#### **Annex A: Principles of Operation**

A hydrometeorological system must be set up under the treaty to aid regulation of flood control and power operations. As regards flood control operations, Canada agrees to carry out the plans submitted to her by the U.S.A. Concerning the operations of water storage for power generating purposes, the treaty provides that this will be carried out by Canada in accordance with the plans, so that optimum power generation is achieved in the U.S.A. until "at-site power" is developed. This change must not diminish U.S.A. downstream benefits below a certain level.

#### **Annex B: Determination of Downstream Power Benefits**

In principle, the downstream power benefits will be proportional to the difference of power generation with and without the use of Canadian storage. The Annex outlines three steps for the computation of the increase in dependable hydro-electric capacity and the increase in average annual hydro-electric energy. This must be read with reference to a table in the Annex which provides figures for the computation.

**CASE and COMMENT**