

No. 39101. United States of America and Canada

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA FOR WATER SUPPLY AND FLOOD CONTROL IN THE SOURIS RIVER BASIN. WASHINGTON, 26 OCTOBER 1989 [*United Nations, Treaty Series, vol. 2203, I-39101.*]

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA FOR WATER SUPPLY AND FLOOD CONTROL IN THE SOURIS RIVER BASIN (WITH ANNEX). OTTAWA, 20 AND 22 DECEMBER 2000

Entry into force: 22 December 2000 by the exchange of the said notes, in accordance with their provisions

Authentic texts: English and French

Registration with the Secretariat of the United Nations: United States of America, 15 July 2013

Nº 39101. États-Unis d'Amérique et Canada

ACCORD ENTRE LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE ET LE GOUVERNEMENT DU CANADA SUR L'APPROVISIONNEMENT EN EAU ET LA PROTECTION CONTRE LES CRUES DANS LE BASSIN DE LA RIVIÈRE SOURIS. WASHINGTON, 26 OCTOBRE 1989 [*Nations Unies, Recueil des Traités, vol. 2203, I-39101.*]

ÉCHANGE DE NOTES CONSTITUANT UN ACCORD MODIFIANT L'ACCORD ENTRE LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE ET LE GOUVERNEMENT DU CANADA SUR L'APPROVISIONNEMENT EN EAU ET LA PROTECTION CONTRE LES CRUES DANS LE BASSIN DE LA RIVIÈRE SOURIS (AVEC ANNEXE). OTTAWA, 20 ET 22 DÉCEMBRE 2000

Entrée en vigueur : 22 décembre 2000 par l'échange desdites notes, conformément à leurs dispositions

Textes authentiques : anglais et français

Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies : États-Unis d'Amérique, 15 juillet 2013

[ENGLISH TEXT – TEXTE ANGLAIS]

I

Department of Foreign Affairs
and International Trade

Ministère des Affaires étrangères
et du Commerce international

Note No JLAB-0199

Excellency :

I have the honour to refer to discussions between representatives of our two Governments regarding the Agreement between the Government of Canada and the Government of the United States of America for the Water Supply and Flood control in the Souris River Basin, signed in Washington on October 26, 1989 and which entered into force on the same date, and to propose, on behalf of the Government of Canada, that the Agreement be amended as follows:

1. The text of Section 4.2 of Annex A is deleted in its entirety and replaced by the following:

All non-flood operations will be consistent with Annex B.

2. The text of Section 4.4.1 of Annex A is deleted in its entirety and replaced by the following:

All non-flood operations will be consistent with Annex B.

3. Annex B referred to in Article VII of the Agreement is deleted and replaced by the attached amended Annex B.

If these proposals are acceptable to your Government, I have the further honour to propose that this Note, which is equally authentic in English and French, with its Annex, together with your reply to that effect, shall constitute an Agreement between our two Governments which shall enter into force on the date of Your Excellency's Note in reply.

A handwritten signature in black ink, appearing to read "JC Mac", is positioned above the title of the Minister of Foreign Affairs.

Minister of Foreign Affairs

Ottawa,

DEC 20 2000

ANNEX B

The Province of Saskatchewan shall have the right to divert, store, and use waters which originate in the Saskatchewan portion of the Souris River basin, provided that such diversion, storage, and use shall not diminish the annual flow of the river at the Sherwood Crossing more than 50 percent of that which would have occurred in a state of nature, as calculated by the International Souris River Board of Control (the Board). For the purpose of these calculations, any reference to "annual" and "year" is intended to mean the period January 1 through December 31.

For the benefit of riparian users of water between the Sherwood Crossing and the upstream end of Lake Darling, the Province of Saskatchewan shall, so far as is practicable, regulate its diversion, storage, and uses in such a manner that the flow in the Souris River channel at the Sherwood Crossing shall not be less than 0.113 cubic metres per second (4 cubic feet per second) when that much flow would have occurred under the conditions of water use development prevailing in the Saskatchewan portion of the Souris River basin prior to construction of the Boundary Dam, Rafferty Dam and Alameda Dam.

Under certain conditions, a portion of the North Dakota share will be in the form of evaporation from Rafferty and Alameda Reservoirs. During years when these conditions occur, the minimum amount of flow actually passed to North Dakota will be 40 percent of the annual natural flow volume at the Sherwood Crossing. This lesser amount is in recognition of Saskatchewan's operation of Rafferty Dam and Alameda Dam for flood control in North Dakota and of evaporation as a result of the project.

- (a) Saskatchewan will deliver a minimum of 50 percent of the annual natural flow volume at the Sherwood Crossing in every year except in those years when the conditions given in (i) or (ii) below apply. In those years, Saskatchewan will deliver a minimum of 40 percent of the annual natural flow volume at the Sherwood Crossing.
 - (i) The annual natural flow volume at Sherwood Crossing is greater than 50 000 cubic decametres (40 500 acre-feet) and the current year June 1 elevation of Lake Darling is greater than 486.095 metres (1594.8 feet); or
 - (ii) The annual natural flow volume at Sherwood Crossing is greater than 50 000 cubic decametres (40 500 acre-feet) and the current year June 1 elevation of Lake Darling is greater than 485.79 metres (1593.8 feet), and since the last occurrence of a Lake Darling June 1 elevation of greater than 486.095 metres (1594.8 feet) the elevation of Lake Darling has not been less than 485.79 metres (1593.8 feet) on June 1.

- (b) Notwithstanding the annual division of flows that is described in (a), in each year Saskatchewan will, so far as is practicable as determined by the Board, deliver to North Dakota prior to June 1, 50 percent of the first 50 000 cubic decametres (40 500 acre-feet) of natural flow which occurs during the period January 1 to May 31. The intent of this division of flow is to ensure that North Dakota receives 50 percent of the rate and volume of flow that would have occurred in a state of nature to try to meet existing senior water rights.
- (c) Lake Darling Reservoir and the Canadian reservoirs will be operated (insofar as is compatible with the Projects' purposes and consistent with past practices) to ensure that the pool elevations, which determine conditions for sharing evaporation losses, are not artificially altered. The triggering elevation of 485.79 metres (1593.8 feet) for Lake Darling Reservoir is based on existing water uses in North Dakota, including refuges operated by the U.S. Fish and Wildlife Service. Each year, operating plans for the refuges on the Souris River will be presented to the Board. Barring unforeseen circumstances, operations will follow said plans during each given year. Lake Darling Reservoir will not be drawn down for the sole purpose of reaching the elevation of 485.79 metres (1593.8 feet) on June 1.

Releases will not be made by Saskatchewan Water Corporation from the Canadian reservoirs for the sole purpose of raising the elevation of Lake Darling Reservoir above 486.095 metres (1594.8 feet) on June 1.

- (d) Flow releases to the United States should occur (except in flood years) in the pattern which would have occurred in a state of nature. To the extent possible and in consideration of potential channel losses and operating efficiencies, releases from the Canadian dams will be scheduled to coincide with periods of beneficial use in North Dakota. Normally, the period of beneficial use in North Dakota coincides with the timing of the natural hydrograph, and that timing should be a guide to releases of the United States portion of the natural flow.
- (e) A determination of the annual apportionment balance shall be made by the Board on or about October 1, of each year. Any shortfall that exists as of that date shall be delivered by Saskatchewan prior to December 31.
- (f) The flow release to the United States may be delayed when the State of North Dakota determines and notifies Saskatchewan through the Board that the release would not be of benefit to the State at that time. The delayed release may be retained for use in Saskatchewan, notwithstanding the 0.113 cubic metres per second (4 cubic feet per second) minimum flow limit, unless it is called for by the State of North Dakota through the Board before October 1 of each year. The delayed release shall be measured at the point of release and the delivery at Sherwood Crossing shall not be less than the delayed release minus the conveyance losses that would have occurred under natural conditions between the point of release and the Sherwood Crossing. Prior to these releases being made, consultations shall occur between the Saskatchewan Water Corporation, the U.S. Fish and Wildlife Service, and the State of North Dakota. All releases will be within the specified target flows at the control points.