

The Pending Mexican Treaty

A Sound Solution of a Difficult Problem

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A Sound Solution of a Difficult Problem

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THE SIX STATES COMMITTEE

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INTRODUCTION

The Committee on Foreign Relations of the United States Senate has before it for consideration a treaty between the United States and Mexico relating to the utilization of the waters of the Rio Grande below Fort Quitman, Texas, and of the Colorado and Tijuana Rivers. Opposition to the treaty has been voiced on the ground that it sets up in perpetuity an agency which will wield uncontrolled judicial, administrative, and regulatory power over the entire river basins in the United States in a manner entirely inconsistent with our traditional theory of Federal Government. The purpose of this memorandum is to expose the fallacy of such assertions.

SUMMARY

(1) The effect of the Treaty is to define the rights of each nation in the utilization of the waters of the Rio Grande and Colorado and Tijuana Rivers.

(2) The domestic laws of each nation will operate to determine private rights to the use of the water which is within the nation's share as determined by the Treaty.

(3) The permanence of the Treaty, unless it is mutually agreed otherwise, is necessary and desirable because any provision for termination must be mutual and because future development of water use projects in the affected basins cannot progress with any security if the water allocations are subject to change or revision.

sion could only resort to appropriate courts in the United States for enforcement.

(11) The United States Section of the Commission has jurisdiction only over such works within the interior of the United States as are used exclusively for the performance of Treaty functions.

(12) Adequate control over the United States Section of the Commission is afforded by (a) the fact that the composition and tenure of the personnel are subject to Congressional action, (b) funds to support the Section and to construct, operate, and maintain works must be provided by Congress, and (c) recommendations and decisions are subject to approval by the Department of State.

(13) The United States Section has no authority to exercise any judicial functions and cannot determine private rights.

A copy of the Treaty is appended hereto. The provisions of the Treaty are themselves the best proof of the assertions made in this memorandum.

PRELIMINARY STATEMENT

The international streams of the southwest, the Rio Grande, and the Colorado and Tijuana Rivers, have long presented a serious problem to those concerned with the development of the areas through which they flow. This arises from the uncertainty of the extent of the right of Mexico to receive a portion of the waters of these river systems. Until the extent of the Mexican right is defined, there is no basis for any worthwhile determination of the amount of water available for use in the United States.

partment of State for the definition of the Mexican right to Colorado River water. The states of Arizona, Colorado, New Mexico, Utah, and Wyoming approved the formula. Nevada declined to vote. Only California opposed the formula. The provisions of the Treaty which is now pending before the Committee on Foreign Relations of the United States Senate define the rights of Mexico to Colorado River water in a manner which is fully in accordance with such formula.

With the transmittal of the Treaty by the President to the Senate aggressive opposition from California at once developed. Strangely enough, this opposition does not base its major public attack either upon the desirability for, or necessity of, a Treaty with Mexico or upon the definition of the amount of water allotted to Mexico. Instead, it avoids these points and aims its heavy artillery at other features of the treaty, particularly those of an administrative nature. In so doing, the opponents are endeavoring to appeal to the increasing public sentiment against extension of Federal bureaucracy and against Federal encroachment on the jurisdiction of the states over the development of their own water resources. In the furtherance of such a campaign, many documents have been given wide circulation; and it must be recognized that they have had considerable appeal to those who are unfamiliar with the situation. The best answer which can be made to any attack upon the Treaty is to insist that the Treaty be read. If the states urging ratification of the Treaty believed that there was any danger of the nationalization of streams, of the creation of an all-powerful Federal bureau which would wield judicial, administrative, and regulatory power

system of water control which has existed in the arid and semi-arid portion of the western United States for many years. Rights to the use of water are acquired by compliance with state law. Each state has the power to control the water flowing within its boundaries, provided that every state along an interstate stream is entitled only to its equitable share of the benefits arising from such stream flows. Private rights acquired in one state cannot exceed that state's equitable portion. The quantum to which each state is entitled may be determined either by an original suit in the United States Supreme Court or by interstate compact. When such a determination has been made, all water users in the affected states are bound thereby.

The Colorado River Compact makes a division of the waters of that stream between the upper and the lower basin. Congress gave its approval to this compact by the Boulder Canyon Project Act, which provided among other things for the construction of Boulder Dam and authorized the Secretary of the Interior to contract for the use of stored water. As required by the Project Act all the contracts which have been executed by the Secretary of the Interior provide that all rights thereunder "shall be subject to and controlled by the Colorado River Compact." Both the Compact and the Project Act recognize that the United States may find it necessary to pass defined quantities of water to Mexico. Since the contracts are dependent upon the availability of the water under the Compact and since the Compact specifically provides that water required to satisfy the Mexican right shall be supplied first out of the surplus and then one-half from the share of each basin, the only question

opposed to the Treaty and would be using its entire energy to assure the defeat of the Treaty; but the statement is simply not true. The Colorado River Compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, and all applicable state laws remain in full force and effect. They apply and will continue to apply to the portion of water which, by the provisions of the Treaty, is reserved for use in the United States. If the water supply is inadequate, then the water remaining after the satisfaction of the Mexican right is subject to distribution among the water users of the United States in accordance with the domestic law of this country. Should some water users be deprived of water, it is because of the infirmity of their right—not because of the divisions made by the Treaty. Of this there can be no doubt, unless it can be said that the United States is too generous to Mexico in the total amount of water awarded to that country. It is not the intent here to justify the substantive provisions of the Treaty defining the rights of the two nations. They are so eminently proper and fair to both nations that the futility of attack is apparent even to those opposing the Treaty.

PERPETUAL DURATION OF THE TREATY

Article 28 of the Treaty provides that it shall continue in force until terminated by another Treaty. This has been urged as a serious objection to the Treaty. The argument can have appeal to only those who are unfamiliar with the situation.

Any provision for the termination of the Treaty must be mutual. The United States cannot expect to have a treaty with another sovereign na-

ergy afforded by the reservoir construction in the United States. In 1943 the diversions for use in Mexico amounted to 1,800,000 acre-feet.

It is reasonable to expect that with regulated stream flows Mexican uses will increase rather than decrease. A determination of the Mexican right five, ten, twenty, or more years from now will in all probability require a recognition and protection of an economic development in Mexico based upon the use of a regulated stream flow in amounts in excess of the current diversions. To even the most gullible, it should be plain that there is no advantage to the United States in having a temporary definition of the Mexican right when every probability is that for the next several decades the Mexican use is bound to increase.

The 1906 Convention between the United States and Mexico, providing for the equitable distribution of the water of the upper Rio Grande, is perpetual. Affected water users in the United States have a full recognition of the advantage which they have derived therefrom. No risk is involved in the assertion that with the passage of time the United States will derive a similar advantage from the division of the waters of the Lower Rio Grande and of the Colorado River in perpetuity by the pending Treaty.

The division of the waters of the streams on a perpetual basis has strong supporting precedent. This is true of many interstate compacts, as for example, the Colorado River Compact, the La Plata River Compact, the South Platte Compact, and the Republican River Compact. These are all subject to change only by mutual

THE PROVISIONS FOR ADMINISTRATION DESERVE APPROVAL

General supervision of the administration of the Treaty is delegated to the International Boundary Commission, created by the Convention of 1889. In the fifty-five years of its existence this Commission has established an enviable record of satisfactorily handling international boundary matters. Its jurisdiction has been extended from time to time by treaties and by exchanges of diplomatic notes. In the United States congressional legislation has from time to time delegated additional functions to the United States Section of the Commission. By such action Congress has expressed its full confidence in the ability of both the Commission and the United States Section to handle border problems.

With this background, it is only natural that the Commission should be selected as the administrative agency to supervise the application of the pending Treaty. Its name is to be changed to the International Boundary and Water Commission, and its jurisdiction is extended to include the carrying out of the Treaty provisions. The Commission consists of a United States Section and a Mexican Section, each of which is headed by an Engineer Commissioner. The domestic law of each nation controls not only the qualifications, appointment, tenure, and compensation of the respective commissioners, but also the personnel and procedure of the respective sections. Should the United States Section or the United States Commissioner presume to exercise powers not delegated by Treaty or by congressional act, then all those interests which might be affected in the United States would have the same recourse as exists when any other federal

Quitman, Texas, to the Gulf of Mexico the Rio Grande is the boundary between the two nations, it is obvious that these works are purely international in character and, consequently, must be under the jurisdiction of an international agency. Certain international storage dams are specifically provided for in the Treaty. With respect to the other works, there is no absolute obligation upon the part of the two Governments to construct any of them. The jurisdiction of the Commission with respect to such works, in the first instance, is to investigate, study, prepare plans, and make recommendations. Only with the approval of the two Governments can any of such works, including hydroelectric works at the international storage dams, be built.

With respect to the Colorado River the only works that are specifically enumerated are those provided for by Article 12 of the Treaty. The first of these is a main Mexican diversion structure which will be under the jurisdiction of the Commission only if it is built in the boundary section of the river. Regardless of where this structure is located, mandatory provision is made for the construction of such works as may be necessary to protect United States lands from flood and seepage damage that might be caused by this diversion structure. These protective works are to be constructed, operated, and maintained at the expense of Mexico by the respective Sections of the Commission, or under their supervision, each within the territory of its own country. The United States agrees to build the Davis Storage Dam and Reservoir within its own territory. It should be noted that the Commission is to have no jurisdiction whatsoever over the construction, maintenance or operation of this struc-

ically approve. The works enumerated above are all the works provided for by the treaty with respect to the Colorado River. No others can be constructed by the Commission or the United States Section under the Treaty terms.

With respect to the Tijuana River, the jurisdiction of the Commission is limited to investigating and submitting to the two Governments for their approval recommendations for the equitable distribution of the waters of the Tijuana River system; plans for storage and flood-control; estimates and costs; and recommendations as to the manner in which the works and the cost thereof should be borne by the two Governments. The two Governments assume no obligation other than to construct such works and to carry out such recommendations of the Commission as they may mutually approve.

It is but proper to call attention to the provision of the third paragraph of Article 2 in the Treaty, which says that wherever the Treaty refers to joint action or joint agreement by the two Governments, it shall be understood that this means that such matter shall be handled by or through the Department of State of the United States and the Ministry of Foreign Relations of Mexico. This does not mean that the United States can be bound to construct any works whether or not enumerated in the Treaty on the recommendation of the Commission with the approval of the Secretary of State. The language of Article 2 to which reference has been made does no more than recognize a situation which already exists. The foreign affairs of the United States are, and since 1789 have been, handled "by or through" the Department of State. As has already been pointed out, the works which the Treaty obli-

true with respect to the Convention of 1889, the Convention of 1905, and the Convention of 1933. Jurisdiction of the Commission is confined to the land and water boundaries and the works thereon, and its authority is limited to the exercise of the specific powers and duties entrusted to it "by this and other treaties and agreements in force between the two countries," and to the carrying into execution and prevention of the violation "of the provisions of these treaties and agreements." Thus its jurisdiction is limited to the discharge of the functions specifically provided for by treaty. It has no jurisdiction over the internal rights or affairs of either country. Even within the limits of the jurisdiction thus conferred, it is subject to the control of the two Governments. Many of the acts of the Commission require prior approval by the two Governments. By Article 25 decisions of the Commission are subject to veto by either of the two Governments, provided such veto power is exercised within thirty (30) days after the decision is pronounced. There can be no more effective control over the acts of the Commission than this.

(C) POWERS PERTAINING TO THE SETTLEMENT OF DISPUTES

The Commission by the terms of paragraph (d) of Article 24 of the Treaty has power "to settle all differences that may arise between the two Governments with respect to the interpretation or application of this Treaty subject to the approval of the two Governments." This supervisory power given to the two Governments is an effective check against any abuse of the discretion which is actually vested in the Commission. There is a presumption

international court set up for the settlement of controversies between nations. So far as international disputes are concerned in connection with the interpretation, construction, and administration of the treaty, the Commission would not be usurping the functions of the judicial branch of the United States Government or of any existing international judicial tribunal.

JURISDICTION AND POWERS OF THE UNITED STATES SECTION

In discussing the jurisdiction and powers of the United States Section, the same classifications will be followed as were used in the discussion in the jurisdiction and powers of the Commission.

(A) POWERS PERTAINING TO WORKS

Much of what has been said with respect to the powers of the Commission is applicable here. Most of the works which are to be constructed are specifically enumerated in the Treaty. Those which are not specifically enumerated but which are to await further investigation and study are narrowly circumscribed. Those on the Rio Grande are confined almost entirely to the main stream. No works on the United States tributaries of the Rio Grande are provided for. On the Colorado, the only works the construction of which are not specifically covered by the Treaty but which may be built under the terms of the Treaty are flood control works below Imperial Dam. With respect to all the works which are left for future determination, two effective checks are provided: first, the necessity for approval of the two Governments; and, second, the necessity for Congressional appropriation.

way of illustration, part of the capacity of Davis Dam is necessary to regulate the water to be delivered to Mexico. This does not mean that the United States Section of the Commission may build Davis Dam or that it may operate and maintain it. On the contrary, the only requirement is that the dam be built by the United States and that its operation and maintenance be such as to assure that water releases are made at the times and in the amounts necessary to satisfy Treaty requirements. The same is true of the operation of Imperial Dam and of the Imperial Dam-Pilot Knob Section of the All-American Canal. In practice, the duties of the United States Section will simply be to place appropriate water release orders with the operators of these structures so as to make possible the regulation at the boundary of the waters delivered to Mexico.

The United States Section will also have the duty of measuring the water delivered to Mexico at all points of delivery. If for any reason in the future there is such an administration of the stream as to make unavailable for Mexico the amounts of water necessary to satisfy the Treaty provisions, all the United States Section could do would be to request the appropriate Federal and state agencies to make the correct amount of water available. If any state or any Federal agency fails to honor such a request, the United States Section, pursuant to the provisions of Article 24 (c), would be required to invoke "the jurisdiction of the courts or other appropriate agencies" of this country.

On the Rio Grande, as has been noted, all the works provided by the Treaty are to be located on or along the main stream, and hence are to be under the jurisdiction of the Commission. The principal

Governments agreeing to construct such hydroelectric works as may be recommended by the Commission and approved by the two Governments. The power thus developed is to be divided equally between the two countries.

Article 19 provides that the two Governments shall conclude such agreements as may be necessary to regulate the generation, development, and disposition of this electric power. It should be observed that careless statements of opponents of the Treaty are that this authority is vested in the Commission and that rates, regulations, and fields of service will be beyond Congressional control. Such statements, designed as they are to appeal to those fearing governmental intrusion in the power field, are without foundation. Power generated at the international plants and available for distribution and use in the United States will be subject to such controls as Congress may see fit to impose. Congress can regulate such power just as it now regulates power generated at plants financed and constructed by the Federal Government.

Attention has been directed by at least one opponent to the Treaty that the language of Article 19 contemplates transmission of energy to Mexico. It also contemplates transmission of energy to the United States. Anyone familiar with conditions along the Rio Grande knows that in Mexico, in this vicinity, there is at present little or no market for electric power. The chances are, then, that if either country desires to export any portion of its allocated power, the United States, rather than Mexico, will benefit therefrom. These provisions are of the utmost importance to the development of communities along the Rio Grande in Texas. The Treaty

CONCLUSION

The Six States Committee says:

(1) A treaty with Mexico providing for the utilization of the waters of the border streams is both necessary and desirable unless the United States is willing to accept the theory that such controversies between the two nations are to be determined by force.

(2) The apportionment of the waters of the border streams as provided in the pending Treaty is fair and equitable to each country.

(3) The perpetual duration of the Treaty is a desirable feature since the United States is thereby protected against enlarged Mexican claims predicated upon the future expansion of irrigation uses in that country.

(4) The administrative provisions of the Treaty accord with the traditional and accepted principles of our constitutional form of government.

The Committee urges all who are interested in the future development of those regions of the West dependent upon the use of the waters of the border streams and in the maintenance of friendly relations with our neighbors to the south to support ratification of the Treaty. It is indeed a sound solution of a difficult problem.

The Six States Committee:

CLIFFORD H. STONE, Director
Colorado Water Conservation Board
Chairman

CHARLES A. CARSON, Attorney
Colorado River Commission of Arizona

Appendix

**TREATY BETWEEN THE UNITED STATES
AND MEXICO, RELATING TO WATERS
OF THE COLORADO AND TI-
JUANA RIVERS AND OF
THE RIO GRANDE**

The Government of the United States of America and the Government of the United Mexican States: animated by the sincere spirit of cordiality and friendly cooperation which happily governs the relations between them; taking into account the fact that Articles VI and VII of the Treaty of Peace, Friendship and Limits between the United States of America and the United Mexican States signed at Guadalupe Hidalgo on February 2, 1848, and Article IV of the boundary treaty between the two countries signed at the City of Mexico December 30, 1853, regulate the use of the waters of the Rio Grande (Rio Bravo) and the Colorado River for purposes of navigation only; considering that the utilization of these waters for other purposes is desirable in the interest of both countries, and desiring, moreover, to fix and delimit the rights of the two countries with respect to the waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, United States of America, to the Gulf of Mexico, in order to obtain the most complete and satisfactory utilization thereof, have resolved to conclude a treaty and for this purpose have named as their plenipotentiaries:

The President of the United States of America:

whether this be done by means of dams across the channel, partition weirs, lateral intakes, pumps or any other methods.

(e) "Point of diversion" means the place where the act of diverting the water is effected.

(f) "Conservation capacity of storage reservoirs" means that part of their total capacity devoted to holding and conserving the water for disposal thereof as and when required, that is, capacity additional to that provided for silt retention and flood control.

(g) "Flood discharges and spills" means the voluntary or involuntary discharge of water for flood control as distinguished from releases for other purposes.

(h) "Return flow" means that portion of diverted water that eventually finds its way back to the source from which it was diverted.

(i) "Release" means the deliberate discharge of stored water for conveyance elsewhere or for direct utilization.

(j) "Consumptive use" means the use of water by evaporation, plant transpiration or other manner whereby the water is consumed and does not return to its source of supply. In general it is measured by the amount of water diverted less the part thereof which returns to the stream.

(k) "Lowest major international dam or reservoir" means the major international dam or reservoir situated farthest downstream.

(l) "Highest major international dam or reservoir" means the major international dam or reservoir situated farthest upstream.

visions, it shall be understood that the particular matter in question shall be handled by or through the Department of State of the United States and the Minister of Foreign Relations of Mexico.

The Commission or either of its two Sections may employ such assistants and engineering and legal advisers as it may deem necessary. Each Government shall accord diplomatic status to the Commissioner, designated by the other Government. The Commissioner, two principal engineers, a legal adviser, and a secretary, designated by each Government as members of its Section of the Commission, shall be entitled in the territory of the other country to the privileges and immunities appertaining to diplomatic officers. The Commission and its personnel may freely carry out their observations, studies and field work in the territory of either country.

The jurisdiction of the Commission shall extend to the limitrophe parts of the Rio Grande (Rio Bravo) and the Colorado River, to the land boundary between the two countries, and to works located upon their common boundary, each Section of the Commission retaining jurisdiction over that part of the works located within the limits of its own country. Neither Section shall assume jurisdiction or control over works located within the limits of the country of the other without the express consent of the Government of the latter. The works constructed, acquired or used in fulfillment of the provisions of this Treaty and located wholly within the territorial limits of either country, although these works may be international in character, shall remain, except as herein otherwise specifically provided, under the exclusive jurisdiction and control

agree to give preferential attention to the solution of all border sanitation problems.

II—RIO GRANDE (RIO BRAVO)

ARTICLE 4

The waters of the Rio Grande (Rio Bravo) between Fort Quitman, Texas, and the Gulf of Mexico are hereby allotted to the countries in the following manner:

A. To Mexico:

(a) All of the waters reaching the main channel of the Rio Grande (Rio Bravo) from the San Juan and Alamo Rivers, including the return flow from the lands irrigated from the latter two rivers.

(b) One-half of the flow in the main channel of the Rio Grande (Rio Bravo) below the lowest major international storage dam, so far as said flow is not specifically allotted under this Treaty to either of the two countries.

(c) Two-thirds of the flow reaching the main channel of the Rio Grande (Rio Bravo) from the Conchos, San Diego, San Rodrigo, Escondido and Salado Rivers and the Las Vacas Arroyo, subject to the provisions of subparagraph (c) of paragraph B of this Article.

(d) One-half of all other flows not otherwise allotted by this Article occurring in the main channel of the Rio Grande (Rio Bravo), including the contributions from all the unmeasured tributaries, which are those not named in this Article, between Fort Quitman and the lowest major international storage dam.

ured Mexican tributaries, making it difficult for Mexico to make available the run-off of 350,000 acre-feet (431,721,000 cubic meters) annually, allotted in subparagraph (c) of paragraph B of this Article to the United States as the minimum contribution from the aforesaid Mexican tributaries, any deficiencies existing at the end of the aforesaid five-year cycle shall be made up in the following five-year cycle with water from the said measured tributaries.

Whenever the conservation capacities assigned to the United States in at least two of the major international reservoirs, including the highest major reservoir, are filled with waters belonging to the United States, a cycle of five years shall be considered as terminated and all debits fully paid, whereupon a new five-year cycle shall commence.

ARTICLE 5

The two Governments agree to construct jointly, through their respective Sections of the Commission, the following works in the main channel of the Rio Grande (Rio Bravo):

I. The dams required for the conservation, storage and regulation of the greatest quantity of the annual flow of the river in a way to ensure the continuance of existing uses and the development of the greatest number of feasible projects, within the limits imposed by the water allotments specified.

II. The dams and other joint works required for the diversion of the flow of the Rio Grande (Rio Bravo).

One of the storage dams shall be constructed in the section between Santa Helena Canyon and the

structed simultaneously. The lowest major international storage dam shall be completed within a period of eight years from the date of the entry into force of this Treaty.

The construction of the dams and other joint works required for the diversion of the flows of the river shall be initiated on the dates recommended by the Commission and approved by the two Governments.

The cost of construction, operation and maintenance of each of the international storage dams shall be prorated between the two Governments in proportion to the capacity allotted to each country for conservation purposes in the reservoir at such dam.

The cost of construction, operation and maintenance of each of the dams and other joint works required for the diversion of the flows of the river shall be prorated between the two Governments in proportion to the benefits which the respective countries receive therefrom, as determined by the Commission and approved by the two Governments.

ARTICLE 6

The Commission shall study, investigate, and prepare plans for flood control works, where and when necessary, other than those referred to in Article 5 of this Treaty, on the Rio Grande (Rio Bravo) from Fort Quitman, Texas, to the Gulf of Mexico. These works may include levees along the river, floodways and grade-control structures, and works for the canalization, rectification and artificial channeling of reaches of the river. The Commission shall report to the two Governments the

and in the maximum use of these structures for the purpose of obtaining the most beneficial, regular and constant use of the waters belonging to them. Accordingly, within the year following the placing in operation of the first of the major international storage dams which is constructed, the Commission shall submit to each Government for its approval, regulations for the storage, conveyance and delivery of the waters of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, to the Gulf of Mexico. Such regulations may be modified, amended or supplemented when necessary by the Commission, subject to the approval of the two Governments. The following general rules shall severally govern until modified or amended by agreement of the Commission, with the approval of the two Governments:

(a) Storage in all major international reservoirs above the lowest shall be maintained at the maximum possible water level, consistent with flood control, irrigation use and power requirements.

(b) Inflows to each reservoir shall be credited to each country in accordance with the ownership of such inflows.

(c) In any reservoir the ownership of water belonging to the country whose conservation capacity therein is filled, and in excess of that needed to keep it filled, shall pass to the other country to the extent that such country may have unfilled conservation capacity, except that one country may at its option temporarily use the conservation capacity of the other country not currently being used in any of the upper reservoirs; provided that in the event of flood discharge or spill occurring while one country is using the conservation capacity of the other, all of such flood discharge or spill shall be charged to

(b) Either of the two countries may, at any point on the main channel of the river from Fort Quitman, Texas, to the Gulf of Mexico, divert and use the water belonging to it and may for this purpose construct any necessary works. However, no such diversion or use, not existing on the date this Treaty enters into force, shall be permitted in either country, nor shall works be constructed for such purpose, until the Section of the Commission in whose country the diversion or use is proposed has made a finding that the water necessary for such diversion or use is available from the share of that country, unless the Commission has agreed to a greater diversion or use as provided by paragraph (d) of this Article. The proposed use and the plans for the diversion works to be constructed in connection therewith shall be previously made known to the commission for its information.

(c) Consumptive uses from the main stream and from the unmeasured tributaries below Fort Quitman shall be charged against the share of the country making them.

(d) The Commission shall have the power to authorize either country to divert and use water not belonging entirely to such country, when the water belonging to the other country can be diverted and used without injury to the latter and can be replaced at some other point on the river.

(e) The Commission shall have the power to authorize temporary diversion and use by one country of water belonging to the other, when the latter does not need it or is unable to use it, provided that such authorization or the use of such water shall not establish any right to continue to divert it.

(j) The Commission shall keep a record of waters belonging to each country and of those that may be available at a given moment, taking into account the measurement of the allotments, the regulation of the waters in storage, the consumptive uses, the withdrawals, the diversions, and the losses. For this purpose the Commission shall construct, operate and maintain on the main channel of the Rio Grande (Rio Bravo), and each Section shall construct, operate and maintain on the measured tributaries in its own country, all the gaging stations and mechanical apparatus necessary for the purpose of making computations and of obtaining the necessary data for such record. The information with respect to the diversions and consumptive uses on the unmeasured tributaries shall be furnished to the Commission by the appropriate Section. The cost of construction of any new gaging stations located on the main channel of the Rio Grande (Rio Bravo) shall be borne equally by the two Governments. The operation and maintenance of all gaging stations or the cost of such operation and maintenance shall be apportioned between the two Sections in accordance with determinations to be made by the Commission.

III—COLORADO RIVER

ARTICLE 10

Of the waters of the Colorado River, from any and all sources, there are allotted to Mexico:

(a) A guaranteed annual quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) to be delivered in accordance with the provisions of Article 15 of this Treaty.

the provisions of the following paragraphs of this Article.

(b) Of the waters of the Colorado River allotted to Mexico by subparagraph (a) of Article 10 of this Treaty, the United States shall deliver, wherever such waters may arrive in the limitrophe section of the river, 1,000,000 acre-feet (1,233,489,000 cubic meters) annually from the time the Davis dam and reservoir are placed in operation until January 1, 1980 and thereafter 1,125,000 acre-feet (1,387,675,000 cubic meters) annually, except that should the main diversion structure referred to in subparagraph (a) of Article 12 of this Treaty be located entirely in Mexico and should Mexico so request, the United States shall deliver a quantity of water not exceeding 25,000 acre-feet (30,837,000 cubic meters) annually, unless a larger quantity may be mutually agreed upon, at a point, to be likewise mutually agreed upon, on the international land boundary near San Luis, Sonora, in which event the quantities of 1,000,000 acre-feet (1,233,489,000 cubic meters) and 1,125,000 acre-feet (1,387,675,000 cubic meters) provided hereinabove as deliverable in the limitrophe section of the river shall be reduced by the quantities to be delivered in the year concerned near San Luis, Sonora.

(c) During the period from the time the Davis dam and reservoir are placed in operation until January 1, 1980, the United States shall also deliver to Mexico annually, of the water allotted to it, 500,000 acre-feet (616,745,000 cubic meters), and thereafter the United States shall deliver annually 375,000 acre-feet (462,558,000 cubic meters) at the international boundary line, by means of the All-American Canal and a canal connecting the lower

maintained at the expense of Mexico by the respective Sections of the Commission, or under their supervision, each within the territory of its own country.

(b) The United States, within a period of five years from the date of the entry into force of this Treaty, shall construct in its own territory and at its expense, and thereafter operate and maintain at its expense, the Davis storage dam and reservoir, a part of the capacity of which shall be used to make possible the regulation at the boundary of the waters to be delivered to Mexico in accordance with the provisions of Article 15 of this Treaty.

(c) The United States shall construct or acquire in its own territory the works that may be necessary to convey a part of the waters of the Colorado River allotted to Mexico to the Mexican diversion points on the international land boundary line referred to in this Treaty. Among these works shall be included: the canal and other works necessary to convey water from the lower end of the Pilot Knob Wasteway to the international boundary, and, should Mexico request it, a canal to connect the main diversion structure referred to in subparagraph (a) of this Article, if this diversion structure should be built in the limitrophe section of the river, with the Mexican system of canals at a point to be agreed upon by the Commission on the international land boundary near San Luis, Sonora. Such works shall be constructed or acquired and operated and maintained by the United States Section at the expense of Mexico. Mexico shall also pay the costs of any sites or rights of way required for such works.

(d) The Commission shall construct, operate

ARTICLE 14

In consideration of the use of the All-American Canal for the delivery to Mexico, in the manner provided in Articles 11 and 15 of this Treaty, of a part of its allotment of the waters of the Colorado River, Mexico shall pay to the United States:

(a) A proportion of the costs actually incurred in the construction of Imperial Dam and the Imperial Dam-Pilot Knob section of the All-American Canal, this proportion and the method and terms of repayment to be determined by the two Governments, which, for this purpose, shall take into consideration the proportionate uses of these facilities by the two countries, these determinations to be made as soon as Davis dam and reservoir are placed in operation.

(b) Annually, a proportionate part of the total costs of maintenance and operation of such facilities, these costs to be prorated between the two countries in proportion to the amount of water delivered annually through such facilities for use in each of the two countries.

In the event that revenues from the sale of hydroelectric power which may be generated at Pilot Knob become available for the amortization of part or all of the costs of the facilities named in subparagraph (a) of this Article, the part that Mexico should pay of the costs of said facilities shall be reduced or repaid in the same proportion as the balance of the total costs are reduced or repaid. It is understood that any such revenue shall not become available until the cost of any works which may be constructed for the generation of

With reference to the 1,125,000 acre-feet (1,387,675,000 cubic meter) quantity:

(a) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 675 cubic feet (19.1 cubic meters) nor more than 4,000 cubic feet (113.3 cubic meters) per second.

(b) During the remaining months of the year the prescribed rate of delivery shall be not less than 1,125 cubic feet (31.9 cubic meters) nor more than 4,000 cubic feet (113.3 cubic meters) per second.

Should deliveries of water be made at a point on the land boundary near San Luis, Sonora, as provided for in Article 11, such deliveries shall be made under a sub-schedule to be formulated and furnished by the Mexican Section. The quantities and monthly rates of deliveries under such sub-schedule shall be in proportion to those specified for Schedule I, unless otherwise agreed upon by the Commission.

SCHEDULE II

Schedule II shall cover the delivery at the boundary line by means of the All-American Canal of 500,000 acre-feet (616,745,000 cubic meters) of water each year from the date Davis dam and reservoir are placed in operation until January 1, 1980 and the delivery of 375,000 acre-feet (462,558,000 cubic meters) of water each year thereafter. This schedule shall be formulated subject to the following limitations:

With reference to the 500,000 acre-foot (616,745,000 cubic meter) quantity:

II of this Article shall be correspondingly diminished.

C. The United States shall have the option of delivering, at the point on the land boundary mentioned in subparagraph (c) of Article 11, any part or all of the water to be delivered at that point under Schedule II of this Article during the months of January, February, October, November and December of each year, from any source whatsoever, with the understanding that the total specified annual quantities to be delivered through the All-American Canal shall not be reduced because of the exercise of this option, unless such reduction be requested by the Mexican Section, provided that the exercise of of this option shall not have the effect of increasing the total amount of scheduled water to be delivered to Mexico.

D. In any year in which there shall exist in the river water in excess of that necessary to satisfy the requirements in the United States and the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) allotted to Mexico, the United States hereby declares its intention to cooperate with Mexico in attempting to supply additional quantities of water through the All-American Canal as such additional quantities are desired by Mexico, if such use of the Canal and facilities will not be detrimental to the United States, provided that the delivery of any additional quantities through the All-American Canal shall not have the effect of increasing the total scheduled deliveries to Mexico. Mexico hereby declares its intention to cooperate with the United States by attempting to curtail deliveries of water through the All-American Canal in years of limited

under each schedule are correspondingly increased and reduced.

IV—TIJUANA RIVER

ARTICLE 16

In order to improve existing uses and to assure any feasible further development, the Commission shall study and investigate, and shall submit to the two Governments for their approval.

(1) Recommendations for the equitable distribution between the two countries of the waters of the Tijuana River system;

(2) Plans for storage and flood control to promote and develop domestic, irrigation, and other feasible uses of the waters of this system;

(3) An estimate of the cost of the proposed works and the manner in which the construction of such works or the cost thereof should be divided between the two Governments;

(4) Recommendations regarding the parts of the works to be operated and maintained by the Commission and the parts to be operated and maintained by each Section.

The two Governments through their respective Sections of the Commission shall construct such of the proposed works as are approved by both Governments, shall divided the work to be done or the cost thereof, and shall distribute between the two countries the waters of the Tijuana River system in the proportions approved by the two Governments. The two Governments agree to pay in equal shares the costs of joint operation and maintenance

and enforced for the same purpose by each Section of the Commission with respect to the areas and borders of such parts of those lakes as lie within its territory. Neither Government shall use for military purposes such water surface situated within the territory of the other country except by express agreement between the two Governments.

ARTICLE 19

The two Governments shall conclude such special agreements as may be necessary to regulate the generation, development and disposition of electric power at international plants, including the necessary provisions for the export of electric current.

ARTICLE 20

The two Governments shall, through their respective Sections of the Commission, carry out the construction of works allotted to them. For this purpose the respective Sections of the Commission may make use of any competent public or private agencies in accordance with the laws of the respective countries. With respect to such works as either Section of the Commission may have to execute on the territory of the other, it shall, in the execution of such works, observe the laws of the place where such works are located or carried out, with the exceptions hereinafter stated.

All materials, implements, equipment and repair parts intended for the construction, operation and maintenance of such works shall be exempt from import and export customs duties. The whole of the personnel employed either directly or indirectly on the construction, operation or maintenance

ARTICLE 22

The provisions of the Convention between the United States and Mexico for the rectification of the Rio Grande (Rio Bravo) in the El Paso-Juarez Valley signed on February 1, 1933, shall govern, so far as delimitation of the boundary, distribution of jurisdiction and sovereignty, and relations with private owners are concerned, in any places where works for the artificial channeling, canalization or rectification of the Rio Grande (Rio Bravo) and the Colorado River are carried out.

ARTICLE 23

The two Governments recognize the public interest attached to the works required for the execution and performance of this Treaty and agree to acquire, in accordance with their respective domestic laws, any private property that may be required for the construction of the said works, including the main structures and their appurtenances and the construction materials therefor, and for the operation and maintenance thereof, at the cost of the country within which the property is situated, except as may be otherwise specifically provided in this Treaty.

Each Section of the Commission shall determine the extent and location of any private property to be acquired within its own country and shall make the necessary requests upon its Government for the acquisition of such property.

The Commission shall determine the cases in which it shall become necessary to locate works for the conveyance of water or electrical energy and for the servicing of any such works, for the benefit

ARTICLE 24

The International Boundary and Water Commission shall have, in addition to the powers and duties otherwise specifically provided in this Treaty, the following powers and duties:

(a) To initiate and carry on investigations and develop plans for the works which are to be constructed or established in accordance with the provisions of this and other treaties or agreements in force between the two Governments dealing with boundaries and international waters; to determine, as to such works, their location, size, kind and characteristic specifications; to estimate the cost of such works; and to recommend the division of such costs between the two Governments, the arrangements for the furnishing of the necessary funds, and the dates for the beginning of the works, to the extent that the matters mentioned in this subparagraph are not otherwise covered by specific provisions of this or any other Treaty.

(b) To construct the works agreed upon or to supervise their construction and to operate and maintain such works or to supervise their operation and maintenance, in accordance with the respective domestic laws of each country. Each Section shall have, to the extent necessary to give effect to the provisions of this Treaty, jurisdiction over the works constructed exclusively in the territory of its country whenever such works shall be connected with or shall directly affect the execution of the provisions of this Treaty.

(c) In general to exercise and discharge the specific powers and duties entrusted to the Commis-

the international streams and their tributaries within the boundaries of its own country, such stream gaging stations as may be needed to provide the hydrographic data necessary or convenient for the proper functioning of this Treaty. The data so obtained shall be compiled and periodically exchanged between the two Sections.

(g) The Commission shall submit annually a joint report to the two Governments on the matters in its charge. The Commission shall also submit to the two Governments joint reports on general or any particular matters at such other times as it may deem necessary or as may be requested by the two Governments.

ARTICLE 25

Except as otherwise specifically provided in this Treaty, Articles III and VII of the Convention of March 1, 1889 shall govern the proceedings of the Commission in carrying out the provisions of this Treaty. Supplementary thereto the Commission shall establish a body of rules and regulations to govern its procedure, consistent with the provisions of this Treaty and of Articles III and VII of the Convention of March 1, 1889 and subject to the approval of both Governments.

Decisions of the Commission shall be recorded in the form of Minutes done in duplicate in the English and Spanish languages, signed by each Commissioner and attested by the Secretaries, and copies thereof forwarded to each Government within three days after being signed. Except where the specific approval of the two Governments is required by any provision of this Treaty, if one of the Governments fails to communicate to the Commis-

shall be made on condition that they do not affect the Mexican irrigation system, provided that Mexico shall, in any event, except in cases of extraordinary drought or serious accident to its hydraulic works, release and make available to the United States for its use the quantities requested, under the following conditions: that during the said eight years there shall be made available a total of 160,000 acre-feet (197,358,000 cubic meters) and up to 40,000 acre-feet (49,340,000 cubic meters) in any one year; that the water shall be made available as requested at rates not exceeding 750 cubic feet (21.2 cubic meters) per second; that when the rates of flow requested and made available have been more than 500 cubic feet (14.2 cubic meters) per second the period of release shall not extend beyond fifteen consecutive days; and that at least thirty days must elapse between any two periods of release during which rates of flow in excess of 500 cubic feet (14.2 cubic meters) per second have been requested and made available. In addition to the guaranteed flow, Mexico shall release from El Azucar reservoir and conduct through its canal system and the San Juan River, for use in the United States during periods of drought and after satisfying the needs of Mexican users, any excess water that does not in the opinion of the Mexican Section have to be stored and that may be needed for the irrigation of lands which were under irrigation during the year 1943 in the Lower Rio Grande Valley in the United States.

ARTICLE 27

The provisions of Article 10, 11, and 15 of this Treaty shall not be applied during a period of five years from the date of the entry into force of this Treaty, or until the Davis dam and the major Mexi-

In witness whereof the respective Plenipotentiaries have signed this Treaty and have hereunto affixed their seals.

Done in duplicate in the English and Spanish languages, in Washington on this third day of February, 1944.

For the Government of the United States of America:

CORDELL HULL [Seal]

GEORGE S. MESSERSMITH [Seal]

LAWRENCE M. LAWSON [Seal]

For the Government of the United Mexican States:

F. CASTILLO NAJERA [Seal]

RAFAEL FERNANDEZ MACGREGOR [Seal]