

Re your Paras 4 and 5

From the foregoing, you will note my warning that once Article II of the BWT has been superseded, or laid to rest, if you will, and despite the fact that Canada is stated to have certain rights to divert from the Kootenay to the Columbia, Canada has not been relieved of responsibility for injury or damage occasioned thereby. In fact, under the treaty, you must know, I repeat, that the IJC, or other tribunal, has been vested with jurisdiction to determine injury or damage, and such decision Canada has contracted in advance to accept as "definitive and binding" under Article XV (4).

May I say that your assertion in your Para (4) that the U. S. would not divert from the Kootenai, that is the Libby reservoir, because of the right given to Canada to divert upstream "with no treaty provision for any liability for damages incurred downstream in the United States" is entirely illusory as I have explained above.

I say to you Mr. Martin, as Secretary of State for External Affairs, Canada, with the greatest seriousness, that if this proposed Columbia River treaty is ratified, Libby will be built by the U. S., and for all time thereafter, this action, made possible by yourself and your colleagues in the Government of Canada, will have deprived Canada of the beneficial use and control over the waters of Canadian origin in the East Kootenay. The only benefit we will receive will be what may come to us as a bye-product, of little account, of the regulation of Libby, which is vested in the U. S. to be carried out without restraint other than the minor requirement presented in the IJC Kootenay Lake Order regarding levels.

May I say also that even if the treaty or protocol should remove the right of the U. S. to claim damages for our East Kootenay diversion, the U. S., having invested some hundreds of millions of dollars in the construction of Libby and Kootenay Falls downstream, can be expected to exert the greatest political, economic, and moral pressure to persuade Canada to forego any plans for diversion.

My counsel to you, as an old friend of very long standing, is to withdraw from this dangerous imbroglio, while yet you may, for the sake of Canada.

Re your Para 6

In reply to your inquiry regarding reports made by the IJC to the Governments: The report of the International Columbia River Engineering Board of March, 1959, was made available to the two governments for preliminary information by mutual consent of the U. S. and Canadian Sections IJC. The Commission's discussions of this report were recorded verbatim in the IJC Proceedings, and extend over many meetings. Copies of these have also been made available to the two governments.

As Chairman of the Canadian Section IJC, I have had the privilege of appearing before the House of Commons Committee on External Affairs to keep the members currently informed. This evidence appears in the "Minutes of Proceedings and Evidence" of the Committee.