



Ottawa, September 16, 1964

Dear Mr. Dempson:

Ratification of the Columbia River Treaty

Attached are the following legal documents which are involved in the ratification ceremony of the Columbia River Treaty:

- (1) Instruments of Ratification of the Columbia River Treaty.
- (2) Protocol of Exchange of instruments of ratification.
- (3) Exchange of Notes relating to the Canadian Entitlement purchase agreement made under the Treaty, and attachments (Minutes of the Privy Council and Canadian Entitlement Purchase Agreement)
- (4) Exchange of Notes concerning the coming into force of the protocol of January 22nd, 1964 to the Treaty.

This letter, together with the attachments, is also available in French.

Yours sincerely,

D'I. Fortier,
Press and Liaison Division,¢

Peter Dempson, Esq.,
President
Parliamentary Press Gallery,
O t t a w a.

THE UNITED STATES EMBASSY

Ottawa, September 16, 1964

Sir,

I have the honour to refer to your Note of September 16, 1964, regarding the disposal of the Canadian entitlement to downstream power benefits in the United States, in accordance with Article VIII (1) of the Treaty between the United States of America and Canada relating to the cooperative development of the water resources of the Columbia River Basin, signed at Washington, January 17, 1961.

I wish to advise you that the Government of the United States of America has designated the Administrator of the Bonneville Power Administration, Department of the Interior, and the Division Engineer, North Pacific Division, Corps of Engineers, Department of the Army, as the United States Entity for the purposes of Article XIV(1) of the Treaty. A copy of the designation is attached to this note.

I wish also to advise that the Government of the United States of America confirms the proposals and understandings set forth in your Note, and agrees that your Note, together with this reply, shall constitute an agreement between our two Governments relating to the implementation of the provisions of the Treaty with effect from the date of the exchange of instruments of ratification of the Treaty.

Accept, Sir, the renewed assurances of my highest consideration.

Ambassador.

Enclosure:

As stated.

The Honorable
Paul Martin, P.C. Q.C.,
Secretary of State for External Affairs,
Ottawa.

Certified to be a true copy of a Minute of a Meeting of
the Committee of the Privy Council, approved by
His Excellency the Governor General on the
4th September, 1964.

The Committee of the Privy Council, on
the recommendation of the Right Honourable Lester
B. Pearson, the Prime Minister, advise that Your
Excellency may be pleased to designate the British
Columbia Hydro and Power Authority, a corporation
incorporated in the Province of British Columbia by
the British Columbia Hydro and Power Authority Act
1964, as the Canadian entity for the purposes of
Article XIV of a treaty dated January 17, 1961 at
Washington, D.C. U.S.A. between Canada and the United
States of America relating to co-operative development
of the water resources of the Columbia River Basin,
such designation to take effect on the date on which
the Instruments of Ratification of the Treaty shall
be exchanged.

Sgd R.G. Robertson
Clerk of the Privy Council

(SEAL)

Ottawa, September 16, 1964

Excellency,

I have the honour to refer to my Note of January 22, 1964 addressed to the Honourable Dean Rusk, Secretary of State of the United States of America and the Protocol attached thereto regarding a Treaty between Canada and the United States of America relating to cooperative development of the water resources of the Columbia River Basin signed at Washington on 17 January, 1961 and to Mr. Secretary Rusk's reply of the same date. This Exchange of Notes relating to the carrying out of the provisions of the Treaty provides expressly that it shall come into effect from the date of the exchange of instruments of ratification of the Treaty.

The instruments of ratification of the Treaty having been exchanged on this 16th day of September 1964, I should like to propose that our two Governments confirm that the Inter-governmental Agreement set out in the said Exchange of Notes has now come into full force and effect. I should like to propose further that this Note together with your reply shall constitute an agreement between our two Governments with effect from this 16th day of September 1964.

Accept, Excellency, the renewed assurances of my highest consideration.

Secretary of State
for External Affairs

His Excellency,
W. Walton Butterworth,
Ambassador of the United States
of America,
Ottawa.

CANADIAN ENTITLEMENT PURCHASE AGREEMENT

This Agreement executed this thirteenth day of August, 1964, by and between COLUMBIA STORAGE POWER EXCHANGE, a non-profit corporation organized under the laws of the State of Washington, hereinafter referred to as "CSPE",

and

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a corporation incorporated in the Province of British Columbia, Canada, by the British Columbia Hydro and Power Authority Act, 1964, hereinafter referred to as "the Authority".

WHEREAS:

A. The Governments of the United States of America and Canada are exchanging instruments of ratification of the Treaty between Canada and the United States of America Relating to the Cooperative Development of the Water Resources of the Columbia River Basin Signed at Washington January 17, 1961. By an Exchange of Notes dated January 22, 1964, the two Governments agreed upon the terms of a Protocol with effect from the date of the exchange of instruments of ratification of the Treaty aforesaid (which Treaty and Protocol are hereinafter referred to as the "Treaty").

B. Under the terms of the Treaty, Canada is

entitled to receive from the United States one half of the annual average usable energy and one half of the dependable hydro-electric capacity which can be realized in the United States each year as a result of use of the improved stream flow on the Columbia River created by storage to be constructed in Canada.

C. The Government of Canada and the Government of British Columbia have entered into an agreement dated 8 July, 1963, and a supplementary agreement dated 13 January, 1964, wherein it was agreed that all proprietary rights, title and interests arising under the Treaty, including all rights to downstream power benefits, belong to the Government of British Columbia, and providing that Canada shall designate the Authority as the Canadian Entity as provided for in Article XIV of the Treaty. Pursuant to such agreement Canada is designating the Authority as the Canadian Entity.

D. The Authority is, by virtue of an Order in Council of the Province of British Columbia, dated August 7, 1964, required and authorized to exercise all the rights and powers granted to the Canadian Entity and to perform all the obligations imposed on the Canadian Entity by the Treaty and to enter into this Agreement.

E. CSPE is incorporated with the object of purchasing for a term of years Canada's rights to downstream

power benefits under the Treaty and incurring indebtedness to finance such purchase and disposing of such rights under such arrangements as may be necessary to retire the corporate indebtedness and to pay the necessary expenses of CSPE incidental thereto.

F. The Governments of the United States of America and Canada, as contemplated by Article VIII of the Treaty and in pursuance of the Agreement of the two Governments contained in an Exchange of Notes dated January 22, 1964, relating thereto, are by an Exchange of Notes authorizing the disposition for a term of years within the United States of America of Canada's rights to downstream power benefits under the Treaty, which disposition when so authorized is to be effectuated by this Agreement in accordance with the provisions of the Treaty and documents supplementary thereto.

NOW, THEREFORE, it is agreed:

SECTION 1. TERM

This Agreement shall be effective when authorized by the Governments of Canada and the United States of America by an Exchange of Notes pursuant to the Treaty and shall terminate at midnight on March 31, 2003.

SECTION 2. CONVEYANCE.

(1) The Authority does hereby sell, assign, and convey unto CSPE, and CSPE does hereby accept, the entitlement of Canada, as described in Article V (1) of the Treaty, to the downstream power benefits determined

in accordance with Article VII of the Treaty, save and except the entitlement of Canada to the downstream power benefits resulting from the construction or operation of the project referred to in Article IX of the Treaty, for the following periods of time:

- (a) The benefits resulting from the storage described in Article II(2)(c) of the Treaty (hereinafter referred to as Duncan Lake storage) for a period of 30 years commencing April 1, 1968; and
- (b) The benefits resulting from the storage described in Article II(2)(b) of the Treaty (hereinafter referred to as Arrow Lakes storage) for a period of 30 years commencing April 1, 1969; and
- (c) The benefits resulting from the storage described in Article II(2)(a) of the Treaty (hereinafter referred to as Mica Greek storage) for a period of 30 years commencing April 1, 1973.

(2) All of the entitlement to the downstream power benefits hereby conveyed for the aforementioned periods of time, without the reductions provided for in paragraph 7 of annex A of the Treaty in hereinafter referred to as "The Canadian Entitlement".

(3) For the purpose of allocating downstream power benefits among the three Canadian storages provided for

in the Treaty between April 1, 1998, and March 31, 2003, the percentage of downstream power benefits allocable to each of the said storages shall be the percentage of the total of the Canadian storages provided by that storage as set out in Article II of the Treaty.

SECTION 3. PAYMENT BY CSPE.

Contemporaneously with the exchange of the instruments of ratification, CSPE is causing to be paid to Canada the sum, in United States funds, of \$254,400,000.00 as of October 1, 1964, subject to adjustment in the event of an earlier payment thereof to the then present worth at a discount rate of 4-1/2 percent per annum, which sum shall be applied towards the cost of constructing the Treaty projects through a transfer of the sum by Canada to the Government of British Columbia pursuant to arrangements entered into between Canada and British Columbia. The Authority acknowledges that the receipt by Canada of the said sum is consideration for all the covenants of the authority in this Agreement and particularly the covenants to construct and operate the Treaty projects and is a complete discharge of CSPE for the full purchase price for the sale effected in Section 2 of this Agreement.

SECTION 4. COVENANTS.

1. The Authority covenants and agrees with CSPE that it will undertake all requisite construction work in a good and workmanlike manner and that the storages

described in Article II of the Treaty shall be fully operative for power purposes under this Agreement by the following dates:

- (a) The Duncan Lake storage, April 1, 1968.
- (b) The Arrow Lakes storage, April 1, 1969.
- (c) The Mica Creek storage, April 1, 1973.

To be fully operative the facilities for such storages shall be completed to the extent that storages are available and outlet facilities are operable for regulating flows in accordance with flood control and hydroelectric operating plans as contemplated by the Treaty.

(2) The Authority covenants and agrees with CSPE that it will operate and maintain the Treaty storages in a good and workamanlike manner and in accordance with the provisions of the Treaty and any arrangements made pursuant to the Treaty and that it will not take any action prohibited by the Treaty.

SECTION 5. FLOOD CONTROL.

Nothing in this Agreement affects or alters the obligations, rights, and privileges of the entities under the Treaty relating to operation and compensation for flood control and without restricting the generality of the foregoing, it is expressly agreed that any reduction in generation in the United States brought about by operation for flood control under the Treaty or any flood control arrangements made pursuant to the Treaty shall not be a reduction in the Canadian Entitlement for which com-

pensation is required under this Agreement.

SECTION 6. COMPENSATION.

In the event the Canadian Entitlement is reduced as a result of a failure to comply with Section 4 of this Agreement:

(1) If the failure results other than from wilful omission by the Authority to fulfill its obligations under this Agreement, the United States Entity has agreed that it will, without compensation, offset the effect of that failure by adjusting the operation of the portion of the system described in Step I of paragraph 7 of Annex B of the Treaty which is in the United States to the extent that the United States Entity can do so without loss of energy or capacity to that portion of the System. If the foregoing procedure does not fully offset the effect of the failure, then to the extent the entities agree thereon, an additional offsetting adjustment in the operation of the portion of the system described in Step I of Annex B of the Treaty which is in the United and which would result in only an energy loss will be made if the Authority delivers to the United States Entity energy sufficient to make up one half of that energy loss.

(2) If the effect of the failure is not entirely offset by the procedure specified in subsection (1) of this section, the reduction in the Canadian Entitlement shall be deemed to be one half of the difference in dependable hydroelectric capacity and average annual usable

energy, capable of being produced by:

(a) the Step II system as specified in Annex B of the Treaty for the year in which the reduction occurs, using the 30 year stream flow record provided for in Section 8 of the Protocol, with allowance in each of the 30 stream flow years for the effect of the Adjustment made in following the procedure specified in subsection (1) of this section and

(b) the same system for that year with the application of allowance in each of the 30 stream flow years for the effects of the occurrence causing the reduction

and the dependable hydroelectric capacity and average annual usable energy for the purpose of paragraph (b) of this subsection shall be calculated on the basis of an operation for optimum generation in the United States in the light of the offsetting adjustments and in the light of the effects of the occurrence causing the reduction.

(3) If the failure is the result of an occurrence to which the procedure specified in subsection (1) of this section is not applicable, the reduction shall be deemed to be one half of the difference in dependable hydroelectric capacity and average annual usable energy, capable of being produced by:

(a) the Step II system as specified in Annex B of the Treaty for the year in which the reduction occurs, using the 30 year stream flow record provided for in Section 8 of the Protocol, with no allowance for the effects of the occurrence causing the reduction and

(b) the same system for that year with the application of allowance in each of the 30 stream flow years for the effects of the occurrence causing the reduction

and the dependable hydroelectric capacity and average annual usable energy for the purposes of paragraph (b) of this subsection shall be calculated on the basis of an operation for optimum generation in the United States in the light of the effects of the occurrence causing the reduction.

(4) The Authority shall make compensation for reductions in the Canadian Entitlement, which reductions are to be determined in accordance with subsections (2) or (3) of this section, in amounts equal to the cost of replacing the reductions in the Canadian Entitlement.

(5) The Authority may at its option, and in lieu of the monetary compensation payable under subsection (4) of this section, make compensation by supplying capacity and energy in an amount equal to the reduction in the Canadian Entitlement determined in accordance with subsections (2)

or (3) of this section and adjusted to reflect transmission costs in the United States, delivery to be made when the loss would otherwise have occurred. The Authority may provide combinations of money, capacity and energy that are mutually acceptable in discharge of its obligation to make compensation under this section.

(6) The Authority shall give notice as soon as possible after it becomes apparent to it that compensation may be due and will at that time indicate the amounts of capacity and energy which it anticipates it will be able to make available.

(7) The United States Entity has agreed that, in order to make up any reduction in the Canadian Entitlement, it will cause to be delivered the least expensive capacity and energy available and, to the extent that it would be the least expensive, will deliver at the then applicable rate schedules of the Bonneville Power Administration any available surplus capacity and energy from the United States Federal Columbia River System. The cost of replacement referred to in subsection (4) of this section shall be determined as if the reduction was in fact made up as contemplated by the agreement referred to in the preceding sentence.

(8) Compensation made in accordance with this section shall be accepted as satisfaction of all claims against the Authority with respect to the reduction in the Canadian Entitlement for which such compensation was made and with

respect to the act or omission of the Authority from which the right to such compensation arose.

(9) Any obligation to mitigate damages by the United States Entity, CSPE, the vendees of CSPE, and the owners of the non-Federal dams on the Columbia River in the United States is satisfied by compliance with this section.

(10) If the Canadian Entitlement Exchange Agreements referred to in Section 10 are not in force, compensation for a reduction in the Canadian Entitlement in accordance with subsections (2) and (3) of this section, is required only in respect of that part of the reduction in the Canadian Entitlement which CSPE and its vendees could have used and only in respect of costs that could not have been avoided had every reasonable effort to mitigate been made by CSPE and the owners of non-Federal dams on the Columbia River in the United States.

SECTION 7. REDUCTION OF THE CANADIAN ENTITLEMENT IN ACCORDANCE WITH THE TREATY.

Any reduction in the Canadian Entitlement resulting from action taken pursuant to paragraph 7 of Annex A of the Treaty shall be determined in accordance with subsection (3) of Section 6 of this Agreement and unless otherwise agreed, the Authority shall offset the reduction by supplying capacity and energy equal to the reduction, the energy to be supplied in equal monthly amounts.

SECTION 8. SETTLEMENT OF DISPUTES.

Any dispute arising under this Agreement, including but without limitation a dispute as to whether any event requiring compensation has occurred, the amount of compensation due or the amount of any over-delivery of power, is agreed to be a difference under the Treaty to be settled in accordance with the provisions of Article XVI of the Treaty. Any determination of compensation in money or power due shall be confined to the actual loss incurred in accordance with the principles contained in Section 6 of this Agreement.

SECTION 9. EXCHANGES OF CAPACITY AND ENERGY.

(1) The Authority agrees that CSPE shall have and may exercise the rights of the Authority as the Canadian Entity relating to the negotiation and conclusion with the United States Entity of proposals relating to the exchanges authorized by Article VIII (2) of the Treaty with respect to any portion of the Canadian Entitlement.

(2) It is agreed that no exchange of capacity for energy or of energy for capacity or modification in the delivery of energy in equal amounts each month as provided in the Treaty shall be taken into account in the determination of compensation to be made by the Authority pursuant to this Agreement.

SECTION 10. EXCHANGE AGREEMENTS.

The Bonneville Power Administrator acting as the Administrator and for and on behalf of the United

States Entity has by entering into Canadian Entitlement Exchange Agreements, assured unconditionally the delivery to the vendees of CSPE by appropriate exchange contracts of an amount of power agreed between the United States Entity and CSPE to be the equivalent of the Canadian Entitlement, and the United States Entity, while those Agreements are in force, will succeed to all the rights of CSPE and its vendees to receive the entire Canadian Entitlement and all other rights of CSPE arising from this Agreement. CSPE therefore instructs the Authority, until otherwise notified, to make any compensation whether in power or money required to be made by the Authority pursuant to Section 6 or Section 7 of this Agreement to the United States Entity. CSPE agrees that any settlement of a claim for compensation or arrangement entered into pursuant to this Agreement by the United States Entity shall be binding on CSPE.

SECTION 11. PAYMENTS.

(1) The Authority shall pay any amount in United States funds determined to be due in accordance with the terms hereof within thirty days of receipt of an invoice for such amount.

(2) Should the Authority deliver power in excess of the amount required as compensation, then appropriate adjustments shall be made in kind or in money.

SECTION 12. APPROVALS.

No modification or renewal of this Agreement shall

be effective until approved by the Governments of Canada and the United States of America, evidenced by an Exchange of Notes.

SECTION 13. DELIVERIES.

Any power delivered by the Authority pursuant to this Agreement shall be delivered at mutually acceptable points of interconnection on the Canadian-United States border. Appropriate adjustments shall be made to reflect transmission costs and transmission losses in the United States.

SECTION 14. NOTICES.

Any notices shall be in writing and shall be delivered or mailed prepaid as follows:

Columbia Storage Power Exchange,
20 N. Main Street
East Wenatchee, Washington, U.S.A.

United States Entity
c/o Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208 U.S.A.

British Columbia Hydro and Power Authority
970 Burrard Street
Vancouver 1, British Columbia, Canada.

or such other address as may be signified by notice to the others.

IN WITNESS WHEREOF, the parties have caused this

Agreement to be executed as of the day and year first
above written.

(SEAL)

Attest

BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY

By _____
Chairman

By _____
Secretary

(SEAL)

Attest

COLUMBIA STORAGE POWER EXCHANGE

By _____

RATIFICATION OF THE COLUMBIA RIVER TREATY

(Attachment No. 1)

Historical Background

The history of the Columbia River Treaty dates back to 1944 when the International Joint Commission, at the request of the governments of Canada and the United States, undertook investigations to determine whether further development of the water resources of the Columbia River basin would be practical and advantageous to both countries.

An Engineering Board set up by the Commission submitted a report in March, 1959, which indicated that there were a number of sites in Canada suitable for the construction of large storage reservoirs that could be used to regulate the Columbia River for this purpose. The report did not suggest how the benefits produced in the United States from storage projects upstream in Canada might be shared by the two countries.

In January, 1959, however, the two governments had asked the I.J.C. to make a special report on this problem. The Commission's recommendations were submitted in December of that year. Negotiations between the two governments on the selection of the best possible sites for storage dams, and the apportionment of the benefits to be derived from them, began in February, 1960, and terminated with the signing of the Columbia River Treaty on January 17, 1961.

On March 16, 1961, the United States Senate adopted a resolution approving the Treaty. However, ratification did not take place in Canada, and following the Hyannis Port

meetings between President Kennedy and Prime Minister Pearson in the spring of 1963 formal negotiations resumed between the two countries. At the same time meetings were held between the governments of Canada and British Columbia which resulted in a main agreement signed on July 8, 1963, and a supplementary agreement on January 13, 1964. These agreements outlined the respective responsibilities of the two governments in the development of the Columbia River.

The international negotiations continued until January 22, 1964, when Canada and the United States approved a Protocol modifying and clarifying the 1961 Treaty.

The Treaty and Protocol were submitted to the Canadian Parliament in March, 1964. The Standing Committee on External Affairs recommended approval of both documents following a series of 50 meetings held during April and May. The Commons voted in favour on June 5 and the Senate on June 10.

An agreement under which a group of United States utilities would purchase Canada's share of the downstream power benefits for a 30-year period was signed by the Columbia Storage Power Exchange and the British Columbia Hydro and Power Authority on August 13, 1964. Sale of the bond issue on August 26 to finance the purchase cleared the way for today's ratification of the Treaty.

Payments for flood control will be made by the U.S. Government to Canada as the Treaty storages are completed.

RATIFICATION OF THE COLUMBIA RIVER TREATY

(Attachment No. 2)

Financial Arrangements

In payment for the downstream benefits on the Columbia River which have been sold to a group of power entities in the United States called the Columbia Storage Power Exchange, for a period of 30 years, the Government of Canada has today received in New York from the Columbia Storage Power Exchange the sum of U.S. \$253,929,534.25. This sum is the discounted value at today's date of the U.S. \$254.4 million provided for in the Attachment to the Exchange of Notes between governments in January of this year; the discount has been made at the rate indicated in that Attachment.

The United States dollars received in this way will be disbursed as follows:

- 1) U.S. \$50 million will be sold direct to the Government of British Columbia for the repayment of U.S. dollar debts of that Province coming due at about this time.
- 2) U.S. \$203,929,534.25 will be used by the Government of Canada to purchase special non-marketable securities of the United States Treasury maturing in the years 1965 to 1971 inclusive. These securities will be held in a special account by the Minister of Finance. The purchase of these securities was authorized by Vote L17a as part of Appropriation Act. No. 7, passed by Parliament

on July 16, 1964.

The Canadian dollar equivalent of U.S. \$253,929,534.25, namely Can. \$273,291,666.24, will today be paid over to the Premier of British Columbia by the Prime Minister, the Right Honourable L.B. Pearson. Under the terms of the Agreement between the Government of Canada and the Government of British Columbia dated July 8, 1963, the Government of British Columbia has undertaken to use these funds for the construction of three large storage dams on the Columbia River. Until the funds are actually required for these purposes, the Government of British Columbia is investing the money.

PROTOCOL OF EXCHANGE

The undersigned, the Honourable W. Walton Butterworth, Ambassador of the United States of America to Canada, and the Honourable Paul Martin, Secretary of State for External Affairs, have met for the purpose of exchanging the instruments of ratification by their respective Governments of the Treaty between the United States of America and Canada relating to co-operative development of the water resources of the Columbia River Basin signed at Washington on January 17, 1961.

The respective instruments of ratification of the aforesaid Treaty having been carefully compared and found to be in due form, the said exchange took place this day.

In witness whereof they have signed the present Protocol of Exchange.

Done at Ottawa this 16th day of September, 1964.

For the United States
of America _____

For Canada _____

PROTOCOL OF EXCHANGE

The undersigned, the Honourable Paul Martin, Secretary of State for External Affairs, and the Honourable W. Walton Butterworth, Ambassador of the United States of America to Canada, have met for the purpose of exchanging the instruments of ratification by their respective Governments of the Treaty between Canada and the United States of America relating to co-operative development of the water resources of the Columbia River Basin signed at Washington on January 17, 1961.

The respective instruments of ratification of the aforesaid Treaty having been carefully compared and found to be in due form, the said exchange took place this day.

In witness whereof they have signed the present Protocol of Exchange.

Done at Ottawa this 16th day of September, 1964.

For Canada _____

For the United States
of America _____

No.

Ottawa, September 16, 1964.

Excellency,

I have the honour to refer to the Treaty between Canada and the United States of America relating to cooperative development of the water resources of the Columbia River Basin signed at Washington on 17 January 1961, to the Protocol attached to my Note to the Honourable Dean Rusk, Secretary of State of the United States of America, dated 22 January 1964, and to the exchange of instruments of ratification of the Treaty which occurred today.

I also have the honour to refer to the discussions which have been held between representatives of the Government of Canada and of the Government of the United States of America in connection with the exchange of Notes, dated 22 January 1964, regarding sale in the United States of America of Canada's entitlement under the Treaty of downstream power benefits.

My Government also understands that your Government has designated the Administrator of the Bonneville Power Administration, Department of the Interior, and the Division Engineer, North Pacific Division, Corps of Engineers, Department of the Army, as the United States Entity for the purposes of Article XIV(1) of the Treaty, and I would inform you that the Government of Canada has designated the British Columbia Hydro and Power Authority, a corporation incorporated in the Province of British Columbia by the British Columbia Hydro and Power Authority Act, 1964, as the Canadian Entity for the purposes of that Article. A copy of the designation is attached hereto.

On the basis of those discussions the Government of Canada proposes that the Canadian Entitlement Purchase Agreement regarding the sale in the United States of America of the Canadian Entitlement under the Treaty to downstream power benefits entered into between the British Columbia Hydro and Power Authority and the Columbia Storage Power Exchange, the single purchaser referred to in the attachment to your Note of January 22, 1964, relating to the terms of the sale, a copy of which agreement is attached hereto, be authorized for the purposes of Article VIII(1) of the Treaty as a disposal of the Canadian Entitlement in the United States of America for the period and in accordance with the other terms and provisions set out in the Canadian Entitlement Purchase Agreement.

His Excellency,
W. Walton Butterworth,
Ambassador of the United States
of America,
Ottawa.

My Government also understands that your Government pursuant to paragraph E.5 in the attachment to Mr. Secretary Rusk's Note of January 22, 1964, relating to the terms of the sale, has determined that the United States Entity shall enter into and that it has entered into the Canadian Entitlement Exchange Agreements which agreements assure unconditionally the delivery for the account of the Columbia Storage Power Exchange of an amount of power agreed between the United States Entity and the Columbia Storage Power Exchange to be the equivalent of the Canadian Entitlement being sold under the Canadian Entitlement Purchase Agreement, and that the United States Entity has succeeded to all the rights and obligations of the Columbia Storage Power Exchange under the Canadian Entitlement Purchase Agreement other than the obligation to pay the purchase price, and further that the United States Entity has, pursuant to Article XI of the Treaty, approved the use of the improved stream flow in the United States of America brought about by the Treaty by entering into Canadian Entitlement Allocation Agreements with owners of non-Federal dams on the Columbia River.

My Government also understands that the two Governments are agreed that the Government of the United States of America undertakes that:

- (1) So long as the Canadian Entitlement Exchange Agreements remain in force, the United States Entity will perform all the obligations of the Columbia Storage Power Exchange under the Canadian Entitlement Purchase Agreement other than the obligation to pay the purchase price specified in Section 3 of the Canadian Entitlement Purchase Agreement;
- (2) In the event the Canadian Entitlement is reduced as a result of a failure on the part of the Canadian Entity to comply with Section 4 of the Canadian Entitlement Purchase Agreement and if the failure results other than from wilful omission by the Canadian Entity to fulfil its obligations under that agreement, the United States Entity will, without compensation, offset the effect of that failure by adjusting the operation of the portion of the System described in Step I of paragraph 7 of Annex B of the Treaty which is in the United States of America to the extent that the United States Entity can do so without loss of energy or capacity to that portion of the System; and
- (3) If the procedure described in paragraph (2) above does not fully offset the effect of the failure, then to the extent the entities agree thereon, an additional offsetting adjustment in the operation of the portion of the System described in Step I of Annex B of the Treaty which is in the United States of America and which would result in only an energy loss will be made if the Canadian Entity delivers to the United States Entity energy sufficient to make up one half that energy loss.

- (4) In order to make up any reduction in the Canadian Entitlement, which reduction is to be determined in accordance with Section 6 of the Canadian Entitlement Purchase Agreement, the United States Entity will cause to be delivered the least expensive capacity and energy available and, to the extent that it would be the least expensive available, will deliver, at the then applicable rate schedules of the Bonneville Power Administration, any available surplus capacity and energy from the United States Federal Columbia River System.

The Government of Canada also proposes that:

- (5) Contemporaneously with the exchange of the instruments of ratification CSPE shall have paid to Canada the sum in United States funds of \$253,929,534.25, being the equivalent of the sum of \$254,400,000 in United States funds as of October 1, 1964 adjusted to September 16, 1964 at a discount rate of $\frac{1}{2}$ percent per annum on the basis set out in the January 22, 1964 Exchange of Notes between our two Governments relating to the terms of sale, which sum shall be applied towards the cost of constructing the Treaty projects through a transfer of the sum by Canada to the Government of British Columbia pursuant to arrangements entered into between Canada and British Columbia.
- (6) No modification or renewal of the Canadian Entitlement Purchase Agreement shall be effective until approved by the Governments of Canada and the United States of America, evidenced by an Exchange of Notes.
- (7) The storages described in Article II of the Treaty shall be considered fully operative when the facilities for such storages are available and outlet facilities are operable for regulating flows in accordance with the flood control and hydroelectric operating plans.
- (8) As soon as practicable, the Canadian and United States Entities shall agree upon a program for filling the storage provided by each of the Treaty projects. The filling program shall have the objective of having the storages described in Article II(2)(a), Article II(2)(b), and Article II(2)(c) of the Treaty filled to the extent that usable storage, in the amounts provided for each storage in Article II of the Treaty is available by September 1 following the date when the storage becomes fully operative, and of having the storage provided by the dam described in Article II(2)(a) filled to 15 million acre-feet by September 1, 1975. This objective shall be reflected in the hydroelectric operating plans and shall take into account generating requirements at-site and downstream in Canada and the United States of America to meet loads and requirements for flood control.

- (9) In the event the United States of America becomes entitled to compensation from Canada for loss of downstream power benefits, other than Canada's entitlement to downstream power benefits, in respect of a breach of the obligation under Article IV(6) of the Treaty to commence full operation of a storage, compensation payable to the United States of America under Article XVIII(5)(a) of the Treaty shall be made in an amount equal to 2.70 mills per kilowatt-hour of energy, and 46 cents per kilowatt of dependable capacity for each month or fraction thereof, in United States funds, for and in lieu of the power which would have been forfeited under Article XVIII(5)(a) of the Treaty if Canada's entitlement to downstream power benefits had not been sold in the United States of America. The power which would have been forfeited shall be Canada's entitlement to downstream power benefits attributable to the particular storage had it commenced full operation in accordance with Article IV(6) of the Treaty and shall consist of (1) dependable capacity for the period of forfeiture and (2) that portion of average annual usable energy which would have been available during the period of forfeiture assuming the energy to be available at a uniform rate throughout the year. Alternatively, Canada may, at its option, offset the power for which compensation is to be made by delivering capacity and energy to the United States Entity, such delivery to be made, unless otherwise agreed by the entities, during the period of breach and at a uniform rate. The option for Canada to provide power in place of paying money shall permit Canada to make compensation partly by supplying power and partly by paying money, as may be mutually agreed by the entities.
- (10) The Canadian Entity shall at reasonable intervals provide current reports to the United States Entity of the progress of construction of the Treaty storages. In the event there is a likelihood of delay in meeting the completion dates set out in Section 4 of the Canadian Entitlement Purchase Agreement or a delay which will give rise to a claim under paragraph (9) hereof the Canadian Entity will advise of the probability of power being available to make the compensation required.
- (11) To the extent the Canadian Entity does not make compensation for a reduction in the Canadian Entitlement arising as a result of a failure to comply with Section 4 of the Canadian Entitlement Purchase Agreement, Canada shall make such compensation and such compensation shall be accepted in complete satisfaction of all claims arising out of the failure in respect of the reduction in the Canadian Entitlement for which such compensation was made.

- (12) For any years in which Canada's Entitlement to downstream power benefits is sold to Columbia Storage Power Exchange, the United States Entity may decide the amount of the downstream power benefits for purposes connected with the disposition thereof in the United States of America. This authorization, however, shall neither affect the rights or relieve the obligations of the Canadian and United States Entities relating to joint activities under the provisions of Article XIV and Annexes A and B of the Treaty, provided for in the Canadian Entitlement Purchase Agreement or pursuant to paragraph (9) hereof or to determination of the power benefits to which Canada is entitled.
- (13) Any power delivered by the Canadian Entity or by Canada in accordance with the Canadian Entitlement Purchase Agreement or this Note shall be delivered at points of interconnection on the Canadian-United States border mutually acceptable to the entities. Appropriate adjustments shall be made to reflect transmission costs and transmission losses in the United States of America.
- (14) Any dispute arising under the Canadian Entitlement Purchase Agreement, including, but without limitation, a dispute whether any event requiring compensation has occurred, the amount of compensation due or the amount of any over-delivery of power is agreed to be a difference under the Treaty to be settled in accordance with the provisions of Article XVI of the Treaty, and the parties to the Canadian Entitlement Purchase Agreement may avail themselves of the jurisdiction hereby conferred.

The Government of Canada therefore proposes that if agreeable to your Government this Note together with your reply thereto constitutes an agreement by our Governments relating to the Treaty with effect from the date of the exchange of instruments of ratification of the Treaty.

Accept, Excellency, the renewed assurances of my highest consideration.

Secretary of State for
External Affairs

THE UNITED STATES EMBASSY

Ottawa, September 16, 1964

Sir,

I have the honor to refer to your Note dated September 16, 1964 regarding the Treaty between Canada and the United States of America relating to cooperative development of the water resources of the Columbia River Basin signed at Washington on January 17, 1961. I wish to advise you that the Government of the United States of America confirms that the Exchange of Notes with Annex of January 22, 1964 referred to in your Note has now come into full force and effect. The Government of the United States of America further agrees that your Note together with this reply shall constitute an agreement between our two Governments relating to the carrying out of the provisions of the Treaty with effect from this 16th day of September 1964.

Accept, Sir, the renewed assurances of my highest consideration.

Ambassador.

The Honorable
Paul Martin, P.C., Q.C.,
Secretary of State for External Affairs,
Ottawa.