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EXCHANGE OF NOTES BETWEEN CANADA AND THE
UNITED STATES ON THE GARRISON DIVERSION
UNIT -- FEBRUARY 6, 1974

DEPARTMENT OF EXTERNAL AFFAIRS
MINISTÈRE DES AFFAIRES EXTÉRIEURES

Text of Note From Canadian Embassy to State Department, October 23, 1973

The Canadian Embassy presents its compliments to the Department of State and has the honour to refer its Notes No. 313 of October 19, 1971 and No. 35 of January 25, 1973, concerning the effect on water quality in the Souris River of the proposed Garrison Diversion Project in the State of North Dakota.

The Embassy reaffirms that the Government of Canada continues to be gravely concerned that return flows from the irrigation of land in the Souris Loop and areas adjacent to tributaries of the Red River will significantly and seriously degrade water quality in these two Rivers. The Government of Canada has concluded that based on studies conducted in both countries the proposal would run counter to the obligations assumed by the United States under Article IV of the Boundary Waters Treaty of 1909 that:

"...waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other."

Studies have been undertaken in Canada that indicate that communities, such as Souris and Portage la Prairie, would be required either to seek alternative sources of water supply or undertake additional treatment of present water supplies drawn from the Souris and Assiniboine Rivers. The attachments to this Note contain more detailed explanations of the injury to property resulting from transboundary pollution likely to be incurred by these two Canadian municipalities. The Department of State will understand that the property damage values listed are indicative and minimum values and do not represent other injury to health or property that might be incurred. Such other injury by way of example would include: the unsuitability of the Souris return flows for irrigation purposes, and for various industrial uses including food processing; and adverse effects that may accrue to other downstream interests on both rivers from the Boundary to Lake Winnipeg. In short, options available to Canada for the use of the flows of these Rivers will be severely limited by the Garrison Diversion.

The Government of Canada is also mindful that on July 13, 1972 the Canadian Minister of Environment and the Chairman of the United States President's Council on Environmental Quality jointly reaffirmed their support for Principle 21 of the Declaration on Human Environment that:

"States have, in accordance with the charter of the United Nations and the principles of international law, responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond national jurisdiction."

The Department of State will recall that the group of Canadian and U.S. officials which was to consider alternatives to the present plans

for the Garrison Diversion so as to protect Canadian interests, has not only once. No agreement could be reached as to the terms of reference for the group and thus no progress has been achieved through this mechanism.

The Government of Canada is confident the United States Government will recognize the need to avoid degradation of the water of the Souris River passing into Canada. Accordingly, the Government of Canada requests urgently that the Government of the United States establish a moratorium on all further construction of the Garrison Diversion Unit until such time as the United States and Canadian Governments can reach an understanding that Canadian rights and interests have been fully protected in accordance with the provisions of the Boundary Waters Treaty.

The Government of Canada looks forward to an early reply to this request. Further, the Government of Canada suggests that senior officials from both sides representing all interests meet quickly, following the establishment of a moratorium, to reach the understanding described above.

The Canadian Embassy avails itself of this opportunity to renew to the Department of State the assurances of its highest considerations.

Washington, D.C.
October 23, 1973.

Text of Note From State Department to Canadian Embassy, February 5, 1974

The Department of State refers to the Canadian Embassy's Note 432 dated October 23, 1973, concerning the possible effects of the proposed Garrison Diversion Unit in the State of North Dakota on the quality of waters flowing into Canada.

The United States notes Canada's concern that its waters may be adversely affected by the projected future development of the Garrison Diversion Unit, Canada's views regarding the relevance of Article IV of the Boundary Waters Treaty to the continued development of the project, and Canada's request for a moratorium on further construction. The United States wishes to point out that construction work presently underway on the Garrison Diversion Unit will itself not affect waters flowing into Canada. In any development of features of the Garrison Diversion Unit that will affect Canada, specifically works in the Red River Basin and the Souris Loop, the U.S. will comply with its obligation to Canada not to pollute water crossing the boundary "to the injury of health or property" within Canada. No construction potentially affecting waters flowing into Canada will be undertaken unless it is clear that this obligation will be met.

To this end, the Department of the Interior has underway studies to identify and quantify the beneficial and adverse effects of further development of the Garrison Diversion Unit including possible effects on Canadian interests. Many of the effects of water quality and flows have not been fully evaluated by either country. Initial phases of the studies will be completed in March. At that time, the U.S. will further review the future development of the Garrison Diversion Unit in light of all relevant factors, including Canada's concerns and the U.S. obligations under the Boundary Waters Treaty. The U.S. also notes Canada's suggestion that senior officials of both countries meet quickly to reach an understanding regarding Canadian rights and interests. The United States is equally desirous of holding such a meeting in order to assess fully the potential impact of the project on Canada, to consider possible solutions to the problem, and to resolve outstanding policy issues. Such a meeting could be most beneficially conducted after the completion of the initial phases of the studies referred to above, and after Canada has had an opportunity to review these studies and to evaluate the information pertaining to the effects of return flows on Canada.

February 5, 1974