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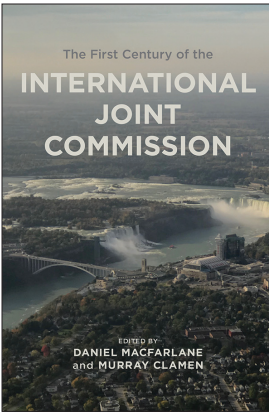
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THE FIRST CENTURY OF THE INTERNATIONAL JOINT COMMISSION

Edited by Daniel Macfarlane and Murray Clamen

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Appendix 2: The Clinton-Gibbons Draft, 1907

TO

THE HONORABLE THE SECRETARY OF STATE
OF THE UNITED STATES, and

THE HONORABLE THE PRIME MINISTER
OF THE DOMINION OF CANADA:

The undersigned have the honor to most respectfully submit for your consideration the attached draft of a proposed treaty.

Dated September 24, 1907.

(Signed) GEORGE CLINTON

“ GEO. C. GIBBONS

PROPOSED TREATY CLAUSES.

ARTICLE I

WHEREAS questions have arisen and may hereafter arise involving the use and diversion of the boundary waters of the United States and Canada, and in relation to the protection of the fisheries therein, the

improvement of navigable channels, the location of the boundary line, the construction of new channels for navigation, the improvement and maintenance of the levels therein, and the protection of the banks and shores of such waters; and whereas it is desirable that the rules of navigation upon navigable waters forming a part of the boundary between the United States and the Dominion of Canada, and the use of signal lights of vessels navigating said waters should be uniform, and whereas the use of said waters for power and other purposes should be regulated by joint rules of the United States and the Dominion of Canada, and such rules must be enforced by joint action of said countries; and whereas it is deemed wise by the high contracting parties, in order to settle all such questions now existing, or which may hereafter arise, and to dispose of all other matters above mentioned, that a permanent international commission be appointed with full powers in the premises: therefore the high contracting parties agree that all such questions and matters as they may arise shall be referred by them to a commission to consist of six commissioners, three to be appointed by the President of the United States, and three by His Britannic Majesty; and the high contracting parties agree to appoint the commissioners as soon after the ratification hereof as may be convenient. In case of the death, absence or incapacity of a commissioner, or in the event of a commissioner omitting or ceasing to act as such, the President of the United States, or His Britannic Majesty, respectively, shall name another person to act as commissioner in the place or stead of the Commissioner originally named.

ARTICLE II

The Commissioners shall meet in Washington at the earliest convenient time after they shall have been named, and shall, before proceeding to do any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment and according to justice and equity, without feeling, favor or affection to their country, upon all such matters as shall be laid before them on the part of the governments of the United States and of His Britannic

Majesty, respectively, and such declaration shall be entered on the record of their proceedings.

After having organized the commissioners may meet at such times and places as they may appoint. They shall give all parties interested in matters which come before them, convenient opportunity to be heard, and may take evidence on oath when deemed necessary. They may adopt such rules of procedure as may be in accordance with justice and equity and may make such examinations in person and through agents, or employees, as they may deem advisable.

The majority of the commission shall have power to render a decision, but in case a majority do not agree, the commission shall select an arbitrator or arbitrators to whom the matters in difference may be referred and whose decision shall be final.

The Commission may employ secretaries, engineers and other assistants, from time to time as it may deem advisable. The salaries and personal expenses of the Commissioners shall be paid by their respective governments, and all other expenses, including the pay of arbitrators, shall be paid equally by the high contracting parties, who shall make proper provision therefor.

ARTICLE III

The Commission shall have the power to consider and determine all questions and matters related to the subject specified in Article I which may be referred to it by the High Contracting Parties.

The decision of the Commission upon any matters submitted to it shall be enforced by the High Contracting Parties; and for the purpose of enforcing any rules and regulations, which may be adopted by the Commission, pursuant to the powers conferred upon it by this treaty, the Commission may exercise such police powers as may be vested in it by concurrent legislation of the United States and the Dominion of Canada.

ARTICLE IV

It is agreed as follows: -

1. The expression "boundary waters" as used in this treaty includes the following described waters, to wit: Lake Superior, Michigan, Huron including Georgian Bay, St. Clair, Erie and Ontario; the connecting and tributary waters of said lakes, the river St. Lawrence from its source to the ocean; the Columbia River and all rivers and streams which cross the boundary line between the Dominion of Canada and the United States, and their tributaries.

2. All navigable boundary waters, and all canals and channels connecting the same or aiding in their navigation, now existing or which may hereafter be constructed are and shall be forever free for navigation by the citizens and subjects of both countries, ascending and descending, subject to such just rules and regulations as either of the High Contracting Parties may, within its own territory, impose, provided that such rules and regulations shall not discriminate between the citizens or subjects of the high contracting parties.

3. The right to use said waters for navigation is paramount to all other rights, except that of use for necessary domestic and sanitary purposes and the service of canals for purposes of navigation.

4. Where diversions of water are permitted for the purpose of generating power, upon waters along the line of the international boundary, the interests of navigation must be fully protected, and, as far as possible, the right to use on half of surplus waters available for power purposes shall be preserved to each country, its citizens or subjects.

5. Where diversion for irrigation is permitted the paramount right of navigation must be preserved and the rights of each country affected and of its citizens or subjects must be equitably protected.

6. The said waters must not be polluted in one country to the injury of health or property in the other.

7. No water shall be diverted from the Niagara River or from Lake Erie by way of the Niagara Peninsula in excess of 18,500 cubic feet per second in the United States, and 36,000 cubic feet per second in the Dominion of Canada, except for necessary domestic and sanitary uses, and for service of canals for purposes of navigation.

8. Solely for the purposes of this treaty, the expression “Navigable boundary waters” shall be taken to mean all such boundary waters as are subject to public use for the transportation of property, in accordance with the common law as recognized in the Dominion of Canada and in the United States; and the Commission is authorized and empowered to determine the navigability of streams, as matter of fact, when it becomes necessary to do so in matters referred to it.

9. No diversion or obstruction of boundary waters in, or by, either country, which shall materially interfere with the natural flow thereof, to the injury of the other country, or of its citizens or subjects shall be permitted without the consent of such other country.

10. The words “citizens” and “subjects” as used in this treaty shall be deemed to include individuals, corporations, joint stock companies, associations and partnerships.

ARTICLE V

The Commission is hereby empowered and directed to ascertain the boundary line between the United States and the Dominion of Canada through lakes Ontario, Erie, St. Clair, and Huron, and the waters connecting the same as laid down by the Commissioners appointed under the treaty of Ghent, as nearly as possible, and to delineate the same upon modern charts and to describe it in writing, and, so far as practical, by reference to fixed monuments which the Commission may locate and erect and which shall be so described that they can be readily found.

The Commission shall by report, signed by the Commissioners, designate the boundary line so ascertained by it and shall cause to be

prepared proper maps delineating the same. They shall file their report together with such maps, in duplicate with the Secretary of State of the United States and with the Minister of Public Works of the Dominion of Canada.

The boundary line as ascertained and reported by the Commission shall be the boundary line between the United States of America and the Dominion of Canada, through the waters last above mentioned.

In case a majority of the commission shall not be able to agree on the location of the boundary line through the waters last above mentioned, in whole or in any part, they shall make joint or several reports in duplicate, to the government of His Britannic Majesty and to that of the United States, stating in detail the points on which they differ.

ARTICLE VI

AND WHEREAS it is desirable that the said Commission, when formed, shall have authority to deal with all other matters, which shall, by consent of both the contracting parties, be submitted to it for decision or which shall with such consent, be referred to it with a view to having the said Commission consider and report thereon with such recommendations as they may think advisable,

NOW THEREFORE the High Contracting Parties agree that the said Commission shall, as to all matters so referred to them for decision, have the same powers as given them with respect to the subjects mentioned in Article I of this treaty.

As to such matters as are not referred to them for decision the said commission shall consider and report upon the facts, with such recommendations as they may see fit.

In case a majority of the Commission cannot, in matters so referred to the for decision, agree upon findings, they shall appoint one or more arbitrators as provided in Article I, but as to all other subjects

referred to them if the majority cannot agree upon conclusions, the views of the members shall be embodied in separate reports to be submitted to both the High Contracting Parties.

ARTICLE VII

The Commission with all its powers conferred and duties imposed by this treaty shall continue during the pleasure of both the high contracting parties; but if either of the parties desires to terminate the treaty it shall give to the other at least one year's notice in writing before doing so. For all the purposes of these articles the Dominion of Canada shall be deemed to represent His Britannic Majesty.

All reports and communications of the Commission are to be made to the Secretary of State of the United States and to the Prime Minister of the Dominion of Canada.

