

Appendix 1407

INTERDEPARTMENTAL AGREEMENT

(State and Interior Departments)

June 18, 1945

MEMORANDUM OF UNDERSTANDING AS TO FUNCTIONS AND JURISDICTION OF AGENCIES OF THE UNITED STATES IN RELATION TO THE COLORADO AND TIJUANA RIVERS AND THE RIO GRANDE BELOW FORT QUITMAN, TEXAS UNDER WATER TREATY SIGNED AT WASHINGTON, FEBRUARY 3, 1944

This memorandum of understanding made this 14th day of February, 1945 between the Department of State and the United States Section, International Boundary and Water Commission, United States and Mexico (hereinafter referred to as the "United States Section"), represented by the Secretary of State, and the Department of the Interior, represented by the Secretary of the Interior, pursuant to the provisions of the Treaty of February 3, 1944 between the United States and Mexico relating to the Colorado and Tijuana Rivers and the Rio Grande below Fort Quitman, Texas (hereinafter referred to as the "treaty"); the Protocol between the two Governments supplementary to the treaty (hereinafter referred to as the "protocol") dated November 14, 1944; and existing domestic law of the United States.

WITNESSETH, THAT,

a. Whereas, the treaty establishes certain reciprocal rights and obligations of the two nations and requires for its execution both joint and independent determinations and actions on the part of the two Governments as represented, in the case of the United States, by the Department of State and in the case of Mexico by the Ministry of Foreign Relations, or acting through their respective Sections of the International Boundary and Water Commission; and

b. Whereas, the use of works both of an international and domestic character will be necessarily involved in the discharge of various treaty functions; and

c. Whereas, the protocol provides that the said Governments agree and understand that:

Wherever, by virtue of the provisions of the Treaty between the United States of America and the United Mexican States, signed in Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and Tijuana Rivers and of

the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, specific functions are imposed on, or exclusive jurisdiction is vested in, either of the Sections of the International Boundary and Water Commission, which involve the construction or use of works for storage or conveyance of water, flood control, stream gaging, or for any other purpose, which are situated wholly within the Territory of the country of that Section, and which are to be used only partly for the performance of treaty provisions, such jurisdiction shall be exercised, and such functions, including the construction, operation and maintenance of the said works, shall be performed and carried out by the Federal agencies of that country which now or hereafter may be authorized by domestic law to construct or to operate and maintain, such works. Such functions or jurisdictions shall be exercised in conformity with the provisions of the Treaty and in cooperation with the respective Section of the Commission, to the end that all international obligations and functions may be coordinated and fulfilled.

The works to be constructed or used on or along the boundary, and those to be constructed or used exclusively for the discharge of treaty stipulations, shall be under the jurisdiction of the Commission or of the respective Section, in accordance with the provisions of the Treaty. In carrying out the construction of such works the Sections of the Commission may utilize the services of public or private organizations in accordance with the laws of their respective countries.

and which protocol is by the terms thereof made an integral part of the treaty, to be effective on the day of the entry into force of the treaty and to continue effective so long as the treaty remains in force; and

d. Whereas, by virtue of the treaty and the protocol, the Secretary of State and the United States Section are vested with general jurisdiction over the performance of treaty functions, in so far as the rights and obligations of the United States are concerned, and are likewise vested, and from time to time in the future may be further vested, with jurisdiction over various works, constructed and to be constructed, on or along the boundary between the United States and Mexico, and over certain matters and problems of an international character arising on or affecting the said boundary, by virtue of treaties in force between the two nations, and by virtue of Acts of Congress; and

e. Whereas, the Secretary of the Interior, pursuant to the Reclamation Law and other Acts of Congress pertaining to the investigation, conservation and utilization of the water resources of the United States, has been, and from time to time in the future may be au-

thorized to construct and to operate and maintain certain facilities wholly in the United States for the storage and conveyance of water, flood control, production of hydroelectric power and for other purposes, which facilities primarily pertain to the functions of the Department of the Interior but, some of which facilities, in consequence of the treaty, will in part also pertain to treaty functions; and

f. Whereas, the Bureau of Reclamation (hereinafter referred to as the "Bureau") is an agency of the Department of the Interior which aids and assists the Secretary of the Interior in the performance of his responsibilities and functions pursuant to the Reclamation Law and other Acts of Congress pertaining to the investigation, conservation and utilization of the water resources of the United States; and

g. Whereas, in order that all international and domestic obligations and functions prescribed by the treaty and domestic law may be coordinated and fulfilled in the manner contemplated by the protocol, it is mutually desirable to define and set forth the specific jurisdiction and functions to be exercised by the Department of State and the United States Section, and the Department of the Interior and its agency, the Bureau, with respect to the operation and maintenance of such existing works as may be necessary in whole or in part to the fulfillment of treaty provisions, or which may be constructed, operated and maintained pursuant thereto, and with respect to the gathering and collation of certain information and data and the making of certain findings of fact and recommendations which may become necessary or desirable in the fulfillment of treaty provisions; and to define the cooperation between the said Interior agency and the United States Section as contemplated by the protocol in the performance of functions under their respective jurisdiction;

Now, therefore, it is agreed as follows:

1. The principles enunciated in this memorandum and in the protocol and hereinabove in recital *c* set forth shall control with respect to all facilities or works which now exist and which are to be used in whole or in part in the discharge of treaty functions, or which may hereafter be constructed pursuant to the treaty in relation to the Rio Grande below Fort Quitman, Texas, and the Colorado and Tijuana Rivers, even though such facilities or works may not be herein specifically enumerated. For the purpose of defining the respective jurisdiction and function of the Department of State, the Department of the Interior and their respective agencies represented thereby, respecting facilities which have been heretofore, or, which hereafter may be constructed or hereafter used in connection with the performance of treaty provisions;

(a) The term "works" and the term "facilities" shall be construed as embracing either or both works and facilities, and

(b) For the purpose of this memorandum, the term "works located upon their common boundary," as used in the treaty, and the term "on * * * the boundary" wherever used in the treaty or the protocol, shall have application only to works or features of works situated partly in both countries. For the purpose of this memorandum the term "along the boundary," as used in the protocol, shall have application only to works or the features of works located in such proximity to the boundary and of such a character as to control or affect the regimen or flow of the boundary sections of the Rio Grande or Colorado River, as determined by the Secretary of State after consultation with the Secretary of the Interior and, in the event they shall not be in accord as to such determination, with the approval of the President.

The provisions of this subdivision of this memorandum shall not be construed to effect:

(1) the allocation of works as to jurisdiction or function, or both, made elsewhere in this memorandum,

(2) the regulatory jurisdiction of the Commission or the United States Section arising under prior existing treaties and Acts of Congress.

(c) Nothing in this memorandum shall be construed as effecting, limiting, or modifying the functions and activities of the United States Geological Survey, or of the United States Section, respectively, with respect to stream gaging and other water resources investigations.

2. The United States Section shall consult with the Bureau with respect to the plans contemplated by subsection (2) of Article 16 of the treaty relating to the Tijuana River.

3. The Department of State and the Department of the Interior, and their respective agencies, the United States Section and the Bureau, in the exercise of their respective jurisdictions and performance of their respective functions, will cooperate with each other, among other things, as to effecting, to the extent permissible by law, assignment of personnel, transfer of funds and exchange of information to the end that there may be fulfilled the provisions of the treaty, as supplemented by the protocol, and the Reclamation Law and all other Acts of Congress pertaining to the functions of the Department of the Interior as to the investigation, conservation and utilization of the natural resources of the United States. The Secretary of State and the Secretary of the Interior will cooperate in making studies, reports and recommendations, including those pertaining to the obtaining of such legislative authorization as may be necessary, concerning the allocation of costs of construction and operation and maintenance of existing or future works, and of water investigations, within the United States which have been heretofore, or may be in the future, constructed or performed in whole or in part under au-

thority vested in the Secretary of the Interior and which may be utilized in whole or in part in the fulfillment of the treaty.

4. Unless and until otherwise provided in accordance with the domestic law of the United States, in conformance with the treaty and the protocol, the Bureau shall exercise or continue to exercise jurisdiction, and shall perform functions and construction, where new construction may be involved, and operation and maintenance, within the principles stated herein, as to facilities and works as follows:

(a) *Rio Grande*

(1) All facilities and works within the United States constituting the Valley Gravity Canal and Storage project as provided for in the Act of June 28, 1941 (55 Stat. 303, 338) except those portions of the Project designated by the Secretary of State, under the authority of that Act, as being international in character: *Provided*, however, that whenever the construction, operation or maintenance of any feature of such works or facilities may involve the use of, affect or interfere with the construction, operation or maintenance of any feature of the Lower Rio Grande Flood Control project under the jurisdiction of the United States section, the plans and specifications and principles of operation as to such feature of the said Valley Gravity Canal and Storage project shall be formulated by the Bureau subject to the approval of the United States Section.

(b) *Colorado River*

(1) All facilities and works above and including Laguna Dam, and all works constituting a part of the Yuma and Gila Federal Reclamation projects of the Department of the Interior.

(2) All-American Canal.

(3) Pilot Knob check and wasteway and, to whatever extent provision may be made for the generation of electric energy at Pilot Knob by the United States, the Pilot Knob power plant and appurtenances.

(4) The design of the protective works within the United States contemplated by the provisions of Article 12 (a) of the treaty as a result of the construction of the Mexican diversions structure in the Colorado River shall be subject to the approval of the Bureau, with the understanding that the part of such works to be built in the United States may be built and operated and maintained by the Bureau, at its option, subject to supervisory control by the United States Section.

(5) The flood control works contemplated by Article 13 of the Treaty above Laguna Dam and, to the extent that may hereafter be agreed upon between the United States Section and the

Bureau by a memorandum supplementary hereto, the flood control works allocated to the United States between Laguna Dam and the boundary: *Provided*, however, that nothing herein shall impair or modify the jurisdiction and functions of the Bureau under the Act of January 21, 1927 (44 Stat. 1010), as amended, relating to the Colorado River front work and levee system.

(6) The Bureau will collect and communicate to the United States Section such data and information as may be necessary for the use of the United States Section in making the determinations and findings of fact in accordance with Article 10 and Article 15 of the treaty. Such determinations and findings shall be made by the United States Section after consultation with the Bureau.

5. Unless and until otherwise provided in accordance with domestic laws of the United States, in conformance with the treaty and the protocol, the United States Section shall exercise or continue to exercise jurisdiction, and shall perform functions and construction, where new construction may be involved, and operation and maintenance, within the principles stated herein, as to facilities and works as follows:

(a) *Rio Grande*

(1) In so far as the functions of the United States Section may be involved, the engineering planning, designing, construction, and operation and maintenance of the international dams and other works provided for in the treaty: *Provided*, however, that the United States Section shall consult with the Bureau relative to locations, plans and designs for construction, and principles of operation of the principal international storage dams, and shall consult with the National Park Service relative to the location of any such dam which would involve construction in or the impounding of water on lands in the area of the Big Bend National Park.

(2) Power plants at the international storage dams: *Provided*, however, that the United States Section shall consult with the Bureau with respect to plans and designs for the construction of such plants, and principles of operation; and *Provided*, further, that the disposition in the United States of hydroelectric power which, pursuant to the provisions of Article 7 of the treaty, is generated at the international storage dams on the Rio Grande and is made available to the United States, shall be made in accordance with such provisions therefor as the Congress of the United States shall have provided or will provide; and the Department of State will consult with the Department of the Interior in the performance of its functions regarding future agree-

ments, regulations and other matters provided for in Article 19 of the treaty; and *Provided*, further, that the Secretary of State will cooperate with the Secretary of the Interior in connection with such legislation as hereafter may be proposed in the Congress whereby the Secretary of the Interior may be authorized to dispose of such power as may so become available to the United States for disposal therein.

(b) *Colorado River*

(1) Functions with respect to approval of the location, design, and construction and principles of operation of the main diversion structure provided for in Article 12 (a) of the treaty if it shall be built in the limitrophe section of the river: *Provided*, however, that the United States Section shall consult with the Bureau as to the location, design, and principles of operation of such structure.

(2) Works constructed or acquired pursuant to Article 12 (c) of the treaty and used exclusively for delivery of water to Mexico: *Provided*, that the United States Section will consult with the Bureau in the development of plans and in the operation and maintenance of such works, and; *Provided*, further, that no agreement pursuant to Articles 11 (b) or 15-B of the Treaty which will involve the use for the purposes set out therein of any works under the jurisdiction of the Secretary of the Interior shall be made without prior arrangements having been made with him.

(3) The part of the flood control works between Imperial Dam and the Gulf of California provided for in Article 13 of the treaty, which may be assigned to the United States, except the part lying above Laguna Dam, and except as provided in subdivision (b) 5 of Article 4 hereof; *Provided*, that the United States Section will consult with the Bureau with respect to the design and construction of the part of such works which may be built in the United States.

(4) Approval of the plans for the temporary diversion structure referred to in Article 27 of the treaty, and approval of the construction and operation thereof, subject to concurrence therein by the Bureau.

(5) Subject to the provisions of subdivision (b) (4) of Article 4 hereof, the design, construction, and maintenance and operation of the protective works within the United States contemplated by the provisions of Article 12 (a) of the treaty as a result of the construction of the Mexican diversion structure in the Colorado River.

6. Where the use of any works under the jurisdiction or control of the Bureau is required for the discharge of any treaty functions, such work or works shall be operated and maintained, in cooperation with

the United States Section, in such manner that all treaty functions may be coordinated and fulfilled. Where provision is made in this memorandum of understanding for consultation regarding the planning, design, construction or operation of works, or the discharge of other treaty functions, or functions under domestic law, it is understood that the Bureau and the United States Section will mutually cooperate in furnishing such advice and assistance, consistent with their normal operations and to the extent permissible by law, in furnishing such services as may be requested by one of the other.

7. In order to insure compliance with the provisions of the treaty and domestic law, to the fullest extent practicable, wherever action is proposed to be taken by one of the cooperating agencies in the exercise of its jurisdiction or function pertaining to subject matter the responsibility or function of the other which may be affected thereby, an opportunity for consultation will be afforded by the acting agency a reasonable time in advance of the taking of such action.

8. The status of the jurisdiction and functions of the United States Section and the Bureau, respectively, shall continue, as to the Rio Grande above Fort Quitman and works thereon, as such status may exist independently of and unaffected by this memorandum.

9. This memorandum of understanding shall not become effective until it has been approved by the President of the United States and until the treaty as supplemented by the protocol becomes effective by an exchange of ratifications.

IN WITNESS WHEREOF, the Secretary of State and the Secretary of the Interior have hereunto subscribed their official signature the day and year first above written.

(sgnd) JOSEPH C. GREW,
Acting Secretary of State.

(sgnd) HAROLD L. ICKES,
Secretary of the Interior.

Approved June 18, 1945.

(s) HARRY S. TRUMAN,
President of the United States.