

(English text of Minute No. 188 dated March 12, 1948)

INTERNATIONAL BOUNDARY AND WATER COMMISSION  
UNITED STATES AND MEXICO

Ciudad Juárez, Chih.  
March 12, 1948

MINUTE NO. 188

AGREEMENT RELATIVE TO THE EMERGENCY USE OF THE  
ALL-AMERICAN CANAL FOR THE DELIVERY OF WATER FOR  
USE IN MEXICO DURING THE 1948 IRRIGATION SEASON.

The Commission met at the offices of the Mexican Section at Ciudad Juárez, Chihuahua, México, at 10:00 a.m., March 12, 1948, pursuant to instructions of their respective Governments to negotiate an agreement, subject to the approval of the two Governments, for use of the All-American Canal for the delivery of water through the Pilot Knob wasteway for use in Mexico during the 1948 irrigation season.

Request for such use of the All-American Canal had been communicated by the Chargé d'Affaires ad interim of Mexico to the Department of State in note No. 8380 dated December 20, 1947. It was stated therein that channel conditions of the Colorado River near the Rockwood Heading of the Alamo Canal prevent the diversion to that canal of sufficient water to supply irrigation demands of the Mexicali Valley, that said conditions could be remedied by the construction by Mexico of the temporary diversion dam authorized by article 27 of the treaty of February 3, 1944, but that the conclusion had been reached from studies made by the Mexican Government that the construction of such a temporary diversion dam would be inadvisable from the standpoint of both countries. The Mexican Government therefore requested that arrangements be made whereby water for use in Mexico would continue to be received through the All-American Canal in the same manner as during the years 1944, 1945, 1946 and 1947. It was further proposed that such arrangements be set forth in a Minute of the International Boundary and Water Commission.

In a note dated March 11, 1948, the Secretary of State had informed the Ambassador of Mexico at Washington that under certain conditions necessitated by legal requirements the Government of the United States would be glad again to cooperate with Mexico in the further use of the All-American Canal for delivery of water for use in Mexico during the 1948 irrigation season, and had concurred in the suggestion contained in the aforementioned note of the Chargé d'Affaires of Mexico that arrangements for use of the All-American Canal be agreed upon by the Commissioners of the International Boundary and Water Commission and set forth in a Minute of the Commission.

The Commission reviewed the aforementioned exchange of notes and the special agreements previously concluded by the two Governments for use of the All-American Canal for the delivery of water for use in Mexico during

the years 1944, 1945, 1946 and 1947. The United States Commissioner stated and explained the conditions which the interested agencies of the Government of the United States have determined would necessarily govern such use of the All-American Canal during 1948 and which are set forth below in the resolution adopted by the Commission.

The Commission thereupon adopted the following resolution:

"Subject to the approval of the two Governments, the Commission agree that the use of the All-American Canal for the delivery of water for use in Mexico during 1948 shall be governed by the following provisions and conditions:

- (1) It is agreed that the use of the All-American Canal by the Bureau of Reclamation of the Department of the Interior of the United States to deliver water through the Pilot Knob wasteway for irrigation in the Mexicali Valley is an emergency use, temporary in nature and limited to the year 1948, and is contingent upon the availability of appropriations by the Congress of the United States for operation and maintenance of the necessary facilities by said Bureau.
- (2) Such use of the All-American Canal or of other works under the jurisdiction of the United States shall not be considered as establishing a precedent therefor, or in any way affecting or modifying the express terms and conditions of the treaty of February 3, 1944, and particularly of article 27 thereof, and such deliveries will therefore be considered as having been made by the United States as a matter of comity between nations and not in recognition of any present duty on the part of the United States to make deliveries of water to Mexico by means of the All-American Canal or of other works constructed, operated or maintained by the United States.
- (3) It is understood that the United States shall utilize the All-American Canal to make deliveries of water for use in Mexico only when and to such an extent as such deliveries do not interfere with the use of said canal for any and all other beneficial purposes in the United States as may be required by law thereof or by contract now or hereafter in existence, as determined by the United States.
- (4) Such use of the All-American Canal shall not require the release of water stored by Hoover Dam or other conservation works on the Colorado River constructed, operated or maintained by the United States, in excess of the releases required by the United States.

- (5) Mexico shall pay the United States for its own account and for that of its water users, on the following basis: first, a 'capital charge', being a fair and equitable payment for the use of the works involved; and second, an operation and maintenance charge covering all costs of operation and maintenance properly allocable to the delivery of water for use in Mexico.

(a) The 'capital charge' shall consist of a payment by Mexico based upon a proration of the annual amount necessary to amortize the construction costs of the works involved over a period of 40 years with interest at 3 percent annually, this proration to be based upon the proportionate part of the year in which said works are in part devoted to serve Mexico's needs and upon the proportion between the volume diverted for use in Mexico and the total volume diverted into the All-American Canal during that part of the year. The period during which the works are in part devoted to serve Mexico's needs shall embrace the entire period commencing with the first day water is diverted into the canal for use in Mexico and ending with the last day of such diversion during the calendar year 1948, except any intervals during which diversions for Mexico may be suspended by and at the instance of the United States in accordance with the terms of this agreement. The volume diverted for use in Mexico shall be that required to be diverted at Imperial Dam in order to produce the actual deliveries at Pilot Knob, in order that the charge to Mexico shall include the proportionate part of canal losses between Imperial Dam and Pilot Knob.

(b) The operation and maintenance charge shall include the pro rata share chargeable to Mexico of the actual normal operation and maintenance costs during the calendar year 1948 of the facilities involved as determined by the ratio that the diversion of water at Imperial Dam for use in Mexico bears to total diversions during the calendar year. It shall also include any extraordinary expenses which may be incurred solely by reason of the delivery of water for use in Mexico.

- (6) Compensation shall be made by Mexico to the United States to the extent of any loss or damage that may result either from the increased carriage of water in the All-American Canal for use in Mexico, or from any delay, occasioned in order to increase the volume of water carried for Mexican use, in undertaking necessary repairs to the canal and appurtenant works.

$$= \text{Proportionate Part of Year} \times \frac{V_M}{V_T}$$

- (7) If at the request of Mexico the United States should agree to deliveries of water through the All-American Canal to such an extent that the power head at the Siphon Drop Power Plant is reduced, Mexico agrees to pay for the resulting loss of power revenues.
- (8) The Mexican Section of the International Boundary and Water Commission shall cause to be communicated to the United States Section not later than Wednesday of each week the anticipated requirements for the following week beginning Monday and shall make every possible effort not to deviate from the requirements thus indicated. The notice thus given through the Mexican Section of the International Boundary and Water Commission to the United States Section, shall be sufficient to begin or to terminate deliveries of water through the All-American Canal for use in Mexico, during the period this agreement is in effect.
- (9) The United States shall make every effort to make available at Imperial Dam the amounts required by Mexico with the understanding that curtailments may become necessary for the reasons stated hereinabove, and that failure to make any delivery as and when requested by Mexico shall not give rise to any claim for damages against the United States, its officers or agents, and should any such failure occur, any claim for damages resulting therefrom shall be waived.
- (10) It is understood that the United States does not own or control, and that this agreement does not relate to, the facilities in the United States below Pilot Knob wasteway necessary to convey water to the international boundary line for use in Mexico. It is further understood, therefore, that this agreement is predicated upon necessary arrangements being made by Mexico with the agency or agencies owning or controlling such facilities."

The meeting then adjourned.

/s/ L. M. Lawson  
Commissioner of the United States

/s/ D. Herrera J.  
Commissioner of Mexico

/s/ George H. Winters                      /s/ Fernando Rivas S.  
Secretary of the United States Section      Secretary of the Mexican Section