

Ottawa, April 8, 1946

Sir:

I have the honour to advise you that the Governments of the United States and Canada have been informed of a complaint made by Mr. J. W. Cox of Havre, Montana, United States of America, with reference to the alleged appropriation in Alberta, Canada, of waters of Sage Creek, an intermittent stream arising in Township 5 North, Range 4 East, Province of Alberta, which would otherwise flow across the international boundary into Montana and there be available for the irrigation of Mr. Cox's land. Mr. Cox complains that the diversion has gone on for some years and that he has in consequence suffered a considerable financial loss.

Sage Creek is a small stream rising in Southern Alberta near the Saskatchewan Boundary and flowing south into Wild Horse Lake located immediately south of the International Boundary with an arm extending into Canada. Wild Horse Lake has no outlet and in recent years has been dry. It is not tributary to the St. Mary and Milk Rivers system and accordingly is not subject to apportionment between the two countries under Article VI of the Boundary Waters Treaty.

Sage Creek is also normally dry except for the short period of spring run-off from melting snow during the months of March and April. The creek is higher than the adjacent land and it is reported that in some years when the channel is filled with hard snow or ice a large portion of the flow spreads out in various directions over the flat areas adjoining the creek in Canada, thus preventing the water from crossing the Boundary.

In Canada the Province of Alberta has granted seven water rights for irrigation purposes, totalling 1,769 acre-feet at high and flood stages. These rights were granted during the period 1907 to 1921 but no record is available of the amounts of water used by the licensees. It is known that in dry years there is not sufficient run-off to satisfy Canadian requirements.

In the United States Mr. Cox claims to have a water right on Sage Creek from the State of Montana, dating from 1901 for the flood irrigation of 1,000 acres. In 1932 he complained to the Province of Alberta that no water was allowed to cross the International Boundary. This matter was investigated in the field in 1933 and the report indicates that Mr. Cox had constructed a dam and a ditch capable of irrigating about 100 acres of the dried-up bed of Wild Horse Lake and that the works were in a bad state of repair.

The Secretary,
The International Joint Commission,
Ottawa.

In 1937 Mr. Cox...2

In 1937 Mr. Cox registered a further complaint, copies of which were forwarded to the International Joint Commission and to the Director of Water Resources for the Province of Alberta. As a result of a further field investigation the Province of Alberta arranged in the years 1939 and 1940 to have a Water Master on Sage Creek during the run-off period with a view to regulating the diversions in accordance with the water licenses in existence. No records are available of the amounts of water which in fact crossed the Boundary as a result of this procedure. In any event, owing to the expense involved the Province discontinued the practice of having a Water Master on the grounds in the years following 1940.

Having in mind the provisions of Article 9 of the Boundary Waters Treaty signed at Washington, January 11, 1909, that questions or matters of difference arising between the Governments of United States and of Canada involving the rights, obligations or interests of either in relation to the other or to the inhabitants of the other along the common frontier between the United States and the Dominion of Canada shall be referred from time to time to the International Joint Commission for examination and report whenever either the Government of the United States or the Government of the Dominion of Canada shall request that such questions or matters of difference be so referred, the two Governments have agreed upon a joint reference of the matter to the International Joint Commission pursuant to the provisions of the said article of the said Treaty.

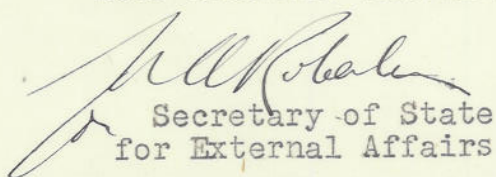
The Commission is requested to examine and report upon the facts and circumstances of the complaint made by Mr. Cox and to use its good offices to bring about a mutually satisfactory agreement.

For the purpose of assisting the Commission in making the investigation and recommendations provided for in this Reference, the two Governments will, upon request, make available to the Commission the services of engineers and other specially qualified personnel of their governmental agencies, and such information and technical data as may have been acquired by such agencies or as may be acquired by them during the course of the investigation.

The Commission should submit its report and recommendations to the two Governments as soon as practicable.

I have the honour to be,
Sir,

Your obedient servant,


Secretary of State
for External Affairs