

INTERNATIONAL JOINT COMMISSION.

IN THE MATTER OF:

THE APPLICATION OF THE GREATER WINNIPEG WATER DISTRICT "FOR THE APPROVAL OF THE USE OF THE WATERS OF SHOAL LAKE (SITUATE IN THE PROVINCES OF ONTARIO AND MANITOBA, CANADA), IN PURSUANCE OF THE POWERS CONFERRED BY AN ACT OF THE PARLIAMENT OF CANADA TO ENABLE THE CITY OF WINNIPEG TO GET WATER OUTSIDE THE PROVINCE OF MANITOBA."

ORDER OF APPROVAL.

The application in this matter filed at Ottawa and Washington on the 8th September, 1913, is in the following terms:

To the Honourable ROBERT ROGERS,

Minister of Public Works for the Dominion of Canada:

The petition of the Greater Winnipeg Water District humbly sheweth as follows:

1. Your petitioners are a Corporation duly created by an act of the legislative assembly of the Province of Manitoba, being chapter 22 of the statutes of said Province passed in 3 George V (1913), and brought into force by proclamation of the lieutenant governor in council on the tenth day of June, 1913, issued upon and after the vote mentioned in sections 86 to 89 of said act had been duly taken and was answered affirmatively by six-sevenths of the electors voting thereon.

2. Your petitioners are desirous of obtaining the approval of the Government of Canada for the use of the waters of Shoal Lake (situate in the Provinces of Ontario and Manitoba) for domestic and sanitary purposes by the inhabitants of the Greater Winnipeg Water District and for such purposes the right, privilege, and power of constructing a system of waterworks with the pipe line or intake pipe placed in said Shoal Lake at or about latitude 49° 38' N., longitude 95° 7' 50" W., in the Province of Ontario, and from there carried and connected by a pipe line through parts of the Provinces of Ontario and Manitoba to a point or points in the Greater Winnipeg Water District; and for said purposes to exercise the powers conferred by an act of the Parliament of Canada to enable the city of Winnipeg to get water outside the Province of Manitoba, which said act was passed in the session of 1912-13.

3. The use of said water for the purposes aforesaid is rendered imperative in the opinion of your petitioners after careful examination by competent experts and authorities, owing to the rapidly increasing population of the said Greater Winnipeg Water District and the insecurity of the present artesian source of supply, and the difficulties and danger attending the use of the water of either of the rivers flowing through the district (Red and Assiniboine Rivers).

4. Your petitioners submit that the use and diversion of said water from Shoal Lake for said purpose will not appreciably affect the level of the Lake of the Woods, or in any way affect the right or ability to navigate said lake and will not injuriously affect the interests or rights of any parties.

5. Your petitioners beg to point out that the present population of the Greater Winnipeg Water District is estimated at two hundred and twenty-five thousand souls and that the population for the same territory at the census of 1901 was only fifty thousand.

6. Herewith are filed the following: Two tracings or maps showing the position of Shoal Lake and indicating generally the route of the proposed pipe line from the said lake to the city of Winnipeg.

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7. In view of clause "10" of the said act of the Parliament of Canada and the connection of said Shoal Lake with the Lake of the Woods, which latter lake is a boundary water under the terms of the waterways treaty between Great Britain and the United States of America of January eleventh, nineteen hundred and nine, respecting boundary waters, your petitioners are desirous that the International Joint Commission under said treaty should confirm your petitioners' right to take the water of Shoal Lake for the purposes aforesaid, and do hereby request that you will transmit this application to the said commission, under rules 6, 7, and 8 of said commission, accompanied with a request that the commission take appropriate action thereon. For such purpose your petitioners forward herewith the following documents (in addition to those hereinbefore mentioned and in addition to the two originals of this paper intended for the approval of your department).

(a) One duplicate original of this application for each of the secretaries of said commission.

(b) One original tracing map (for each of said secretaries), showing the territory in question and indicating the general direction of the proposed pipe line (this is duplicate of the map herewith filed with your department).

(c) Twenty-five printed copies of this application for each secretary (50 in all).

(d) Twenty-five white prints of said map for each secretary (50 in all).

8. Your petitioners request that in transmitting this application and the accompanying papers to the Canadian and American secretaries of the commission at Ottawa and Washington, respectively, that your department forward therewith your approval thereof under the terms of rule numbered 8 of said commission.

Your petitioners therefore pray:

(1) That you will approve of said map under the provisions of section 3 of said act of the Parliament of Canada, and

(2) That you will transmit this application to the Canadian and American secretaries of the International Joint Commission in compliance with its rules, together with your expressed approval thereof and with your request that the commission take appropriate action thereon.

And your petitioners will ever pray.

The approval of the minister of public works of Canada, which bears date the 25th day of August, 1913, reads as follows:

I hereby approve of the annexed application by the Greater Winnipeg Water District and of the map referred to therein (the scale of said map being, in my opinion, sufficient).

Duplicates of said application and of said map are hereby transmitted to the International Joint Commission under the treaty between the United States and Great Britain, signed January 11th, 1909, and I hereby request the commission to take appropriate action thereon.

Dated at Winnipeg, this twenty-fifth day of August, A. D. 1913.

R. ROGERS,
Minister of Public Works.

Subsequently, at the hearing, a motion was made on behalf of the applicant for leave to amend the application by inserting the words "and Lake of the Woods" in the second paragraph, after the word "Manitoba," in the fourth paragraph after the words "Shoal Lake," and in the seventh paragraph between the words "Shoal Lake" and the words "for the purposes aforesaid."

The United States Government, within the delays fixed by the rules, filed no statement in answer to the said application.

On the 30th December, 1913, the municipal corporation of the town of Kenora filed a document styled "Petition," addressed to the commission and reading as follows:

The petition of the municipal corporation of the town of Kenora humbly sheweth, as follows:

1. Your petitioner is a municipal corporation, situated upon and at the outlets of the Lake of the Woods, and is largely dependent upon the lumbering navigation and water-power interests thereon and connected therewith.

2. The use of the water of Shoal Lake for the purposes and in the manner proposed under the application of the Greater Winnipeg Water District, filed with the International Joint Commission on the 8th day of September, 1913, will divert large quantities of water from the Lake of the Woods (of which Shoal Lake is merely an arm) materially affecting the levels of the Lake of the Woods and the rights and interests of navigation thereon.

3. Your petitioner being situated as aforesaid and being owner and otherwise interested in valuable water powers on the outlets of said lake will be seriously affected by the proposed diversion of such water from its natural course especially in low-water periods.

4. That such proposed diversion being from Shoal Lake will deprive such water powers of the special advantages of a large natural storage reservoir (Shoal Lake) which fills up from the Lake of the Woods in high-water seasons and flows back again through its narrow connecting channel during low-water periods thereby maintaining a more uniform water level in the Lake of the Woods to the great advantage of such water powers as well as navigation.

5. That such proposed diversion of water from Shoal Lake will render much more difficult and impracticable the successful working out of any scheme or plan for regulating and maintaining uniformity of water levels on the Lake of the Woods for the improvement and advantages of water powers, navigation, lumbering, summer resorts, and other interests of importance and benefit to the town of Kenora.

6. That there is no actual or substantial necessity for the applicants, the Greater Winnipeg Water District, to obtain such water supply from Shoal Lake or divert water therefrom for such purposes as proposed inasmuch as an ample supply of good water is easily available without interfering with or affecting the interests above mentioned:

Your petitioner therefore prays:

- (a) That the said application of the Greater Winnipeg Water District be not granted, approved, or confirmed.

- (b) That your petitioner be given notice of the date of hearing of the said application and of such other proceedings as it may please the commission to order.

- (c) That your petitioner be also granted leave to be represented by counsel at the hearing of the said application and to adduce evidence in support of the allegations above contained as provided for under the rules of procedure of the commission.

And your petitioner will ever pray.

The application came up for hearing at Washington, D. C., on the 14th of January, when Isaac Campbell, Esq., K. C., appeared on behalf of the applicant, George W. Koonz, Esq., appeared on behalf of the War Department of the United States, C. S. MacInnes, Esq., K. C., on behalf of the Government of the Dominion of Canada and Allan McLennan, on behalf of the municipal corporation of the town of Kenora and the board of trade thereof.

Mr. Koonz, on behalf of the War Department of the United States, filed the following statement or brief:

To the honourable, The International Joint Commission.

As counsel for the War Department in this regard the undersigned respectfully submits:

The project of the Greater Winnipeg Water District, pending before your honourable commission, contemplates the diversion of the waters of Shoal Lake for domestic and sanitary purposes, and involves for the accomplishment of such diversion the placing in said lake of a system of water works including pipe lines, intakes, and other appurtenant structures. The project has been approved by the minister of public works of the Dominion of Canada and the approval of your honorable commission is sought by reason of the fact that Shoal Lake connects with the Lake of the Woods, which latter is a boundary water within the terms of the treaty between the United States and Great Britain proclaimed May 13th, 1910.†

Shoal Lake is situated in the Provinces of Ontario and Manitoba, and the proposed waterworks structures are to be located wholly within Canadian territory. The chief concern of the War Department with the project is the effect that the proposed diversion will have on the level of the Lake of the Woods, and consequently on the navigable capacity of the lake and its tributaries, which under present conditions will be directly proportional to the amount of water diverted.

It is understood that the present consumption of water in Winnipeg is a little less than 50 gallons per capita per day, and that the possible maximum consumption is placed at 100 gallons. With this maximum consumption and a population of 500,000, which is more than double that of the present, the daily consumption would be 50,000,000 gallons, which translated into stream flow means about 77 cubic feet per second. This flow would have but little effect on the level of the Lake of the Woods, as if kept up continuously for an entire year, and all other influences affecting the level of the lake are disregarded, it would lower the lake only three-fourths of an inch. The area of the lake is 1,450 square miles, of which 111 square miles, or about 8 per cent, are in Shoal Lake, and if the latter should be entirely separated, the reservoir area would be reduced only 8 per cent.

With respect to the proposed diversion on the outflow of the lake, and hence on the water powers there located, it may be said that there are approximately 25,900 square miles in the watershed of the lake, and based upon the best estimates obtainable there is a minimum flow of 2,660 second-feet. The proposed diversion of 77 second-feet for the Winnipeg water system is, therefore, less than 3 per cent of the minimum flow, and much smaller per cent of the normal flow, and this amount will be required only with more than double the present population and double the present per capita consumption.

It is apparent from the foregoing that it will be many years before the consumption of water by the Greater Winnipeg Water District will be great enough to lower the Lake of the Woods an appreciable amount or before the maximum effect on the outflow will be as much as 3 per cent, and that the reservoir area, if Shoal Lake were sepa-

rated, would be reduced only 8 per cent. A reduction of even as much as one inch on a navigable depth of 8 to 10 feet could scarcely be considered important and surely would cause little injury to navigation on the Lake of the Woods, and still less to the navigable capacity of Rainy River.

For the foregoing reasons the War Department makes no objection to the favorable consideration by your honorable commission of the application of the Greater Winnipeg Water District.

It is deemed appropriate to add that in reaching this conclusion the War Department has considered the projected diversion in its relation to the problem of fixing the level of the Lake of the Woods and its tributaries, which is also before your honorable commission for determination. While greatly interested in this problem, and in the ultimate level to be fixed, and while fully recognizing that the authority which may be constituted to supervise and maintain the level of the Lake of the Woods should also control all users of its waters, the War Department feels that the proposed diversion by the Winnipeg Water District is so small a factor of the general problem as to be practically insignificant, and that no valid reason exists for objecting to its consummation.

Mr. MacInnes read to the commission and produced in the record copy of an order of His Royal Highness the Governor General in council, dated the 3d day of January, 1914, which is in the following terms:

His Royal Highness the Governor General in council.

Whereas an application was recently made by the Greater Winnipeg Water District (a corporation created by a special act of the legislature of Manitoba and on which certain powers were conferred by a special act of the Parliament of Canada passed in 1913, ch. 208 of 3-4 George V) to the minister of public works asking for the approval, under section 3 of the said act of the Parliament, of a certain map of plan in relation to the use of the waters of Shoal Lake, situated in the Provinces of Ontario and Manitoba, for domestic and sanitary purposes by the inhabitants of the Greater Winnipeg Water District, and requesting that the said application be transmitted to the International Joint Commission with the approval of the minister of public works and with the request that the said commission take appropriate action thereon;

And whereas the said application was transmitted by the minister of public works to the International Joint Commission with his approval and with the request that appropriate action be taken thereon;

And whereas it appears that under the ruling subsequently made by the International Joint Commission the existing rules of procedure of the said commission require that approval of such a map or plan as is attached to the said application should first be given by the Governor in council before consideration thereof by the said commission;

And whereas after full consideration the conclusion has been reached that Shoal Lake is not a boundary water within the definition thereof in the treaty between Great Britain and the United States relating to boundary waters, dated 11th January, 1909, or otherwise, but it has further appeared, however, that the said application is in such terms that the diversion of water contemplated thereby may be such as to affect the natural level or flow of boundary waters and the interests of navigation of both Canada and the United States;

And whereas it has also appeared that the said Shoal Lake is within the scope of an outstanding reference to the International Joint Commission under Article IX of the said treaty, relating to "the waters of the Lake of the Woods and the waters flowing into and from the lake:"

The secretary of state of external affairs, with the approval of the minister of public works, reports that Shoal Lake is not to be considered a boundary water, but that the interests of navigation and the level of boundary waters on both sides of the boundary may possibly be affected, and that the said application covers matters connected with the investigation directed by the said reference to the said commission, Article IX of the said treaty. It thus appears desirable that the said application of the Greater Winnipeg Water District relating to the use of the waters of Shoal Lake should be considered and dealt with by the International Joint Commission.

His Royal Highness the Governor General in council is therefore pleased to approve of the said plan (subject to such conditions and regulations as may be contained in any order in council as provided by section 9 of the said act of Parliament) in order that appropriate action whether by decision or report may be taken by the International Joint Commission, without awaiting the disposition of all matters covered by the said reference under Article IX of the said treaty.

RODOLPH BOUDREAU,
Clerk of the Privy Council.

It was established on behalf of the applicant that the Greater Winnipeg Water District was duly incorporated by a statute of the Province of Manitoba, entitled "The Greater Winnipeg Water District Act," being chapter 22, 3 George V, assented to on February 15, 1913. By the eighty-sixth section the said act was to come into force upon proclamation of the lieutenant governor in council. By a proclamation dated the 10th June, 1913, the said act was duly brought into force, which proclamation was published in the Manitoba Gazette of June 21. By the act 3-4 George V, chapter 208 of the Parliament of the Dominion of Canada, power was given to the city of Winnipeg "for the purpose of conveying from sources outside of the Province of Manitoba to the city of Winnipeg, water for the use of the municipal corporation of the said city, hereinafter called 'the Corporation,' and of the inhabitants of the said city," to lay, build, construct, equip and maintain a line of conduit or pipe from the city of Winnipeg extending out of the Province of Manitoba and into any other Province, with all the powers incidental thereto, and under certain conditions mentioned in the said act. By section 11 of the said act, the powers granted thereby to the city of Winnipeg were to be extended to the Greater Winnipeg Water District so soon as the statute of the Province of Manitoba, hereinabove mentioned, had been brought into force by proclamation.

By section 10 of the Dominion act, any order of the governor general in council permitting the corporation to take any waters "over which the Parliament of Canada has control or may for the purposes of the act exercise control," is subject in so far as it applies to "any waters sought to be affected, to the provisions of an act relating to the establishment and expenses of the International Joint Commission under the Waterways treaty of January the eleventh, nineteen hundred and nine, and to the said treaty."

The applicant filed the following order in council, approved by his honor the lieutenant governor of the Province of Ontario, on the 2d October, 1913:

The committee of council have had under consideration the annexed report of the honourable the minister of lands, forests, and mines, with reference to the application of the Greater Winnipeg Water District, comprising the following municipalities in the Province of Manitoba, that is to say:

Winnipeg having a population of	191,067
St. Boniface " " " "	9,100
Transcona " " " "	1,632
Assiniboia " " " "	6,000
Fort Garry " " " "	3,000
St. Vital " " " "	1,817
Kildonan " " " "	2,075

for permission to take water from Shoal Lake in the district of Kenora for domestic and municipal purposes and advise that there be granted to the said Greater Winnipeg Water District the right to enter upon and to divert and take water from the said Shoal Lake, subject to the terms, conditions, and stipulations set forth and contained in the minister's report.

Certified.

J. LONSDALE CAPREOL,
Clerk, Executive Council.

To His Honour the Lieutenant Governor in Council:

The undersigned has the honor to report that the Greater Winnipeg Water District, comprising the following municipalities in the Province of Manitoba, that is to say:

Winnipeg having a population of	191,067
St. Boniface " " " "	9,100
Transcona " " " "	1,632
Assiniboia " " " "	6,000
Fort Garry " " " "	3,000
St. Vital " " " "	1,817
Kildonan " " " "	2,075

which said district is shewn on the map hereto annexed, has represented that the only available source of water supply for domestic and municipal purposes for use in the said district is Shoal Lake in the district of Kenora, in the Province of Ontario, and the said district has applied for permission to take water from the said lake for the purposes aforesaid.

The undersigned respectfully recommends that there be granted to the said Greater Winnipeg Water District the right to enter upon and to divert and take water from Shoal Lake, in the district of Kenora, in this Province, subject to the following terms, conditions, and stipulations:

1. That full compensation be made to the Province of Ontario and also to all private parties whose lands or properties may be taken, injuriously affected, or in any way interfered with, but water taken within the terms hereof and considered merely as water is not property to be paid for.

2. That the district shall abide by and conform to any and all rules, regulations, or conditions regarding the ascertainment of the quantity of water being taken, and as to the inspection of works and premises, and the manner of carrying out the proposed works that the government of Ontario may at any time see fit to make or enact in the premises.

3. That the water shall be used only for the purposes for which municipalities and residents therein ordinarily use water, and not for the generation of hydraulic or electric

power, and the quantity taken shall never, at any time, exceed one hundred million gallons per day.

4. That if it should hereafter appear that the taking of said water from Shoal Lake affects the level of the Lake of the Woods at the town of Kenora, and thereby appreciably reduces the amount of power now developed and owned by the town of Kenora, or in any way injuriously affects the property of the said town, the Greater Winnipeg Water District shall construct such remedial works as may be necessary to prevent or remove any such injurious effects, and in the case of failure on the part of the said district to construct such works, then the said district shall pay to the town of Kenora any damages the said town shall sustain by reason of the taking of the water as aforesaid.

5. In the event of a dispute between the town of Kenora and the Greater Winnipeg Water District with reference to any of the matters in the preceding paragraph mentioned, the same shall be finally settled and determined by arbitration under the Ontario Arbitration Act.

Toronto, October 1st, 1913.

W. H. HEARST.

The following essential facts were established in evidence:

1. That it is necessary for the city of Winnipeg and surrounding municipalities constituting the Greater Winnipeg Water District to obtain from some source outside the limits of such district a sufficient supply of water for domestic and sanitary purposes.

2. That after examination and researches by competent engineers it is manifest that the most feasible plan to obtain such supply of water is to construct an aqueduct from Shoal Lake as described in the statutes, orders in council, and plans mentioned in and filed with the application herein.

3. That it is proposed eventually to draw from Shoal Lake for the Greater Winnipeg Water District a quantity of water amounting to from 85,000,000 to 100,000,000 gallons per diem.

4. That Shoal Lake, which communicates with the Lake of the Woods by a series of passages, rapids, and lakes varying in width and about 7 miles long, can not supply such a quantity of water without drawing from the waters of the Lake of the Woods, a boundary water within the meaning of the waterways treaty of the 11th of January, 1909.

5. That the diversion eventually contemplated will amount to 158 second-feet per day, or 260 horsepower, of which the town of Kenora and its industries will be deprived, but that, on the other hand, even if the town of Kenora installed and operated its whole plant, there would still be, as there always has been, water enough passing down the river to operate all the undertakings at the foot of the Lake of the Woods, and that the withdrawal of the said quantity of water would have no appreciable effect upon the said undertakings.

6. That the authorization to withdraw the said quantity of water from Shoal Lake and the Lake of the Woods is subject to certain specified conditions contained in the statutes and orders in council hereinabove recited under and pursuant to which the applicant

is seeking to act, and that the inobservance of such conditions would carry with it the loss and cancellation of the franchise, and that thereby the public and private interests are fully protected.

After hearing witnesses and counsel for the different parties represented, and after careful consideration, the commission unanimously decided to grant the said application, subject to the conditions specified. And it is therefore

Ordered, That the use and diversion of the waters of Shoal Lake and of the Lake of the Woods for domestic and sanitary purposes by the inhabitants of the Greater Winnipeg Water District, prayed for in the said application, be permitted, subject to the conditions contained in the statutes and orders in council hereinabove recited: And provided further, That the water so to be diverted from Shoal Lake and from the Lake of the Woods be not used for other than domestic and sanitary purposes, that the present approval and permission shall in no way interfere with or prejudice the rights, if any, of any person, corporation, or municipality to damages or compensation for any injuries due in whole or in part to the diversion permitted and approved of, and that the quantity of water so taken and diverted shall never at any time exceed one hundred million gallons per day: And provided further, That the present permission and order shall not be invoked or relied upon in any manner against the recommendations or report to be made by the commission on the reference to it respecting the levels of the Lake of the Woods and shall in no way interfere with the action of the commission in that regard.

Dated at Washington the fourteenth day of January, one thousand nine hundred and fourteen.

JAMES A. TAWNEY,
TH. CHASE CASGRAIN,
GEORGE TURNER,
HENRY A. POWELL,
OBADIAH GARDNER,
CHARLES A. MAGRATH.