

(English text of Minute No. 185 dated January 25, 1947)

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

El Paso, Texas,
January 25, 1947.

MINUTE NO. 185

PROPOSING AGREEMENT RELATIVE TO THE EMERGENCY USE OF
THE ALL-AMERICAN CANAL FOR THE DELIVERY OF WATER FOR
USE IN MEXICO DURING THE 1947 IRRIGATION SEASON.

The Commission met at the offices of the United States Section at El Paso, Texas, at 10 a.m., January 25, 1947 to prepare an agreement subject to the approval of the two Governments, for the use of the All-American Canal for the delivery of water through the Pilot Knob Wasteway for use in Mexico during the 1947 irrigation season, and the conditions to govern such use. By arrangement between the two Governments, an engineering conference had been held in the offices of the Commission at El Paso, Texas, and Ciudad Juarez, Chihuahua, on January 8, 9 and 10, 1947, at which conference there were discussed, among other subjects, the terms of such an agreement.

The representatives of Mexico stated that it will be impossible for Mexico to construct the temporary diversion structure in the bed of the Colorado River in territory of the United States, provided for in Article 27 of the Treaty of February 3, 1944, for the purpose of diverting water into the Alamo Canal, in time to meet the irrigation needs of Mexico in the Mexicali Valley for the 1947 irrigation season. It was also explained that because of conditions in the River bed near the Rockwood Heading and in the Alamo Canal at the Rockwood Heading, it will be impossible, without such a diversion structure, to divert sufficient water into the Alamo Canal to supply the needs of the Mexicali Valley during the 1947 season. It was pointed out, therefore, that use of the All-American Canal and Pilot Knob Wasteway was the only means of supplying the needs of the Mexicali Valley during certain months in 1947 when the demands were greatest.

The representatives of the United States explained the existing legal requirements and other conditions under which the Government of the United States could undertake to make such deliveries of water through the All-American Canal for use in Mexico during the 1947 irrigation season.

Based upon these discussions, and upon a review of the correspondence between the two Governments with respect to the use of the All-American Canal for the same purpose during the 1944, 1945 and 1946 irrigation seasons, the United States Commissioner and the Mexican Commissioner agreed that the provisions set out in the following resolution are those which should govern the use of the All-American Canal for the purpose aforesaid during 1947, and the Commission thereupon adopted the following resolution:

"The Commission agrees that the use of the All-American Canal for the delivery of water for use in Mexico during the 1947 irrigation season 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 1947;

(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 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 waters stored by Boulder Dam, Imperial 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; second, an operation and maintenance charge covering all costs of operation and maintenance properly allocable to the delivery of water for use in Mexico. The 'capital charge' shall consist of a payment by Mexico on the basis of the proportionate part of the year in which the canal is in part devoted to serve Mexico's needs and of the pro rata share of the annual amount necessary to amortize the construction costs of the works involved over a 40-year period with interest at 3 percent. This pro rata share shall be based upon the additional diversions needed at Imperial Dam to produce the actual deliveries at Pilot Knob, in order that the charge shall include Mexico's pro rata share of the canal losses between Imperial Dam and

Pilot Knob. The operation and maintenance charge shall include the pro rata share properly chargeable to Mexico of the actual normal expenses of operation and maintenance during the period for which the canal is partly used for delivery of water to Mexico. 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.

(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 on 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/ Rafael Fernández MacGregor
Commissioner of Mexico

/s/ George H. Winters
Secretary of the United States Section

/s/ Fernando Rivas S.
Secretary of the Mexican Section