

bilateral energy agreements

David Morton



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1909 Boundary Waters Treaty

The Boundary Waters Treaty (BWT) established the principles and a mechanism for addressing boundary and transboundary water issues and resolving disputes along the Canada-United States boundary primarily concerning water quantity and quality.





Key Elements

- Water levels and flows in boundary waters must not be altered without the approval of the responsible government and the International Joint Commission (IJC).
- Boundary and transboundary waters shall not be polluted in either country to the injury of property or health of the other country (Article IV).



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- Canada and the United States enjoy "equal and similar rights in the use of the waters" on their own side of the boundary, and in the event of a dispute among competing uses, water use priorities will be ranked in the following order: domestic and sanitary; navigation; power and irrigation. (Article VIII).



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- The IJC provides a mechanism to resolve and prevent disputes. The IJC is composed of six Commissioners (three appointed by each country) who must decide by a majority. It responds to applications for the use, obstruction, or diversion of certain boundary and transboundary waters affecting levels and flows. It may impose binding conditions (including compensation) on both countries and appoint an international board of control to oversee compliance with the conditions.





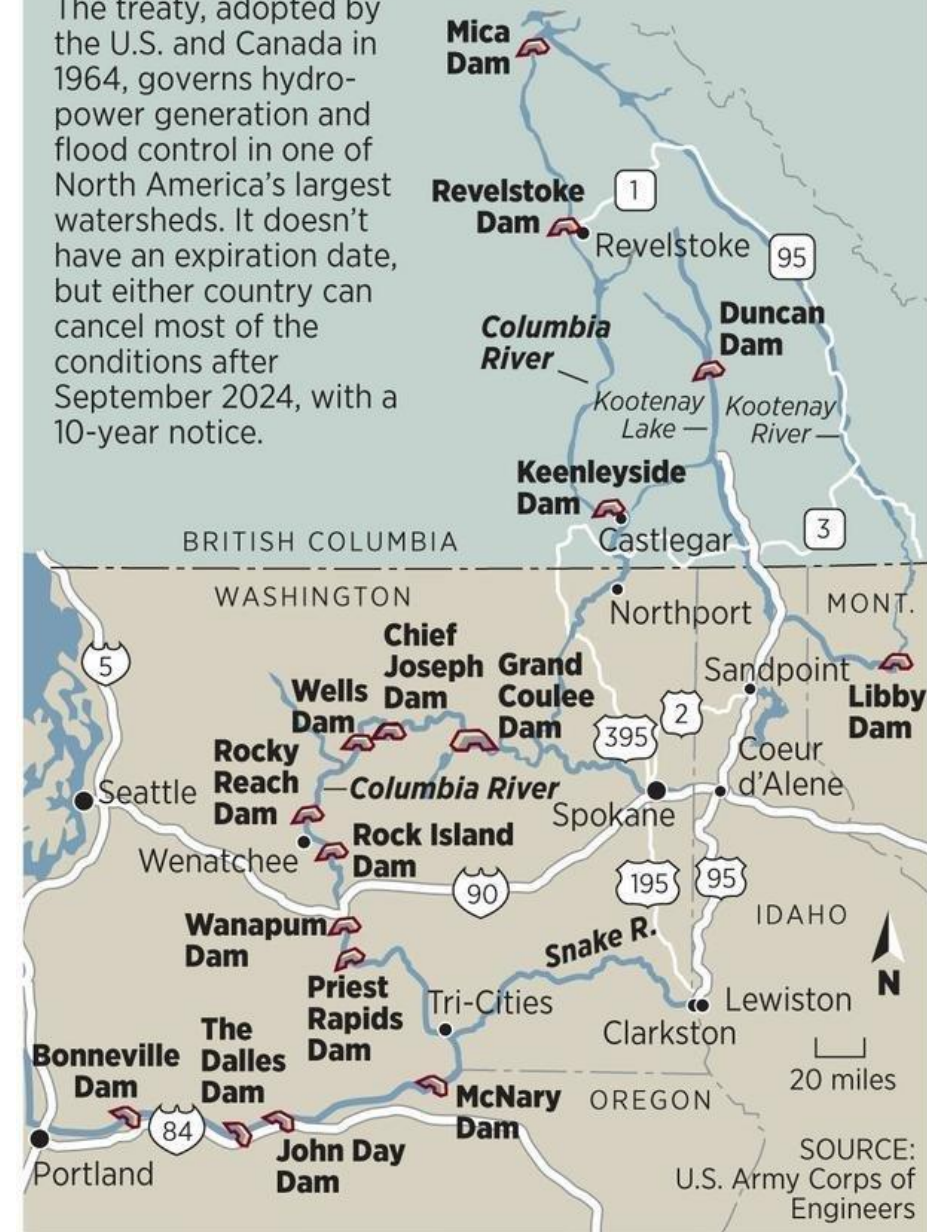
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1964 Columbia River Treaty

- Columbia River originates in Canada and drains into the Pacific from the United States.
- 55% of the average flow is the result of runoff from Canada.

Columbia River Treaty

The treaty, adopted by the U.S. and Canada in 1964, governs hydro-power generation and flood control in one of North America's largest watersheds. It doesn't have an expiration date, but either country can cancel most of the conditions after September 2024, with a 10-year notice.



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1964 Columbia River Treaty *(cont'd)*

- "Great Flood of 1894" flooded settlements in Oregon and the town of Cascade, Oregon was wiped out.
- 1948 Flood wiped out the city of Vanport, Oregon and dozens died. Settlements on both sides of the border were flooded.





- Flood management concerns and a growing demand for low cost electricity on the US side as a result of an improving economy were the key drivers for the treaty.
- IJC recommended principles for determining and sharing of benefits
- Construction and operation of reservoir storage on the Canadian side would regulate flows on both sides of border
- Improved regulated flow while assisting in flood control would also provide for greater useable energy and a higher level of dependable capacity at the US plants.



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Key Elements

- Canada required to build and operate 3 dams with 15.5 million acre feet of water storage: Duncan Dam, Hugh Keenleyside Dam and the Mica Dam.
- US had the right to construct the Libby Dam which required approximately 40 miles of flooding into Canada.
- Downstream power benefits (power generated in the US as a result of additional storage in Canada) to be shared equally.
- Canada agrees to provide assured annual water storage of 8.45 million acre feet for flood control for 60 years (expiry date 2024) in exchange for a payment of over \$60 million
- Canada agrees to provide "On Call Flood Control" to US in exchange for compensation for as long as the dams exist and even if the Treaty is terminated.





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- 90% of the water in the Columbia River is now used 90% of the time
- Ten year advance notice for termination of treaty.
- Negotiations for renewal of treaty terms are currently going on.
- Environmental concerns, particularly fishery concerns, have more prominence today than when the treaty was entered into.





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Skagit River Treaty

Skagit River originates in southwest BC and empties into the Pacific at Puget Sound, Washington

Seattle City Light (SCL) planned 3 dams as part of the Skagit Hydroelectric Project and applied for US federal licences for the area in 1917.





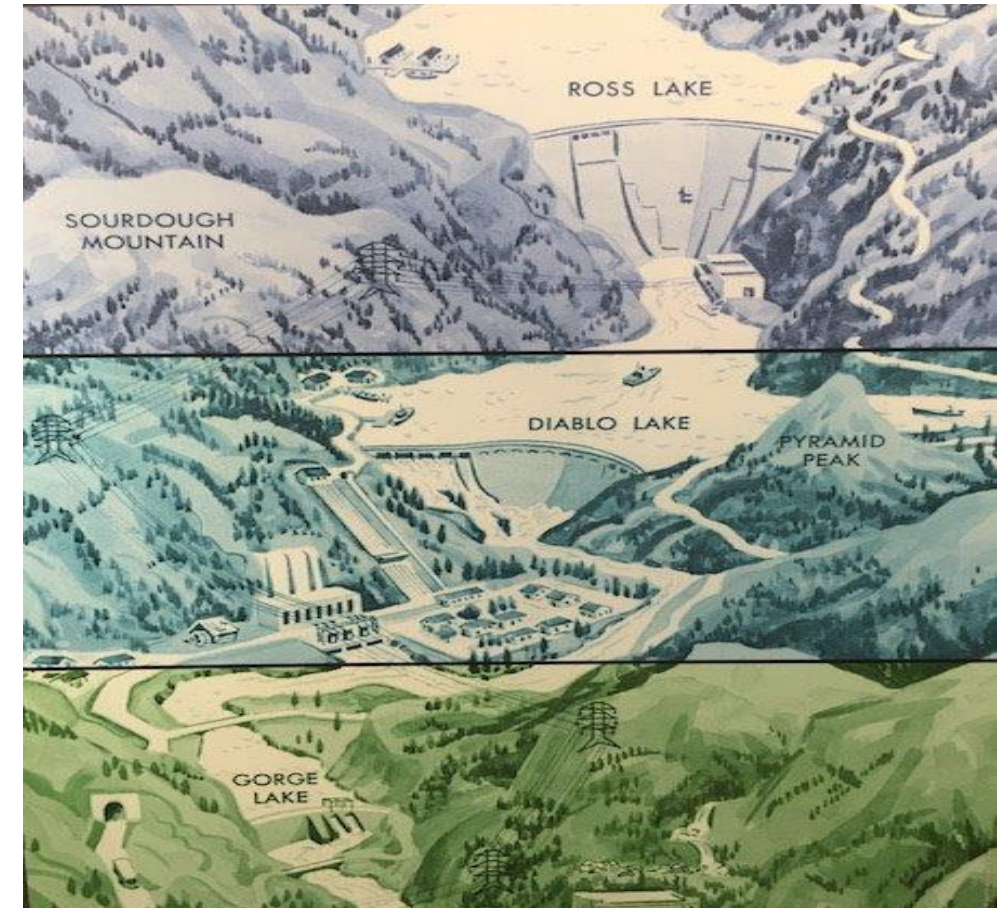
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Skagit River Treaty *(cont'd)*

SCL built the 200 ft. Gorge Dam in 1924 and the 350 ft. Diablo Dam in 1931.

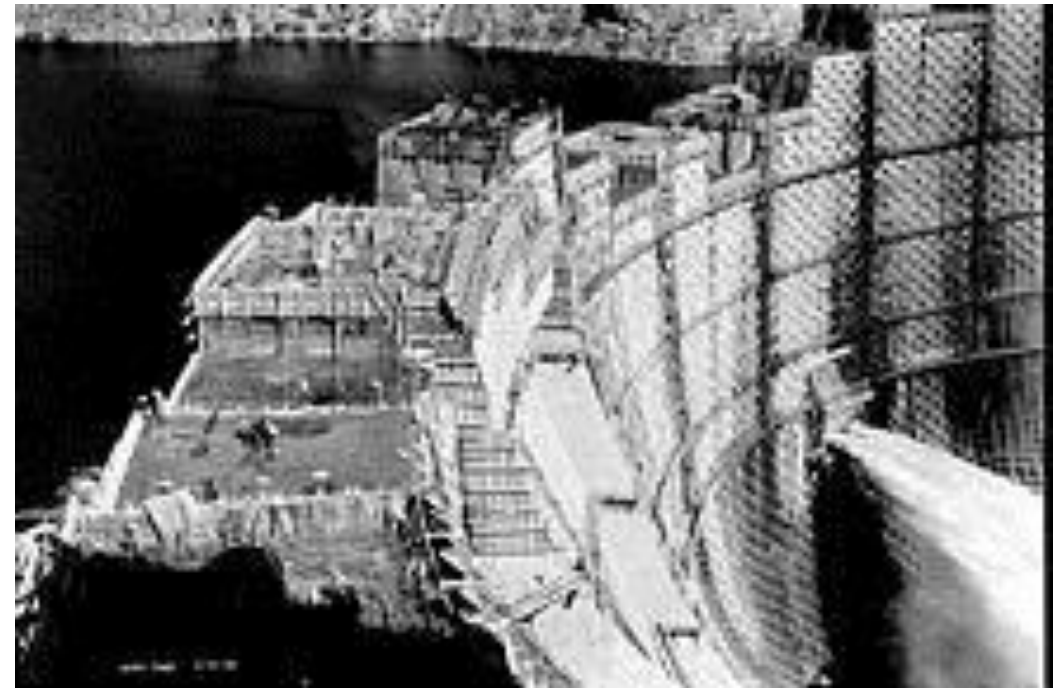
Crown jewel was to be the Ruby Dam (later called the Ross Dam) with a height of 700 ft. and a reservoir more than 30 miles long of which approximately 1/3rd would flood into BC

SCL applied to BC for a permit to flood in 1926 and in 1931 negotiated a payment, but an agreement was never signed. SCL was required to "deal with private interests" in the BC





- Construction of the Ross dam commenced in 1937, was to proceed in stages. The first two stages would raise the dam to 300 ft. which would not extend the reservoir into BC and were completed by 1940.
- SCL was unable to conclude deals with the private interests in BC until the start of WWII in 1939.
- In 1941, SCL applied to the IJC to flood into BC and secured approval contingent upon SCL and BC **signing** an agreement for compensation.
- Between 1941 and 1944 SCL planned for the additional construction.
- In 1944, SCL attempted to get an agreement with BC signed but WWII efforts distracted the BC government.
- SCL began construction to raise the dam to a level that would take the reservoir to the border



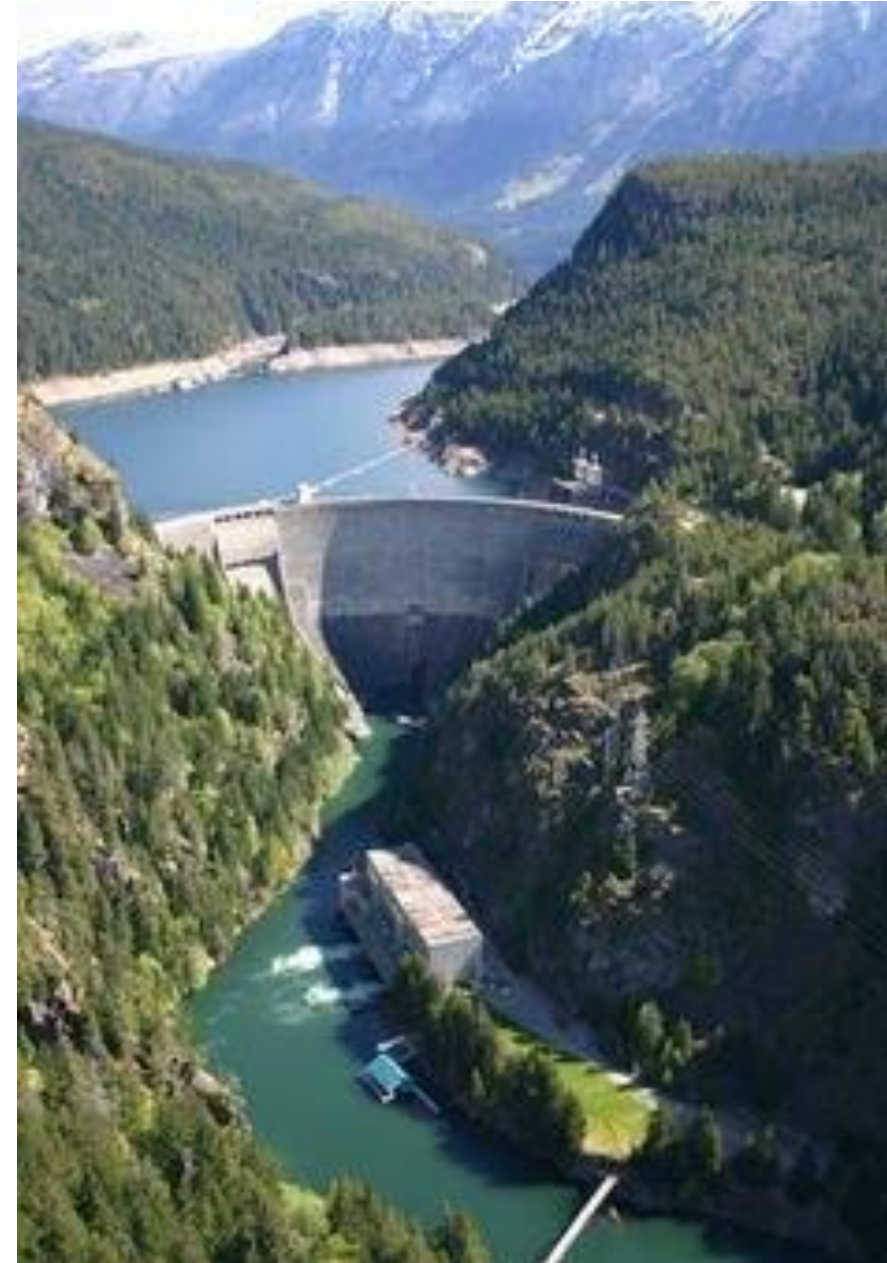


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Negotiations for compensation concluded in 1952 with an agreed amount but BC would not sign the agreement.

SCL completed construction of additional spillways on top of the dam in 1953 raising the dam to a level that would flood into BC.

SCL closed the spillways causing the reservoir to flood 550 acres of BC





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BC referred this "illegal activity" to the IJC and the IJC met twice in 1954 and 1958 to hear the dispute. In 1959 the IJC split along national lines over the issue of whether BC should be forced to sign an agreement.

SCL and BC began further negotiations in the early 1960s and agreed on compensation. An agreement was signed in 1967.





In the late 1960s, the environmentalists on both sides of the border became aware of and opposed the construction of an addition to the dam and further flooding.

Hearings in the US for approvals to begin construction were now seeing interventions from environmentalists, indigenous groups and politicians from both sides of the border and became protracted. Politicians in BC were threatening to cancel the deal.





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Little progress was made until 1982 when the IJC took the unprecedented step of advising both parties that it would not protect either from the adverse consequences of their actions and that neither could predict what it would decide. A one-year deadline was imposed to reach a solution.

The solution achieved by Canada and the US was called the "Paper Dam"



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Key Elements

- BC provides power that would have been generated by the completion of the Ross Dam to SCL until 2066 (termination date in the original agreement) in exchange for what it would have cost SCL to build, finance and operate the raised Ross Dam
- BC received the right to raise the Seven Mile Dam on the cross-border Pend d'Oreille River which required flooding into the US

