Office of the Attorney General
Washington, D.C.

MEMORANDUM FOR THE HONORABLE SHERMAN ADAMS,

THE ASSISTANT TO THE PRESIDENT

Re: St. Lawrence Seaway

This is with reference to your memorandum to me of January 31, 1953, with which you transmitted copies of S. 589 and H.J. Res 104, 83d Cong., 1st sess., and a memorandum from the Great Lakes-St. Lawrence Association with respect to them. You requested that I review the memorandum and the proposed legislation and give you my suggestions.

Proposals to build a ship canal in the St. Lawrence River, which would open the Great Lakes to ocean shipping, and, in conjunction therewith, a hydroelectric power project have a long history. In recent years such proposals have been referred to as the "St. Lawrence Seaway and Power Project." For the purposes of this memorandum a description of the history of the proposals is not necessary, but it may be pointed out that development of the Seaway and Power Project has been recommended by every President from Coolidge to Truman, and that at various times since 1933 committees of the Congress have held extensive hearings on the subject. The project has been strenuously urged by groups interested in the development of hydroelectric power in the area and

by various midwestern interests concerned with opening the Great Lakes to deep draft shipping. Most recently, there have been included among such interests groups concerned with making the newly discovered Labrador iron ore deposits available to the United States steel industry. Equally strenuous opposition has been expressed by railroad and coal mining interests, by certain power interests and by various other eastern interests which fear the loss of industry to the midwest.

Following studies made by United States and Canadian engineering groups, an Executive Agreement was entered into between Canada and the United States in 1941, subject to the approval of the Congress. The agreement provided for the joint construction and operation by the two countries of the St. Lawrence Seaway and Power Project, designated in the agreement as the "Controlled Single Stage Project (238-242)." That agreement has never been approved by the Congress. Little was done in connection with the matter during World War II, but renewed efforts to obtain approval of the agreement in the Congress were made without success after the termination of the war. Extensive hearings were held by the Senate Committee on Foreign Relations and the House Committee on Public Works in the 82d Congress. The Committee on Public Works did not file a report on the question, and the Committee on Foreign Relations was divided evenly. It merely reported the matter (S. Rept. 1489, 82d Cong. 2d sess) without recommendation and the Congress did not act on it.

Simultaneously with congressional consideration of the Executive Agreement by the 82d Congress and in anticipation of its failure

to act favorably, an alternative plan was proposed by Canada and concurred in by the executive branch of this Government. In brief, that alternative involved the construction of the power phase of the project, i.e., the necessary dams, by the Hydro-Electric Power Commission of Ontario in association with an appropriate agency or entity in the United States. See Message of President Truman to the Congress, dated January 28, 1952 (H. Doc. No. 337, 82d Cong. 2d sess.). While the United States entity was not named in the President's Message, it was generally understood that it would very likely be the Power Authority of the State of New York which had been created by the New York State Legislature for that purpose. It was understood that simultaneously with the construction of the power phase of the project, the St. Lawrence Seaway Authority, an instrumentality of the Federal Government of Canada, would construct the Seaway on the Canadian side of the St. Lawrence. This varied from the 1941 agreement in that certain locks and canals which would be built on the United States side of the St. Lawrence under that agreement would, under the alternative plan, be built on the Canadian side. Further, New York and Ontario, rather than Canada and the United States, would control the power which would be developed, and Canada would have sole control of the Seaway. The purpose of the plan was obviously to make construction of the project possible without the congressional assent necessary for direct participation by the United States Government. Procedurally what was contemplated was that the Hydro-Electric Power Commission of Ontario and the New York State Power Authority would each obtain a license from the respective Canadian and United States

Authorities (in the United States, the Federal Power Commission) to build a portion of the proposed dams, subject in each case to the other receiving a license for its portion. Both licensees would have to secure the approval of the International Joint Commission created by the 1909 Boundary Waters Treaty between the United States and Canada (36 Stat. 2448). That Treaty created the Commission, composed of three members each, from the United States and Canada, to consider and approve structures which materially affect the level or flow of boundary waters between the two countries.

This alternative plan was regarded by President Truman as "second best" to the arrangement provided for under the 1941 agreement. He so indicated in his Message to Congress dated January 28, 1952, previously referred to, and in a subsequent Message dated July 1, 1952. H. Doc. No. 528, 82d Cong. 2d sess. Since the Congress did not approve the 1941 agreement, the alternative plan was acted upon. On June 30, 1952, both the United States and Canada filed applications with the International Joint Commission for the construction of the power works and stated in their applications that in the event the application should be granted, it was understood that Canada would simultaneously construct and operate a deep draft waterway between Montreal and Lake Erie on the Canadian side of the St. Lawrence. The International Joint Commission acted favorably upon the application in October of 1952. Thereafter, the Federal Power Commission proceeded to rehear a previously filed application by the New York State Power Authority for a license to construct and operate the power works in conjunction with the Hydro-

Electric Power Commission of Ontario. That application had been denied by the Federal Power Commission in December of 1950, and referred by it to the Congress pursuant to section 7 (b) of the Federal Power Act (16 U.S.C. 800 (b)) which provides that

> "Whenever, in the judgment of the Commission, the development of any water resources for public purposes should be undertaken by the United States itself, the Commission shall not approve any application for any project affecting such development, but shall cause to be made such examinations, surveys, reports, plans, and estimates of the cost of the proposed development as it may find necessary, and shall submit its findings to Congress with such recommendations as it may find appropriate concerning such development."

The Power Authority appealed the decision to the Court of Appeals for the District of Columbia but after the Congress failed to act the matter was remanded by the court to the Commission pursuant to the joint request for such action by the Commission and the Authority. Hearings on the application have been completed, and oral argument will be heard shortly. Since the International Joint Commission has already approved construction of power works by a United States entity to be designated by the appropriate United States authorities, the granting of a license to the New York State Power Authority will, in the absence of any attempt at judicial review, be the final act necessary preliminary to starting the actual construction of the power project and the Seaway.

The theory behind both S. 589 and H.J. Res. 104 apparently is that the Seaway and power project has now reached the stage where it is likely to be constructed, and that it would be appropriate for

the Federal Government to participate in construction and control of the Seaway. The general purpose of each proposal is to create a self-liquidating Government corporation which would join with the Government of Canada in the control and operation of the Seaway, leaving construction and operation of the power facilities to instrumentalities of New York and Ontario. Except in certain details which will be noted herein, S. 589 and H.J. Res. 104 are identical. Each would provide for the creation of a St. Lawrence Seaway Development Corporation to be managed by a Board of Directors appointed by the President with the advice and consent of the Senate. They would authorize the corporation to construct deep water navigation works in United States territory, in accordance with Controlled Single Stage Project (238-242), and to maintain such works in coordination with the St. Lawrence Seaway Authority of Canada. The latter entity would presumably construct and maintain the balance of the works necessary to complete the Seaway on the Canadian side of the St. Lawrence.

S. 589 would provide that the corporation shall have a capital stock of five million dollars which may be retired to a minimum of one million over a period of not more than 50 years. H.J. Res. 104 would provide for a capital stock of two million dollars and would make no provision for the retirement of capital stock. Under both proposals the capital stock would be subscribed by the United States and the necessary sum for such subscription would be authorized to be appropriated to the Secretary of the Treasury. Both the resolution and the bill would provide for the issuance by the corporation of one hundred million dollars in debentures, bonds or similar obli-

gations which shall mature in no more than 50 years, and which would be guaranteed by the United States Government. The proceeds of both the stock and the obligations would be authorized to be used for expenses of the corporation. Both proposals would authorize the corporation to enter into agreements with the St. Lawrence Seaway Authority for the charging of tolls. In addition, S. 589 would authorize agreements for an equitable division of revenues of the Seaway between the corporation and the St. Lawrence Seaway Authority. Both proposals would authorize the corporation to establish rates or tolls unilaterally in the event that negotiations with the St. Lawrence Seaway Authority do not result in agreement.

I think it is clear that the Department of Justice has no direct interest in the development of the Seaway and power project. I have been advised that the alternative to the 1941 agreement was worked out by a "United States Advisory Group for the St. Lawrence Project" established at the direction of President Truman by Jack Gorrie, former chairman of the National Security Resources Board, and composed of representatives of that agency, the Department of State, the Department of Defense, the Department of the Interior, the Department of Commerce, the Defense Production Administration and the Federal Power Commission. Although representatives of the Department of Justice were consulted in connection with certain legal problems which arose in connection with the alternative plan, this Department has never played any role in connection with the policy of development of the St. Lawrence.

A cursory examination of the problem, however, indicates that all the important civilian and military officials having defense responsibilities in the last administration have concurred in the value of the project in view of the obvious advantages of permitting deep draft vessels to carry cargo directly to and from Great Lakes ports, the necessity for an inexpensive method of shipping the newly discovered Labrador iron ore deposits to steel producers and the need for hydroelectric power in the area which would be served. In addition, the United States' investment would be nominal and self-liquidating, and such investment would make it possible for the United States to participate in the control of the use to which the Seaway is put and the charges which would be made on American shipping.

I should point out, however, that if New York and Ontario build the power project, they will have to construct at their expense certain works essential to the Seaway. Whoever constructs the Seaway will be able to do so without contributing to the cost of common works, i.e., those works essential both to the power project and the Seaway. In a sense, therefore, the builder of the Seaway will be able to construct it at a bargain price. If the Federal Power Commission grants a license to the New York State Power Authority, Canada will be in a position to take advantage of this bargain simply by building the entire Seaway on the Canadian side of the St. Lawrence. In addition, it would have sole control over the use of the Seaway and over the tolls charged. Both S. 589 and H.J. Res 104 contemplate a return to the original plan of having the Seaway built

partly in Canadian waters and partly in United States waters. I do not know whether the advantages of this plan outweigh the advantages available to Canada if Canada builds the Seaway alone or if it would be willing under present circumstances to share construction, control and operation of the Seaway with the United States. The Department of State may be in a position to supply an answer to these questions.

In summary and on the basis of a limited acquaintanceship with the problem, S. 589, H.J. Res. 104 and the position taken by the Great Lakes-St. Lawrence Association seem deserving of support by the administration. However, the personnel of agencies active on the United States Advisory Group for the St. Lawrence Project have a greater familiarity with the problem than any one in the Department of Justice. Included among such personnel are Mr. Bradford Ross, General Counsel, Federal Power Commission, Mr. James L. Kunen, General Counsel, National Security Resources Board, Mr. Jack B. Tate, Deputy Legal Adviser, Department of State, and, of course, the personnel of the Corps of Engineers.

I am returning herewith the memorandum of the Great Lakes-St. Lawrence Seaway Association, and the copies of S. 589 and H.J. Res. 104 which you transmitted with your memorandum.

Herbert Brownell Jr.

Attorney General

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