In order to clarify the point, I should like to explain that the Goldsmith Arbitration in 1872 was to the effect that neither side should take any steps calculated to stop or interfere with the flow of any quantity of Hirmand water required for irrigation. In the interpretation which he (Goldsmith) made of his arbitration in the following year, it was further emphasized that the Government of Afghanistan can clear the channels or dig new channels on the condition that the quantity of water required for irrigation of the Iranian lands is not diminished.

McMahon's Arbitration in 1903, providing that the share of Iran should be one-third of the quantity of water flowing to Sistan, was not accepted by Iran and was rejected in writing at that time.

Since 1311 (Iranian year) we have been engaged in taking energetic steps to remove causes of friction, and in 1317 a treaty was finally concluded between Iran and Afghanistan. Article I of this treaty provides that any quantity of Hirmand water which reaches Bande Kemal Khan should be divided in two equal portions from that point. A declaration was also made by the two governments and annexed to the treaty under which the Afghan Government engaged itself not to take any steps that would result in the diminution of the share of Iran at Bande Kemal Khan.

This treaty and the declaration were signed by the Iranian Ambassador and the Foreign Minister of Afghanistan. The Government of Afghanistan, however, has not accepted the
declaration on the ground that the Afghan Assembly had
rejected it, although there exists no difference between the
substance of this declaration and the Goldsmith Arbitration.

So far our talks have been of no avail and the
Government of Iran has received no assurances that the
Government will not prevent the flow of water to Bande Kemal
Khan. The Government of Afghanistan desires to have freedom
of action from Bande Kemal Khan northward and in the use of
Hirmand water to any extent in the development and expansion
of cultivation. Furthermore, they desire that the Government
of Iran should undertake not to raise any objections in this
respect. Obviously this is not acceptable to the Iranian
Government. So much for introduction.

I would add that from 1316 onwards reports have
reached us that the Government of Afghanistan has undertaken
some kind of works along the River Hirmand, as well as con-
structing a .....................stream in the vicinity of
Gereshkooh about 60 meters wide and 9 meters deep. Recently
also we have received reports regarding construction of a dam
by the Americans around Gereshkooh.

The Afghans do not permit anyone to travel along
Hirmand River, nor have they accepted the recent Iranian
proposal regarding the dispatch of a mixed commission composed
of technical men of both sides to the spot, with a view to
investigating and submitting a report aiming at the solution
of the question. The Afghans contended that this would con-
stitute interference in the internal affairs of Afghanistan.
They, however, requested that an Afghan commission should, for the present, go to Sistan to examine the situation and make a report to the Afghan Government for their study. This was contrary to the indisputable right of Iran to use Hirmand water. Besides, the object of the Iranian Government is not only to insure the present irrigation of Sistan, but also to have the right of Iran to Hirmand water recognized. Therefore, in reply to the Afghan telegram to the effect that the Iranian Government should either accept the 1317 treaty without the declaration, or permit the Afghan commission to go to Sistan to investigate water requirements, the Iranian Government replied that inasmuch as the treaty and the declaration were jointly approved by the Majless, it finds itself unable to accept the treaty and disregard the declaration, which forms an inalienable part of the treaty.

In these circumstances, the Iranian Government is compelled to resort to the Goldsmith Arbitration and its interpretation for the solution of the case. According to this arbitration, the Government of Afghanistan is not permitted to undertake such work along the River Hirmand as would result in the diminution of the Iranian share of the water, and, consequently, the Iranian Government considers itself entitled to supervise any work which the Government of Afghanistan undertakes along the Hirmand River.

Since Tirmah of the current year, reports have reached us concerning the shortage of water in Sistan and it is now two months since the flow of water has completely stopped. Even
for drinking purposes, the inhabitants have to resort to water drawn from wells. The panicky inhabitants of Sistan, faced with famine, have taken refuge in the telegraph office and are continually sending telegrams to Teheran in order to find out what action the Foreign Ministry has taken in the matter.

This attitude of the Afghans in not allowing anyone to go and examine the Hirmand River, despite lack of water in Sistan, has raised suspicion among the people.

Now, since the Afghans are not prepared to solve the question directly with us, I have issued instructions to His Excellency Mr. Adl to employ a jurist, with the help and advice of the Embassy, and, after consultations, refer the complaint to the Security Council.

We are forced to take this action as our conversations, though drawn over a lengthy period, have proved to be fruitless. We have no alternative but to refer the matter to an authority for fair judgment. We do not know any other authority to be competent except the Security Council.
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HELMAND RIVER DISPUTE


The region referred to as Sistan or Seistan was in ancient times part of Persia. It was conquered by Ahmad Shah Durani of Afghanistan in the 18th century. Subsequently, it lapsed gradually back into the Persian dominion, but as the result of raiding by both Persians and Afghans the area was depopulated and conditions became anarchic. Finally, in 1870 at the request of the Persian and Afghan governments, the British Government appointed Major-General Frederic John Goldsmid as arbitrator and boundary commissioner. The request made by Persia to Great Britain for mediation was under the terms of Article VI of the Anglo-Persian Treaty of March, 1857, promising the friendly offices of the British Government when required.

Goldsmid's award, which was made in 1872, divided Seistan between the countries, Persian Seistan being thereafter referred to as "Seistan Proper" and Afghan Seistan as "Outer Seistan". The boundary was defined as "following the main channel of the river to the shores of the Seistan Lake,
which was then traversed by the boundary so as to leave the northern portion of the lake to Afghanistan and the southern portion to Persia” [Tate].

Both Iran and Afghanistan objected to the award and appealed to the British Secretary of State for Foreign Affairs. The two main Iranian objections were:

1st. That the oblique line drawn across the Sistan desert, by cutting off the Persians from the left bank of the Helmand above Kuhak, endangered the needed supply of water to the tract called "Sistan Proper".

2nd. That the limitation of "Sistan Proper" to the line of the Naizar or reed beds on the north deprived the Persian villages in the vicinity of their legitimate lands and revenues.

Both Iran and Afghanistan accepted the award in 1873.

II. The McMahon Award.

In 1893 Sir Mortimer Durand headed the boundary mission that defined and demarcated the Afghan-Indian boundary. The so-called Durand Agreement, which was described as a model boundary agreement, was signed in Kabul in 1893.

Sir Henry McMahon was a member of the Durand Mission.

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In 1896 the Helmand River shifted its main channel into the lake, which caused renewed dispute over the interpretation of the Goldsmid award. In 1902 the Helmand nearly ran dry, causing fighting between Persians and Afghans over the water available. The two governments thereupon again requested the British Government to mediate, and McMahon was appointed to investigate the question of the water supply and its use by the two countries. His instructions concerning the boundary were to lay down a line that should conform as closely as possible in the altered circumstances to that defined in the Goldsmid award.

The boundary line as fixed by the two commissions runs from the Kuh-i-Malik Siyah Mountain (where Iran, Afghanistan and Baluchistan meet) roughly northeast to Band-i-Seistan on the Helmand River, then northward to the Naizar reed beds on the Hamun shore, and then turns westward to Siyah Kuh. The part on the west is Seistan Proper and that on the east Outer Seistan.

The McMahon award was dated 10th April, 1905. Its terms reiterated the stipulations of the Goldsmid award requiring both parties to refrain from constructing anything with a view to interfering with the waters requisite for the irrigation of cultivation on both sides of the Helmand. New channels could be dug provided they would not reduce the water
required for both banks. Article IX, par. c of the pre-
amble to the award declared between the period of autumn
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third of the water then reaching Bandar Kamal Khan was
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vation.

Article 3 of the award itself declared that "Iran
is therefore entitled to one-third of the total water of
the Helmand River, to be reckoned from the point where
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In September, 1936 and October, 1937, the Iranian and Afghan governments concluded a treaty which provided for a division into two equal portions of the water reaching Band-i-Kamal Khan. A declaration was made by the two governments and annexed to the treaty under which the Afghan government engaged itself not to take any steps that would result in the diminution of Iran's share. The treaty and declaration were signed by the Iranian Ambassador and the Afghan Foreign Minister. The Iran Majles approved both but the Afghan Assembly rejected them.

Since then the Iran government has accused the Afghan government of undertaking construction above Band-i-Kamal Khan which has seriously diminished the

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supply of water reaching Seistan, of not permitting observers or travellers on the Upper Helmand, and of refusing to settle the dispute by direct negotiation. Therefore, Iran wishes to stand by the terms of the Goldsmid award and to take the matter to the Security Council of the United Nations.

A. M.
January 18, 1950

HELMAND RIVER DISPUTE

Historical Note On The Goldsmid And McMahon Arbitration And Boundary Commissions And Subsequent Negotiations


The region referred to as Sistan or Seistan was in ancient times part of Persia. It was conquered by Ahmad Shah Durani of Afghanistan in the 18th century. Subsequently, it lapsed gradually back into the Persian dominion, but as the result of raiding by both Persians and Afghans the area was depopulated and conditions became anarchic. Finally, in 1870 at the request of the Persian and Afghan governments, the British Government appointed Major-General Frederic John Goldsmid as arbitrator and boundary commissioner. The request made by Persia to Great Britain for mediation was under the terms of Article VI of the Anglo-Persian Treaty of March, 1857, promising the friendly offices of the British Government when required.

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1. Iran had violated the Goldsmid award by digging new channels between Chakardur and Seistan. Therefore, the award was no longer in effect.

2. Iran had violated the McMahon award.

3. The declaration annexed to the 1938 Agreement had not been approved by the Afghan National Assembly.

4. It was unreasonable that Afghanistan, in which the Helmand originated, be expected to give up its rights in order to accommodate the "illegal" expansion of agriculture by Iran.

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MEMORANDUM

In 1872 Afghanistan and Iran accepted an arbitral award, known as the Goldsmid Award, which provided in part:

"... no works are to be carried out on either side calculated to interfere with the requisite supply of water for irrigation on the banks of the Helmand."

The award did not further define what was meant by "the requisite supply of water for irrigation".

In 1905 Colonel McMahon issued what purported to be an "Arbitral Award" "in accordance with the terms of Sir Frederic Goldsmid's award". In this Colonel McMahon stated:

"It only remains to define what amount of water fairly represents a requisite supply for Persian requirements."

Colonel McMahon concluded that:

"... 1/3 which now reaches Seistan at Band-e-Kamal Khan would amply suffice for the proper irrigation of existing cultivation in Persian Seistan and also allow of a large future extension of that cultivation."

Under the heading "award" Colonel McMahon wrote:

"Clause II. The amount of water requisite for irrigation of Persian lands irrigable from and below the Band-e-Kohak is 1/3 of the whole volume of the Helmand river which enters Seistan."

* * * *

"Clause III. Persia is, therefore, entitled to 1/3 of the whole Helmand river calculated at the point where water is first taken off from it to irrigate lands on either bank situated at or below Band-e-Kamal Khan."
One third of the whole volume of the Hirmand river entering Seistan on and before 1905 amounted to ______.

Reports issued by the Commission headed by Colonel McMahon showed that at least 90% of the water reaching Band-e-Seistan was taken by Iran. (Study page 77). At this time, according to these reports, the area of land irrigated for spring crops by each country from the water reaching Band-e-Seistan was as follows:

- **Iran** 128,597 acres or 91%
- **Afghan** 13,194 acres or 9%
- **Total** 141,791 acres

Colonel McMahon explained his award of less than 90% on the basis that:

- (a) Seistan suffers more from excess than deficiency water . . . .
- (b) . . . question as to sufficiency of water only proves serious when the spring cultivation is concerned . . . .; and
- (c) after carefully calculating the normal volume of the Helmand river during the period between the autumn equinox and the spring equinox, it has been clearly ascertained that 1/3 of the water which now reaches Seistan at Band-e-Kamal Khan would amply suffice for the proper irrigation of existing cultivation in Persian Seistan and also allow of a large future extension of that cultivation.

Colonel McMahon added:

"This would leave a requisite supply for all Afghan requirements".
In short, after examining the practices following the Goldsmid award and measuring the division of water over the period 1902-05, Colonel McMahon found as a fact that 1/3 of the whole volume of the Hirmand river then entering Seistan fairly represented a requisite supply for Persian requirements and "would leave a requisite supply for all Afghan requirements." Colonel McMahon purported to award to Iran "in accordance with the terms of Sir Frederic Goldsmid's award" 1/3 of the Hirmand river flow at or below Band-e-Kamal Khan.

The Persian Government objected to this award as not complying with the condition that it must be in accordance with the Goldsmid award and filed objections to the effect that while the McMahon recommendations gave lip service to the condition in effect attempted to establish for the future a regime inconsistent with the Goldsmid award.

The position of the Persian Government is that a proper measure of "the requisite supply of water for irrigation" in Persia is the amount of water which has been put to productive use prior to the reduction forced by Afghan withdrawals plus the equitable share of any supplies that can be made usable in the future.
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B. Iranian Requirements.

(1) Under Present Conditions (i.e. Apart from the Consideration of Up-Stream Reservoirs.)

The total area of land in Iran culturable from the waters of the Hirmand was calculated by the McMahon mission as 873,063 acres. This figure does not include the culturable area then covered by dense sand hills. Nor does it include the large area of over 275,000 acres of Bannum grass or over 300,000 acres of Naizar, or reeds, that was annually inundated by Spring floods, and used for pasturage as the water receded.2

Iran's primary need is for the return to it of the water to which it has prior rights under international law and the Goldsmid award. These flows, which it formerly received and of which it has been deprived, are estimated in the preceding section. Upon the return of these flows, and with improved methods, a good deal of expansion in the area under cultivation can take place. In a normal year with the average flow during the planting season of 2,117 cusecs to which Iran is entitled, and the duty estimated at 155 acres per cusec, Iran could cultivate about 375,000 acres of Spring crop.

There can be no doubt that when the water to which Iran has prior rights is returned, it will be used effectively for expanding cultivation in this manner. The need for such cultivation is enormous. Iran, normally

an exporter of wheat, was required to import wheat in 1949. The Government of Iran’s keen interest in the development of Seistan is indicated by projects already undertaken even with the present greatly reduced and insecure supply of water.

Two permanent diversion dams are under construction. One is at Mian Kangi on the Rud-i-Seistan and the other at Band-i-Zayhak. Although not, of course, increasing the total flow in the canals, these dams will avoid the annual rebuilding of the temporary dams that has been required heretofore. They will facilitate irrigation in the Spring when, owing to the state of the river, the bands cannot be built. They may also serve to extend irrigation in the winter when premature floods occasionally destroy the temporary bands.

Plans are well along for the use of the depression at Chah-i-Nima\(^1\) as a reservoir, which may be able to hold 120,000 acre feet. This project, one of the first which will be built under the Seven Year Program, will require the construction of a large canal, a dam, and smaller canals. This expensive scheme will be undertaken in order to expand cultivation in Seistan.

Also directed toward an expansion of cultivation is the present study of the grain parasite of Seistan. At the present time this parasite destroys crops sown later than about the middle of December to the extent that such late sowings are not worth while. If the insect can be controlled, greater use can be made of the water reaching Seistan in January.

\(^2\) After Construction of Up-Stream Reservoirs.

Dams are now under construction in Afghanistan at Kajkai on the Hirmand and on the Argandab River.

\(^1\) For description see Revenue Report, Vol. II, p. 447.
which joins the Hirmand at Kala-i-Bist. These raise two problems: One, the protection of Iran's prior rights in existing uses, and the other, Iran's right to an equitable proportion of the supply made increasingly available through these reservoirs.

(a) Protection of Existing Uses.

A fundamental concern is that the dams should not reduce the regular flows belonging to Iran from the time of the Goldsmid award and used by Iran until Afghan diversions in recent years. The amounts of these flows, particularly during the dry months, have been estimated in a previous section. Such flows as are used to fill the reservoirs behind the dams must be taken during the flood season when there is water in excess of the previously established uses downstream.

Even in reducing the flood waters, there are rights of Iran which must be considered and provided for. The first of these is the right of continued pasturage on the land normally inundated in the Spring flood. The only pasturage available for the large number of cattle and sheep is the grass and reeds in the areas remaining along the borders of the Hamun as the floodwaters recede and evaporate. These fields make Sistan, one of the two best cattle-raising areas in Iran. Cattle from the Hirmand delta are shipped throughout the country. Should the Spring floods be reduced, or perhaps even eliminated, this vital pasturage area would be reduced or eliminated. Iran is entitled to have sufficient water in addition to the flows earlier used for irrigation to enable it to irrigate at least an equal amount of pasturage to that which is lost. Even then

1 This was true at the time of McMahon. See Revenue Report, Vol. 1, pp. 253-35, reprinted Appendix C, p. 333.
Iran will have lost the benefits of natural pasturage and will be obliged to incur the additional expense of artificial irrigation. In calculating the amount of water needed to irrigate sufficient pasturage, the extreme heat and wind of Seistan must be borne in mind. Figures for the water needed for an acre of pasturage in other countries may have to be raised to compensate for the high rate of evaporation.

The second existing use of flood waters which must be protected is their use to deposit fertile top-soil on the fields. In time of high water when the river is full of silt, the waters are allowed to flow onto the fields and deposit this earth. As in the case of the Nile, the fertility of Seistan is in large part derived from these rich deposits. The flood waters must never be reduced to an extent which would prevent this depositing process. Should the dams nevertheless result in depriving Iran of the important silt-laden waters, Iran should receive some compensating increase in the regular flows which it would otherwise receive.

Another interest of Iran in the flood waters has been to keep the Hamun water fresh. In the past the lake or lakes into which the Hirmand drains have been prevented from becoming salty by the normal annual floods and particularly by the occasional flood which washed through the Hamun and flowed over into the Gaud-i-Zirreh to the south. Control over the river must not cause the Hamun to become salty with the consequent damage to fish, vegetation and livestock.

(b) Allocation of an Equitable Proportion of Increased Supply.

Under the principles of international law accepted by civilized nations, Iran is entitled to a fair share of
waters surplus to existing uses. By storing the common flood waters of the Hirmand, the dams presently under construction will make available such surplus waters. Iran has offered to bear its share of the cost of these projects. Moreover, Iran clearly has a great need for these waters. The crops which they will enable Iran to grow are essential to raise the standard of living of the people and to assist the country in carrying out its development program. As indicated earlier, Iran will put to beneficial use its full share of these additional waters.

(3) Incidental Requirements.

As a consequence of the sharing of the Hirmand River between Iran and Afghanistan, certain minor problems arise. Any solution of the problem of the Hirmand River should recognize the interests of the two countries in these matters.

(a) To the extent that the amount of water to be received by Iran depends upon measurements of water flows in Afghanistan, the Government of Iran must be entitled to have its personnel participate in the flow measurements. During dry years the people of Seistan would become suspicious and further ill-feeling engendered unless their own Government could assure them that the reduced supply was the fault of the river and not the result of unwarranted upstream withdrawals.

(b) As a result of the border, Iran is unaware of the state of the upper Hirmand. Floods and droughts take Seistan equally by surprise. In addition to such data as may be provided in connection with the division of the waters of the Hirmand, Iran should be allowed to receive continuing reports on the flow of the
upper river to warn Iran of floods and droughts, and to enable it to make the most efficient use of the water it receives.

(c) As a result of the border running down the center of the Rud-i-Parian, neither country has been able to make the most efficient use of its waters. The Government of Iran have been even unable recently to measure the flow in this branch since it was denied the use of the Afghan bank of the river. Other countries having a river boundary have recognized that allowing such measurements is one aspect of the general duty to cooperate.1 The Government of Iran believe that the partnership of Iran and Afghanistan in sharing the lower Hirmand as a common boundary entails certain obligations. The Government of Iran will continue to be willing to allow Afghans’ use of the Iranian bank for purposes of measuring the flow or constructing diversion dams. However, lower Seistan cannot be properly developed unless Iran on its part can make similar measurements and construct similar diversion dams. So that the water of the Rud-i-Parian may be economically used and will not damage crops, the two Governments must cooperate in constructing banks which will stabilize the course of the river and in constructing dikes against periods of flood.

(d) As a result of the border drawn by Goldsmid from Band-i-Seistan to the southwest, Iran is able to irrigate large portions of land near Ramrud and

1See for example Article 7 of the Protocol Regarding the Usufruct on the German-Saar Frontier, Appendix B, No. 9, p. 226. Under the agreement services of either government could at any time conduct measurement work approximately ten kilometers on either side of the frontier river.
Howzdar that were once cultivated and are still culturable only by taking a canal through Afghan territory. It is possible that the course of the river may again change depriving presently irrigated areas of water unless diversion dams are built in Afghanistan and canals taken across Afghan territory. When Goldsmid's award was appealed, he stated in regard to the water supply for Seistan that Iran should suffer no evil result from the possession by Afghanistan of the left bank of the Hirmand above Band-i-Seistan. He even included reference to the possibility of the reconstruction of the old Bandar Kamal Canal for the benefit of Iran.1 The McMahon mission also suggested the rebuilding of canals to bring water across Afghanistan to the Howzdar and Ramrud area; and McMahon recommended that under certain circumstances Afghanistan should let Iran excavate a canal through Afghan territory.2 Any agreed solution regarding the Hirmand should enable Iran, by meeting the full expenses, to receive its share of water through canals and by virtue of diversion dams in Afghanistan where technically needed for efficient irrigation.

(e) It may be possible to use depressions intersected by the Iranian-Afghan boundary as storage reservoirs. As with the problems discussed above, arrangements should be worked out by which Iran (or the two countries together if they both so desire) may make use of these depressions.

1 See pp. 16-17, supra.
3 Clause VI, see Appendix A, No. 10, p. 144.
C. Proposed Basis for Apportioning the Supplies of the Hirmand River.

It is clear that any apportionment of the waters of the Hirmand must take account of the prospectively available supplies as well as those now available. Projects for the control of the river are now under construction. Additional storage dams can be built which may eventually make the full supply available at the times when it is needed most. For an apportionment agreed upon now to be just and permanent, there must be an allocation of the water supply that presently is usable, a formula for division of the water that becomes additionally usable as storage capacity is utilized, and machinery to assure the day-to-day realization of whatever division is agreed to.

It is equally clear that in apportioning the waters of the Hirmand River prior rights must be accorded to the prior uses of Iran and Afghanistan. A solution which did not assure supplies for the rightfully established uses of long standing would be inconsistent with the principle of equitable apportionment. It would cause great damage to both countries, it would encourage encroachments by rewarding the offender, and would be impossible of acceptance.

The extent of the flows to which Iran has established a prior right has been calculated in an earlier section. These amounts are given in Table 12 at page 83. The traditional uses which these amounts supplied were rightfully established from supplies that until then were unappropriated. These uses have been maintained to the maximum permitted by the upper riparian, Iran, because of its downstream position, could not appropriate supplies from earlier uses in Afghan-
istan except as they may have been abandoned. The record of protests by Iran against Afghan interference in Iranian uses and the full use of all supplies that have reached Iran demonstrate that there has been no abandonment on the part of Iran of any of its traditional uses. There can be no doubt as to their validity or their priority.

The extent of the flows to which Afghanistan has rights of equal priority has been calculated as closely as possible with the information obtainable. On the basis of this information gleaned principally from the McMahon investigations, it appears that at the time of these investigations the flow put to beneficial use in Afghanistan did not exceed for any month 54% of the amounts shown in Table 12 representing the Iranian uses. This represented a proportion of the use of the Hirmand normal supplies of 35 for Afghanistan to 65 for Iran.

Whether all of the irrigation uses in Afghanistan at the time of the McMahon investigations were established without interference with prior Iranian uses is not certain. The very existence of the disputes leading to the McMahon mission would indicate that interferences were taking place. In the absence of authoritative earlier flow data, to simplify the problem of apportionment and to put forward a basis that certainly could not be criticized as unfair to Afghanistan, it will be assumed that all Afghan uses at the time of the McMahon investigations were rightfully established.

In the apportionment of the supplies of the Hirmand for the present and future one then starts with the prior rights to the amounts of water shown in Table 12 which the McMahon investigations disclosed...
were then being used by Iran. The corresponding senior allocations for Afghanistan for each month must be determined as best they can from the records and traditions of Afghan irrigation. Judging from the findings of the McMahon mission, these amounts will not exceed for any month 54% of the amounts shown in Table 12.

Before the Hirmand River is brought under control through storage reservoirs and other means, there will be times when the total flow of the river is inadequate to meet these prior rights. A basis must accordingly be worked out to determine how the deficiency is to be borne.

In accordance with the principle of equitable apportionment, uses of equal age enjoy equal priority. Where the total uses of first priority exceed the total supply, the effects of drought must be borne proportionately.

It would appear that the irrigation uses found by the McMahon investigations in Iran date from an earlier period than those in Afghanistan. The agricultural development in Seistan traces back to antiquity. It would be simpler, however, to assume that all uses that were established at the time of the McMahon investigations were of equal antiquity. Such an assumption would certainly not be unfair to Afghanistan. Its effect on Iran will not be substantially prejudicial so long as the amounts of water recognized to have been appropriated at that time by Iran for which a prior right is given are in amounts not less than those set forth in Table 12 and so long as the senior Afghan allocations are in amounts not more for any month than 54% of the amounts in Table 12 allocated to Iran.
On this assumption it could then be provided that in years when the total available supplies of the Hirmand were less than the total of these senior allocations, and were found to be so by an impartial joint commission, the water should be rationed proportionately. Each country would have its flows reduced by the same percentage.

Under such a formula Iran with more senior uses would give up a greater quantity of water during a drought. Notwithstanding this there have been indications that Afghanistan might contend that since it has the power, it also has the right, to take the same amount of water in dry years as in other years. To accept such a contention would be to contradict the very basis of equitable apportionment. Might confers no right to interfere with established uses in any year, be it normal or dry.

Cooperative use of the supplies of a common river requires cooperation in the measurement of those supplies and of the take-off by each main canal. The precedents worked out in the case of other common rivers indicate the strong advisability of a joint commission of engineers with duties which would include periodic measurements of river supplies and withdrawals. If such measurements disclosed that the total flow of the river were insufficient to meet the senior allocations of both countries, the commission would specify the percentage by which the withdrawals in both countries should be reduced.

Any permanent solution to the problem of apportioning the supplies of the river should require that Iran receive its full allocations except as reduced proportionately by a joint commission on the basis of joint measurement of the full river supply. No solution
could be considered satisfactory that permitted the up-
stream riparian to deliver less than the allocated
amounts to the downstream riparian while at the same
time denying to the downstream riparian the oppor-
tunity to participate in the measurement of the total
supply.

When the total flow of the river is greater than
needed to meet the prior rights of both Afghanistan
and Iran, provision must be made for the allocation
of these additional supplies in accordance with the
principle of equitable apportionment.

During the critical months of a normal year at the
time of the McMahon investigations, there apparently
was little or no excess supply. Since that time Afghan-
istan has expanded its canals. This expansion, it has
been seen, has been so great as to interfere with Iran’s
prior rights. To the extent that Afghan expansion has
been built upon the appropriation of waters excess to
the requirements of agriculture at the time of the
McMahon investigations, Afghanistan may have
acquired certain additional established uses. While
these later uses are junior to the uses existing at the
time of McMahon, they are entitled to consideration
ahead of new uses in the future.

Water rights cannot, of course, be established
through wrongful action. The large recent expansion
of irrigation in Afghanistan which has diverted water
previously appropriated for established uses in Iran
must share only in any excesses along with future ex-
ansion in Iran. These recent Afghan uses have no
rightful claim to any priority. It is only irrigation
in Afghanistan from waters not appropriated at the
time of McMahon which may properly be considered
as having priority rights and this priority is second
to the uses existing in Iran and Afghanistan at the time of McMahon.

It is highly unlikely that, before storage reservoirs are utilized, there will be substantial supplies available in excess of the amounts used at the time of McMahon and any proper uses that have since grown up without diverting water from prior uses. After storage reservoirs are put into operation, proper management can make available additional supplies. The storage of flood waters will, however, adversely affect certain existing Iranian uses and the Iranian allocations which enjoy prior right should be increased to take this into account.

The storage of Spring floods is likely to reduce the area of natural pasturage along the borders of Lake Hamun. The extent of this reduction can be estimated and the amounts necessary to irrigate compensating pasturage can be calculated. The amounts thus determined should be added to those set forth in Table 12 which represent the amounts to which Iran should be allocated prior rights based upon historic use. The storage of the Spring floods and the use of the stored water gradually through the year may change the character of Lake Hamun in other ways to the detriment of the population in Seistan. The storage of the Spring floods will certainly deprive many farmers of the benefits of the natural fertilization that comes with the annual deposit of the alluvion. In determining the equitable share of Iran to the supplies made additionally available in the period other than Spring by reason of storage, one must take into account and seek to compensate for these adverse effects of storage.

This brings us to various formulae that might be used in apportioning the supplies made available through
the storage of the Spring floods. One method would be to divide the water made available in the same ratio as the water that has been traditionally available. This would mean (as indicated in Table 14 above) that approximately 65% of the stored flood waters should be received by Iran and 35% by Afghanistan. A second method which looks less to the past and which gives to each country an equal opportunity would be to divide the stored flood waters 50% to each country. A third method which is even more favorable to Afghanistan would be to apportion to Afghanistan from the stored flood waters such amounts as to make the total supplies used by Afghanistan equal to the total amount of water allocated to Iran for established and compensatory irrigation. Further supplies would then be divided equally between the two countries. Under this method in determining when Afghanistan’s total irrigation supplies equal those of Iran, the irrigation from the Argandab should, of course, be included.

A concise statement of the bases of settlement that would give effect to the foregoing is contained in the Foreword.

If the Hirmand waters are divided along these lines, the interests of both countries will be well served and the long lasting dispute over the apportionment of the waters of the Hirmand will be justly solved.