

APPENDIX B

SUMMARY OF CORPS OF ENGINEERS RESPONSIBILITIES  
FOR PRESCRIBING REGULATIONS  
FOR NON-CORPS RESERVOIR PROJECTS

No.

SUMMARY

- 1 a. "Regulations for Use of Storage Allocated for Flood Control or Navigation and/or Project Operation at Reservoirs subject to Prescription of Rules and Regulations by the Secretary of the Army in the Interest of Flood Control and Navigation" (33 CFR 208.11) prescribe the responsibilities and general procedures for regulating reservoir projects capable of regulation for flood control or navigation and the use of storage allocated for such purposes and provided on the basis of flood control and navigation, except projects owned and operated by the Corps of Engineers; the International Boundary and Water Commission, United States and Mexico; and those under the jurisdiction of the International Joint Commission, United States and Canada, and the Columbia River Treaty.
- b. Pertinent information on projects for which regulations are prescribed under Section 7 of the 1944 Flood Control Act, (Public Law 78-58 Stat. 890(33 U.S.C. 709)) the Federal Power Act (41 Stat. 1063(16 U.S.C. 791(A))) and Section 9 of Public Law 436-83d Congress (68 Stat. 303) is published in the Federal Register in accordance with 33 CFR 208.11.

Publication in the Federal Register establishes the fact and the date of a project's regulation plan promulgation.

- 2 Section 7 of Act of Congress approved 22 December 1944 (58 Stat. 890; 33 U.S.C. 709), reads as follows:

"Hereafter, it shall be the duty of the Secretary of War to prescribe regulations for the use of storage allocated for flood control or navigation at all reservoirs constructed wholly or in part with Federal funds provided on the basis of such purposes, and the operation of any such project shall be in accordance with such regulations: Provided, That this section shall not apply to the Tennessee Valley Authority, except that in case of danger from floods on the Lower Ohio and Mississippi Rivers the Tennessee Valley Authority is directed to regulate the release of water from the Tennessee River into the Ohio River in accordance with such instructions as may be issued by the War Department."

- 3 Section 9(b) of the Reclamation Project Act of 1939, approved 4 August 1939 (53 Stat. 1189, 43 U.S.C. 485), provides that the Secretary of the Interior may allocate to flood control or navigation as part of the cost of new projects or supplemental works; and that in connection therewith he shall consult with the Chief of Engineers and may perform any necessary investigations under a cooperative agreement with the Secretary of the Army. These projects are subject to 33 CFR 208.11 regulations.
- 4 Several dams have been constructed by State agencies under provisions of legislative acts wherein the Secretary of the Army is directed to prescribe rules and regulations for project operation in the interest of flood control and navigation. These projects are subject to 33 CFR 208.11 regulations.
- 5 There are a few dams constructed under Emergency Conservation work authority or similar programs, where the Corps of Engineers has performed major repairs or rehabilitation, that are operated and maintained by local agencies which are subject to 33 CFR 208.11 regulations.
- 6 The Federal Power Act, approved 10 June 1920, as amended (41 stat. 1063, 16 U.S.C. 791 (A)), established the Federal Power Commission, now Federal Energy Regulatory Commission (FERC), with authority to issue licenses for constructing operating and maintaining dams or other project works for the development of navigation, for utilization of water power and for other beneficial public uses in any streams over which Congress has jurisdiction. The Chief of Engineers is called upon for advice and assistance as needed in formulating reservoir regulation requirements somewhat as follows:
- a. In response to requests from the FERC, opinions and technical appraisals are furnished by the Corps of Engineers for consideration prior to issuance of licenses by the FERC. Such assistance may be limited to general presentations, or may include relatively detailed proposals for water control plans, depending upon the nature and scope of projects under consideration. The information furnished is subject to such consideration and use as the Chairman, FERC, deems appropriate. This may result in inclusion of simple provisions in licenses without elaboration, or relatively detailed requirements for reservoir regulation schedules and plans.

b. Some special acts of Congress provide for construction of dams and reservoirs by non-Federal agencies or private firms under licenses issued by the FERC, subject to stipulation that the operation and maintenance of the dams shall be subject to reasonable rules and regulations of the Secretary of the Army in the interest of flood control and navigation. Ordinarily no Federal funds are involved, thus Section 7 of the 1944 Flood Control Act does not apply. However, if issuance of regulations by the Secretary of the Army is required by the authority under which flood control or navigation provisions are included as functions of the specific project or otherwise specified in the FERC license, regulation plans will be prescribed in accordance with 33 CFR 208.11 regulations.

7 Projects constructed by the Corps of Engineers for local flood protection purposes are subject to conditions of local cooperation as provided in Section 3 of the Flood Control Act approved 22 June 1936, as amended. One of those conditions is that a responsible local agency will maintain and operate all works after completion in accordance with regulations prescribed by the Secretary of the Army. Most such projects consist mainly of levees and flood walls with appurtenant drainage structures. Regulations for operation and maintenance of these projects has been prescribed by the Secretary of the Army in 33 CFR 208.10. When a reservoir is included in such a project, it may be appropriate to apply 33 CFR 208.10 in establishing regulations for operation, without requiring their publication in the Federal Register. For example, if the reservoir controls a small drainage area, has an uncontrolled flood control outlet with automatic operation or contains less than 12,500 acre-feet of flood control or navigation storage, 33 CFR 208.10 may be suitable. However, 33 CFR 208.11 regulations normally would be applicable in prescribing flood control regulations for the individual reservoir, if the project has a gated flood control outlet by which the local agency can regulate floods.

8 Regulation plans for projects owned by the Corps of Engineers are not prescribed in accordance with 33 CFR 208.11. However, regulation plans for projects constructed by the Corps of Engineers and turned over to other agencies or local interests for operation may be prescribed in accordance with 33 CFR 208.11.

- 9       The small Reclamation Projects Act of 6 August 1956 provides that the Secretary of the Interior may make loans or grants to local agencies for the construction of reclamation projects. Section 5 of the Act provides in part that the contract covering any such grant shall set forth that operation be in accordance with regulations prescribed by the head of the Federal department or agency primarily concerned. Normally, 33 CFR 208.11 is not applicable to these projects.