

Regulation for the Administration of the Zarumilla Canal and the Use of its Waters

Objectives and Fundamental Rules

Art. 1. - The objective of this Regulation is to establish rules that allow the optimal use of water that flows through the Zarumilla Canal, in line with the point (c) of the Aranha Formula of the 17th of May, 1994. Another objective is for a body responsible for the administration of the Canal to be established, under the Base Agreement approved in Quito on the 5th of March, 1998, by the Zarumilla Canal Working Group, within the framework of the Rio de Janeiro Timetable of January 19th, 1998.

Art. 2.- A Permanent Binational Commission for the Administration of the Zarumilla Canal and the Use of its Waters will be created, an entity that in this text will also be called "the Commission"

Art. 3.- A perpetual obligation of Peru will be to pass some of the Zarumilla river waters through the Canal (the old bed), so as to ensure water supply to Ecuadorian populations.

Structure of the Permanent Binational Commission

National Branches and their Members

Art. 4.- The Permanent Binational Commission will be composed of Ecuadorian and Peruvian National Branches, each containing three head representatives and three alternate ones, appointed by their respective Ministries of Foreign Affairs.

Art. 5.- Each National Branch will have a Chairman and a Technical Secretary.

Art. 6.- The headquarters of the Commission will alternate on a quarterly basis between the headquarters of the two National Branches.

Art. 7.- The Commission will hold regular and extraordinary meetings. The regular meetings will be carried out every three months, and the extraordinary meetings at the request of the President of one of the National Branches or by agreement between them.

Art. 8.- The Commission's Presidency will be fulfilled by the President of the National Branch of the host country, and its Technical Secretary will assume the functions of Commission Secretary, until the following regular meeting in the other headquarters.

The quorum for meetings will consist of two representatives from each National Branch including their respective Presidents.

Art. 9.- The Commission will adopt any solutions and recommendations within the scope of its mandate, by agreement of the National Branches.

Solutions will relate to matters on which two sections are committed to on a mandatory basis, and the recommendations to matters which are non-binding.

Art. 10.- The Commission will record minutes of its meetings in two authentic copies, one for each National Branch. Each will contain a summary of discussions and the texts of solutions and recommendations that were agreed upon.

The minutes will be signed by the President of the Commission and the President of the visiting National Branch, and will be endorsed by the acting Committee Secretary.

Art. 11.- expenses incurred during the Commission's meetings will be met by the host Branch. The costs of the visiting Branch's travel and accommodation to the meeting headquarters will be met by the latter.

Each National Branch will assume any costs required by the implementation of the Commission's solutions and recommendations, when appropriate.

Functions of the Commission

Administration the Canal's Waters

Art. 12.- The Commission will be responsible for the operation, maintenance, and improvement of the Zarumilla Canal, with the aim of ensuring the efficient use of the water that flows through it, in line with this Regulation.

Art. 13.- The Commission will assume these responsibilities from the date on which it is established, in line with the last paragraph of the final article of this Regulation.

Art. 14.- It is up to the Commission to manage the Zarumilla Canal's waters. For this purpose, it will maintain the necessary limnimetric scales to perform hydrometric operations to a satisfactory standard and to control flow rates. It will install new limnigraphic stations for permanent and more precise control over flows that enter the Canal, and that continue into the Zarumilla river.

In order to keep the hydrometric work up to date , the Commission will be able to incorporate into the Canal additional measurement and instant long-distance transmission systems, automatic or not, that inform the two countries on the water levels passing through the Canal. The corresponding costs will be met by Peru if they apply to water pipes and by both countries if they apply to the Canal.

Ecuador will maintain the terminals needed to receive information from the above automatic measurement and instant long-distance transmission systems.

Technical experts from both countries will be involved in the calibration of the long-distance transmission stations.

Art. 15.- The Commission will distribute the Canal's flow so that Ecuador can use 55% of the total available and Peru 45%. When the flow rates are between 1.5m³/s and 0.4m³/s, the two countries will take turns using it.

For anything lower than 0.4m³/s, the entire flow rate will be considered as ecological flow to maintain the environment up until the river's mouth into the sea.

Any water running under the river bed which can be obtained will be shared by the two countries in the same percentages established in this article.

Art. 16.- Each National Branch will fix water rates for its territory, in line with its rules and regulations.

Operation, Maintenance and Improvement of the System

Art. 17.- The Commission will draw up and approve a Canal Operating Manual, which includes floodgate management, on the basis of the provisions of this Regulation. Peru will maintain water pipes at its own expense, according to manufacturer instructions, and will operate them according to the Operating Manual to be approved by the Commission.

Art. 18.- The Commission will annually schedule Canal maintenance tasks, taking into consideration the recommendations contained in the service manual approved by it.

The two National Branches will allocate equivalent budgets to the Canal's maintenance. The costs of divisions necessary for partitioning will also be shared equally by the two countries. The costs for bypasses to secondary Canals will be met by the respective countries.

The budget for the maintenance and operation of water pipes and the and instant long-distance transmission systems, to incorporate into settling basins, their weirs and floodgates, as well into dams and their 'bleeding' gates, will be assumed annually by Peru, in line with the Base Agreement.

The budget for the maintenance of the walls defending the water pipes and weir in each of the two countries' banks will be assumed by the respective National Branches. Therefore as soon as the water system allows for its implementation, the Canal will immediately be ready for use, and it will prevent flooding during the subsequent flood seasons in areas near the Canal and in the cities of Huaquillas and Aguas Verdes.

Art. 19.- The Commission will keep the bed and margins of the Zarumilla Canal clean all along its course, with participation from local residents and authorities.

Art. 20.- The Commission may amend through experience the Operating Manual, with a view to improving it. In addition, it may issue additional rules for various operations that maintenance and optimal use of the Canal require.

The Commission, through the National Branches, will implement partitioning and bypass operations with the aim of honouring established water rights and maintaining and improving the Zarumilla Canal.

Art. 21.- Any water pumped out of the Canal will be accounted for, so that both countries receive their established percentages, to the best possible approximation.

The costs of operations specifically to facilitate controlled water extractions, that do not violate the agreed rights of use, will be met by each country.

Art. 22.- The Commission will agree to the construction of partitioning operations for waters that flow through the Canal, so that what is stipulated in Art. 15 of this Regulation is complied with.

The partitions will preferably be percentage-based, designed for operation in critical conditions. They will be located with consideration towards the geographical situation of the irrigation areas of the two countries and other needs of the population. The resulting water flows will be adjusted in line with the rights of the Parties.

Art. 23.- The Commission will promote the adoption of sanitation measures and execution of sanitation and environmentally beneficial projects of using the Canal's waters.

Staff Training

Art. 24.- The Commission will train staff to fulfil its functions efficiently operating the Canal, checking water levels, handling gates according to the agreed distribution for each country, and delivering

water in shifts or volumes (QxT) that must be established to operate secondary Canals during water shortages.

Art. 25.- The Commission will support the training of farmers by the respective National Branches, which may hire consultants for that purpose. This training will amongst other things, allow them to repair in a short period of time and at the lowest possible cost occasional damage to the Canal.

Exchange of Information

Art. 26.- The Commission will promote the exchange of hydrometeorological and sediment-related information between the National Branches, as well as information on processing and quantifying the Zarumilla river's liquid and solid discharge, on the height of water pipes, and the annual update of this information and other climatic parameters useful for the use of water.

Functions of the National Branches

Art. 27.- The National Branches will be accountable to the Commission for the implementation of their solutions in the territory of their respective country.

The National Branches will receive from their country's relevant authorities and institutions, public or private, appropriate participation for them to fulfil these solutions and recommendations.

Art. 28.- The National Branches will fulfil their role in coordinating and cooperating between each other, in order to synchronize their policies and activities to ensure the optimal use of water resources and of their efforts in the use of the Canal.

Art. 29.- The National Branches will be responsible for the efficient administration of the Canal's waters, subject to their national laws and regulations and in line with the solutions and recommendations of the Commission.

Art. 30.- Each National Branch will determine for its country the types of irrigation to be used with the Canal's waters, with a view to ensuring greater efficiency in using this resource.

Art. 31º.- The National Branches will manage the financing of studies, of agreed projects, and their implementation. To this end they will be responsible for the preparation of technical and legal documentation and the corresponding terms of reference.

Art. 32.- The National Branches will ensure the maintenance, in coordination between them, of systems channelling water through inlet pipes (defence walls), as well as repairing and improvement of these to ensure the more efficient operation of the Canal, in line with this Regulation.

Art. 33.- The National Branches will stimulate and guide users in each country towards the maintenance, operation, and the improvement of secondary Canals.

Functions of the Presidents of the National Branches

Art. 34.- The following are functions of the Presidents of the National Branches:

A) represent, jointly with the President of the other National Branch, the Commission in acts and contracts that it holds.

- B) direct and promote the respective National Branch's activities, provide facilities for meetings, and establish their agendas;
- C) sign the minutes of Commission meetings;
- D) represent the respective National Branch before the Commission in acts and contracts that it holds;
- E) maintain close and constant coordination with the President of the other branch, in order to comply with and ensure the implementation of the Commission's solutions and recommendations corresponding to each country;
- F) adopt appropriate provisions for participation corresponding to each National Branch in the surveillance, maintenance, operation, and the improvement of the Canal and of its facilities;
- G) to perform the necessary approaches to the relevant authorities and institutions to comply fully with the solutions agreed by the Commission and with the provisions of this Regulation;
- H) to solicit from the respective national authorities the best action to identify and punish those responsible for damage to the Zarumilla Canal, as well as to prevent and punish infringements of the rules on participation, distribution, and use of water.

Functions of the Technical Secretary of the Commission

Art. 35.- The following are functions of the Technical Secretary:

- A) to convene the members of the Commission to ordinary and extraordinary meetings, by provision of their president.
- B) to prepare documents that may be required in line with the agreed agenda for the Commission's meetings.
- C) to prepare and countersign the minutes of Commission meetings.
- D) make use of solutions and recommendations approved by the Commission.

Duties of the Members of National Branches

Art. 36º.- The following are functions of the Members of National Branches:

- A) to attend the regular and extraordinary Commission meetings and those of the respective National Branch, as well as participate in deliberations;
- B) to verify the progress achieved by the implementation of the Commission's solutions.
- C) to seek the support and cooperation of the organization they represent, for the implementation of the Commission's solutions and recommendations and of those of the National Branch of their respective country.

Settlement of Disputes

Art. 37.- The Committee will resolve by itself any problems that may arise among the National Branches of the two countries from water use, or differences in the maintenance of the Canal, as well as any other matter within its competence.

Art. 38.- If the National Branches are not able to agree within the Committee, the issue will be the escalated to their Governments, who will consult without delay the Foreign Ministries, so that it may be resolved in the shortest possible time.

Validity of and Reforms to the Regulation

Final Article.- This Regulation will come into force from the date in which the respective exchange of letters between the Ministries of Foreign Affairs of Ecuador and Peru is carried out.

Modifications to this Regulation will be processed under the recommendation of the Commission and will come into force by the same procedure.

The Commission will be established within sixty days after this Regulation comes into force.