

Immediate
By Fax/ UMS/ Special Messenger

Government of Pakistan
Ministry of Water Resources
Office of Chief Engineering Advisor/
Chairman, Federal Flood Commission

No. FC-I (23) FPSP-III/Main/ 2023
5/1,

6-Ataturk Avenue, G-

Islamabad, the April 22, 2024

1. Member (Water), WAPDA, WAPDA House, Lahore.
2. Director General, Pakistan Metrological Department, Islamabad.
3. Secretary, Irrigation Department, Government of the Punjab, Lahore.
4. Secretary, Irrigation Department, Government of Sindh, Karachi.
5. Secretary, Irrigation Department, Government of Khyber Pakhtunkhwa, Peshawar.
6. Secretary, Irrigation Department, Government of Balochistan, Quetta.
7. Secretary, Irrigation & Water Management Department, Govt. of G.B., Gilgit.
8. Secretary, Irrigation & Agriculture, Government of AJ&K, Muzaffarabad.

Sub: Draft Bill for Restructuring O/o CEA/CFFC

I am directed to refer to the subject cited above and to recapitulate that office of Chief Engineering Adviser/ Chairman Federal Flood Commission (O/o CEA/CFFC) is an Executive department of Ministry of Water Resources. It was established on July 01, 1959¹ as substitution of the Central Engineering Authority, established by GoP under the Chief Engineering Adviser after the nation (Pakistan) was founded. The then, Office of Chief Engineering Adviser (O/o CEA) was mandated to mainly deal with the issues related to water, irrigation & power sector; so initially O/o CEA performed its mandated functions with two technical wings i.e. Civil Engineering Wing and Power Engineering Wing.

2. Later in 1977, Federal Flood Commission (FFC) was established for the purpose of holistic country-wise flood management at federal level² and it was decided that O/o CEA will be the Secretariat of FFC. Hence, the organization was renamed as office of Chief Engineering Adviser/ Chairman Federal Flood Commission (O/o CEA/CFFC). In 1981³, Dam Safety Council was also added to the O/o CEA/CFFC to review plans for new dams & barrages and to carry out inspections of existing dams with DSO of WAPDA. The CEA & CFFC is an ex-officio member of IRSA, also represents Pakistan in International Commission on Large Dams (ICOLD) and in International Commission on Irrigation & Drainage (ICID). O/o CEA & CFFC conducted three seminal studies on 'Environmental Flows and Sea-Water Intrusion', known as 'Kotri Barrage Studies', which offered crucial input that went into drafting of Indus River System Authority (IRSA) Act and the Water Apportionment Accord (WAA) of 1992. Subsequently IRSA was established to ensure implementation of WAA 1992.

3. As you are kindly aware that there is a direct link between GDP and flood events, which indicates that Pakistan is still at a stage where it is a victim to water. In wake of devastating 2022-floods, Dutch DRR Mission visited Pakistan in December 2022 and had in-person meetings with the stakeholder departments besides field visit to flood affected areas in Sindh province. With a view to ensure enhanced protection against future floods, Dutch Experts made certain recommendations. Experts from the Netherlands questioned whose legal authority it is to

¹ Ministry of Works, Irrigation and Power Letter No. PI-12(77)/58 dated July 01, 1959

² Ministry of Fuel, Power & Natural Resources Letter No. W-ii 3(23)/76 dated January 04, 1977; Revised Notification issued vide Ministry of Water & Power Notification No. 3(22)/2015-Water dated July 09, 2015

³ Establishment Division O.M No. 12/6/80-C(V) dated May 26, 1981

determine how the flood water be used and disposed of. Given that water is a provincial issue, this mandate would appear to be at the provincial level. However, it becomes a federal subject when floodwater from one province crosses the provincial boundaries and causes breaches in important public & private infrastructure of other provinces due to the reason that encroachments in the floodplains/ natural drainage path and ill-planned spatial development significantly affect the disposal of storm water/floodwater. Hence, according to Dutch Experts, FFC, being a multi stakeholders' platform is the best body at the federal level to oversee integrated floodwater management and establish a legislative mandate for improved flood management at the federal level.

4. Apropos, the above task for preparation of 'Draft FFC Bill' for restructuring of this office (O/o CEA/CFFC) was undertaken in order to transform it into *a statutory/regulatory body*. The constitutional provisions that justify the proposed arrangement are as follows:

- i. The existence of FFC itself, and various other federal entities with regulatory charter provide an answer to the question.
- ii. Integrated flood management has a national connotation and its strategic significance not a matter of provincial domain alone.
- iii. Supreme Court of Pakistan directed/made recommendations on reforming FFC in the wake of 2010 floods did not consider floods as a provincial subject in exclusivity.
- iv. The 18th amendment enacted in April 2010, doesn't provide any reason to obstruct a federal legislation for integrated flood control and management, that can assist in creating a national echo system or architecture for flood control.
- v. Establishing appropriate legal sub-structures for effective flood management was recognized as an essential component of FFC reform process.
- vi. Converting FFC into a flood control regulatory body was actually a part of FFC transformative plans as far back as in 2017.
- vii. The framers of constitution, while upholding primacy of devolution to federating units, did not ignore the need for federal involvement in matters of national importance. Article 142 to 149 of the constitution were framed to regulate relations between federation and provinces, while articles 154 to 156 of the constitution define the mechanism for formulate policies and exercising supervision and control over various matters in the legislative list.
- viii. With references to constitutional provisions, there lies no basis to dismiss the specter of creating a national regulatory body on flood control due to being ultra vires to the constitution.
- ix. The constitution of the Islamic Republic of Pakistan provides exclusive powers to the Parliament under Article 142(a) and 142(d) to make laws with respect to any matter mentioned in the fourth schedule, and with respect to such areas in the federation as are not included in any province.
- x. The matters covered under serial # 2 and 16, part I, schedule 4 of the constitution can be correlated to flood protection in one way or the other.
- xi. Article 144 provides power to the Parliament to regulate any matter not enumerated in the fourth schedule and pass an Act accordingly with the consent of one or more provinces by consent.
- xii. Article 143 lays out precedence for a federal legislation over a provincial legislation in case of inconsistency between the two laws. Quote – "If any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of Majlis-e-Shoora (Parliament) which Majlis-e-Shoora (Parliament) is competent to enact, then the Act of the Majlis-e-Shoora (Parliament), whether passed before or after the Act of the Provincial Assembly, shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void". Un-quote.
- xiii. Article 148 obligates every province to exercise its executive authority to secure compliance with federal laws which apply to the province. provincial government to exercise powers in compliance with federal law.

- xiv. The constitution vide its Article 149 obligates a province to exercise its authority as not to impede or prejudice the executive authority of the federation which may appear to be necessary for a purpose.
- xv. The Council of Common Interest (CCI) created under Article 154 is vested with powers to formulate policies in relation to matters in part II of the Federal Legislative List and shall exercise supervision and control over related matters.
- xvi. Invoking Article 144 or 154, a flood control legislation can be introduced as it deals with matters covered under Sr. No 3, 6, 7, 12,13,14, 16 and 18 in Part II of schedule IV. And that the case law doesn't debar federal jurisdiction on matter of national importance, and matters which have Inter-Provincial linkages.

5. Foregoing in view, a copy of the 'Draft FFC Bill' is attached herewith for review and views/ comments, if any. Soft copy of the 'Draft FFC Bill' has also been uploaded on official website of FFC and is available at www.ffc.gov.pk for stakeholders review and feedback, if any.

6. Foregoing in view, being member of the Federal Flood Commission, you are requested to kindly review the attached 'draft FFC Bill' and furnish to this office your views/ comments within **May 10, 2024** so that further necessary action in the matter could be taken accordingly.

7. This issues with the approval of the CEA/CFFC.

Encl: **As above.**



(Zafar Iqbal)

Superintending Engineer (F-II)

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CC: For Information to: -

1. Deputy Secretary (Admin), Ministry of Water Resources, Islamabad.
2. Ms. Mommal Shahab, Section Officer (ADB), Finance Division, Islamabad w.r.t Finance Division's OM No. 4(1) ADB/2023-138 dated March 25, 2024 regarding Climate & Disaster Resilience Enhancement Program (CDREP).
3. Ms. Hummera Atif, Section Officer (ADB-I), EAD, Islamabad w.r.t meeting held in EAD on March 07, 2024 on Climate & Disaster Resilience Enhancement Program (CDREP).
4. Mr. Manzoor Ahmed, Computer Operator, FFC for uploading draft Bill on official website.
5. PS to Secretary, Aviation Division, Islamabad.
6. PS to Chairman WAPDA, Lahore.
7. PS to CEA/CFFC, Islamabad.
8. Master file