

## **TITLE 33 - NAVIGATION AND NAVIGABLE WATERS**

### **CHAPTER 15 - FLOOD CONTROL**

#### **§ 701–1. Declaration of policy of 1944 act**

In connection with the exercise of jurisdiction over the rivers of the Nation through the construction of works of improvement, for navigation or flood control, as herein authorized, it is declared to be the policy of the Congress to recognize the interests and rights of the States in determining the development of the watersheds within their borders and likewise their interests and rights in water utilization and control, as herein authorized to preserve and protect to the fullest possible extent established and potential uses, for all purposes, of the waters of the Nation's rivers; to facilitate the consideration of projects on a basis of comprehensive and coordinated development; and to limit the authorization and construction of navigation works to those in which a substantial benefit to navigation will be realized therefrom and which can be operated consistently with appropriate and economic use of the waters of such rivers by other users.

In conformity with this policy:

(a) Plans, proposals, or reports of the Chief of Engineers, Department of the Army, for any works of improvement for navigation or flood control not heretofore or herein authorized, shall be submitted to the Congress only upon compliance with the provisions of this paragraph (a). Investigations which form the basis of any such plans, proposals, or reports shall be conducted in such a manner as to give to the affected State or States, during the course of the investigations, information developed by the investigations and also opportunity for consultation regarding plans and proposals, and, to the extent deemed practicable by the Chief of Engineers, opportunity to cooperate in the investigations. If such investigations in whole or part are concerned with the use or control of waters arising west of the ninety-seventh meridian, the Chief of Engineers shall give to the Secretary of the Interior, during the course of the investigations, information developed by the investigations and also opportunity for consultation regarding plans and proposals, and to the extent deemed practicable by the Chief of Engineers, opportunity to cooperate in the investigations. The relations of the Chief of Engineers with any State under this paragraph (a) shall be with the Governor of the State or such official or agency of the State as the Governor may designate. The term "affected State or States" shall include those in which the works or any part thereof are proposed to be located; those which in whole or part are both within the drainage basin involved and situated in a State lying wholly or in part west of the ninety-eighth meridian; and such of those which are east of the ninety-eighth meridian as, in the judgment of the Chief of Engineers, will be substantially affected. Such plans, proposals, or reports and related investigations shall be made to the end, among other things, of facilitating the coordination of plans for the construction and operation of the proposed works with other plans involving the waters which would be used or controlled by such proposed works. Each report submitting any such plans or proposals to the Congress shall set out therein, among other things, the relationship between the plans for construction and operation of the proposed works and the plans, if any, submitted by the affected States and by the Secretary of the Interior. The Chief of Engineers shall transmit a copy of his proposed report to each affected State, and, in case the plans or proposals covered by the report are concerned with the use or control of waters which rise in whole or in part west of the ninety-seventh meridian, to the Secretary of the Interior. Within 30 days from the date of receipt of said proposed report, the written views and recommendations of each affected State and of the Secretary of the Interior may be submitted to the Chief of Engineers. The Secretary of the Army shall transmit to the Congress, with such comments and recommendations as he deems appropriate, the proposed report together with the submitted views and recommendations of affected States and of the Secretary of the Interior. The Secretary of the Army may prepare and make said transmittal any time following said 30-day period. The letter of transmittal and its attachments shall be printed as a House or Senate document.

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscp.html>).*

(b) The use for navigation, in connection with the operation and maintenance of such works herein authorized for construction, of waters arising in States lying wholly or partly west of the ninety-eighth meridian shall be only such use as does not conflict with any beneficial consumptive use, present or future, in States lying wholly or partly west of the ninety-eighth meridian, of such waters for domestic, municipal, stock water, irrigation, mining, or industrial purposes.

(c) The Secretary of the Interior, in making investigations of and reports on works for irrigation and purposes incidental thereto shall, in relation to an affected State or States (as defined in paragraph (a) of this section), and to the Secretary of the Army, be subject to the same provisions regarding investigations, plans, proposals, and reports as prescribed in paragraph (a) of this section for the Chief of Engineers and the Secretary of the Army. In the event a submission of views and recommendations, made by an affected State or by the Secretary of the Army pursuant to said provisions, sets forth objections to the plans or proposals covered by the report of the Secretary of the Interior, the proposed works shall not be deemed authorized except upon approval by an Act of Congress; and section 485h (a) of title 43 and section 590z-1 (a) of title 16 are amended accordingly.

(Dec. 22, 1944, ch. 665, § 1, 58 Stat. 887; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501; Pub. L. 104-303, title II, § 223, Oct. 12, 1996, 110 Stat. 3697.)

### **Amendments**

1996—Par. (a). Pub. L. 104-303 substituted “Within 30 days” for “Within ninety days” and “30-day period” for “ninety-day period”.

### **Change of Name**

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted “Title 10, Armed Forces” which in sections 3010 to 3013 continued Department of the Army under administrative supervision of Secretary of the Army.

### **Applicability of Section to Projects Authorized by Flood Control Acts**

Pub. L. 90-483, title II, § 202, Aug. 13, 1968, 82 Stat. 739, provided that: “The provisions of section 1 of the Act of December 22, 1944 (Public Law Numbered 534, Seventy-eighth Congress, second session) [this section], shall govern with respect to projects authorized in this Act [Pub. L. 90-483], and the procedures therein set forth with respect to plans, proposals, or reports for works of improvement for navigation or flood control and for irrigation and purposes incidental thereto shall apply as if herein set forth in full.”

Similar provisions were contained in the following prior acts:

Nov. 7, 1966, Pub. L. 89-789, title II, § 202, 80 Stat. 1418.

Oct. 27, 1965, Pub. L. 89-298, title II, § 203, 79 Stat. 1074.

Sept. 3, 1954, ch. 1264, title II, § 202, 68 Stat. 1256.

May 17, 1950, ch. 188, title II, § 202, 64 Stat. 170.

### **Glendo Unit, Wyoming, Missouri River Basin Project**

Joint Res. July 16, 1954, ch. 532, § 2, 68 Stat. 486, provided, with respect to the Glendo unit (dam and reservoir), Missouri River Basin Project, at the Glendo site on the North Platte River in Wyoming, for waiver of the provisions of subsec. (c) of this section. Section 1 of the Joint Resolution provided for the construction and operation of such unit by the Secretary of the Interior.

### **Section as Unaffected by Submerged Lands Act**

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of Title 43, Public Lands.