

Subsecs. (b) to (d). Pub. L. 106-53, §219(a)(2), (3), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 106-53, §219(a)(2), (4), redesignated subsec. (d) as (e) and substituted “subsection (c)” for “subsection (b)”. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 106-53, §219(a)(2), redesignated subsec. (e) as (f).

CHANGE OF NAME

References to the Director of the Federal Emergency Management Agency to be considered to refer and apply to the Administrator of the Federal Emergency Management Agency, see section 612(c) of Pub. L. 109-295, set out as a note under section 313 of Title 6, Domestic Security.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REEVALUATION OF FLOOD CONTROL PROJECTS

Pub. L. 106-53, title II, §219(b), Aug. 17, 1999, 113 Stat. 295, provided that: “At the request of a non-Federal interest for a flood control project, the Secretary shall conduct a reevaluation of a project authorized before the date of enactment of this Act [Aug. 17, 1999] to consider nonstructural alternatives in light of the amendments made by subsection (a) [amending this section].”

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101-640, set out as a note under section 2201 of this title.

§ 2319. Reservoir management

The Secretary shall ensure that, in developing or revising reservoir operating manuals of the Corps of Engineers, the Corps shall provide significant opportunities for public participation, including opportunities for public hearings. The Secretary shall issue regulations to implement this section, including a requirement that all appropriate informational materials relating to proposed management decisions of the Corps be made available to the public sufficiently in advance of public hearings. Not later than January 1, 1992, the Secretary shall transmit to Congress a report on measures taken pursuant to this section.

(Pub. L. 101-640, title III, §310, Nov. 28, 1990, 104 Stat. 4639; Pub. L. 104-303, title II, §233, Oct. 12, 1996, 110 Stat. 3704.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-303, §233(1), struck out heading and text of subsec. (a). Text read as follows: “Not later than 2 years after November 28, 1990, the Secretary shall establish for major reservoirs under the jurisdiction of the Corps of Engineers a technical advisory committee to provide to the Secretary and Corps of Engineers recommendations on reservoir monitoring and options for reservoir research. The Secretary shall determine the membership of the committee, except that the Secretary may not appoint more than 6 members and shall ensure a predominance of members with appropriate academic, technical, or scientific qualifications. Members shall serve without pay, and the Secretary shall provide any necessary facilities, staff, and other support services in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.).”

Subsec. (b). Pub. L. 104-303, §233(2), struck out “(b) PUBLIC PARTICIPATION.—” before “The Secretary shall ensure”, and substituted “section” for “subsection” in two places.

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101-640, set out as a note under section 2201 of this title.

§ 2320. Protection of recreational and commercial uses

(a) General rule

In planning any water resources project, the Secretary shall consider the impact of the project on existing and future recreational and commercial uses in the area surrounding the project.

(b) Maintenance

Whenever the Secretary maintains, repairs, rehabilitates, or reconstructs a water resources project which will result in a change in the configuration of a structure which is a part of such project, the Secretary, to the maximum extent practicable, shall carry out such maintenance, repair, rehabilitation, or reconstruction in a manner which will not adversely affect any recreational use established with respect to such project before the date of such maintenance, repair, rehabilitation, or reconstruction.

(c) Mitigation

(1) In general

If maintenance, repair, rehabilitation, or reconstruction of a water resources project by the Secretary results in a change in the configuration of any structure which is a part of such project and has an adverse effect on a recreational use established with respect to such project before the date of such maintenance, repair, rehabilitation, or reconstruction, the Secretary, to the maximum extent practicable, shall take such actions as may be necessary to restore such recreational use or provide alternative opportunities for comparable recreational use.

(2) Maximum amount

The Secretary may not expend more than \$2,000,000 in a fiscal year to carry out this subsection.

(3) Termination date

This subsection shall not be effective after the last day of the 5-year period beginning on November 28, 1990; except that the Secretary

may complete any restoration commenced under this subsection on or before such last day.

(d) Applicability

(1) General rule

Subsections (b) and (c) of this section shall apply to maintenance, repair, rehabilitation, or reconstruction for which physical construction is initiated after May 1, 1988.

(2) Limitation

Subsections (b) and (c) of this section shall not apply to any action of the Secretary which is necessary to discontinue the operation of a water resources project.

(e) Cost sharing

Costs incurred by the Secretary to carry out the objectives of this section shall be allocated to recreation and shall be payable by the beneficiaries of the recreation.

(Pub. L. 101-640, title III, §313, Nov. 28, 1990, 104 Stat. 4640.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101-640, set out as a note under section 2201 of this title.

§ 2321. Operation and maintenance of hydroelectric facilities

Activities currently performed by personnel under the direction of the Secretary in connection with the operation and maintenance of hydroelectric power generating facilities at Corps of Engineers water resources projects are to be considered as inherently governmental functions and not commercial activities. This section does not prohibit contracting out major maintenance or other functions which are currently contracted out or studying services not directly connected with project maintenance and operations.

(Pub. L. 101-640, title III, §314, Nov. 28, 1990, 104 Stat. 4641.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101-640, set out as a note under section 2201 of this title.

§ 2321a. Hydroelectric power project uprating

(a) In general

In carrying out the operation, maintenance, rehabilitation, and modernization of a hydroelectric power generating facility at a water resources project under the jurisdiction of the Department of the Army, the Secretary may, to

the extent funds are made available in appropriations Acts or in accordance with subsection (c) of this section, take such actions as are necessary to optimize the efficiency of energy production or increase the capacity of the facility, or both, if, after consulting with the heads of other appropriate Federal and State agencies, the Secretary determines that such actions—

(1) are economically justified and financially feasible;

(2) will not result in any significant adverse effect on the other purposes for which the project is authorized;

(3) will not result in significant adverse environmental impacts;

(4) will not involve major structural or operational changes in the project; and

(5) will not adversely affect the use, management, or protection of existing Federal, State, or tribal water rights.

(b) Consultation

Before proceeding with any proposed uprating under subsection (a) of this section, the Secretary shall provide affected State, tribal, and Federal agencies with a copy of the proposed determinations under subsection (a) of this section. If the agencies submit comments, the Secretary shall accept those comments or respond in writing to any objections those agencies raise to the proposed determinations.

(c) Use of funds provided by preference customers

In carrying out this section, the Secretary may accept and expend funds provided by preference customers under Federal law relating to the marketing of power.

(d) Application

This section does not apply to any facility of the Department of the Army that is authorized to be funded under section 839d-1 of title 16.

(e) Effect on other authority

This section shall not affect the authority of the Secretary and the Administrator of the Bonneville Power Administration under section 839d-1 of title 16.

(Pub. L. 104-303, title II, §216, Oct. 12, 1996, 110 Stat. 3694; Pub. L. 106-541, title II, §212, Dec. 11, 2000, 114 Stat. 2593.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1996, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-541, §212(1), inserted introductory provisions and struck out former introductory provisions which read as follows: “In carrying out the maintenance, rehabilitation, and modernization of a hydroelectric power generating facility at a water resources project under the jurisdiction of the Department of the Army, the Secretary may take, to the extent funds are made available in appropriations Acts, such actions as are necessary to increase the efficiency of energy production or the capacity of the facility, or both, if, after consulting with the heads of other appropriate Federal and State agencies, the Secretary determines that the increase—”.

Subsec. (a)(1). Pub. L. 106-541, §212(1), substituted “are” for “is” before “economically justified”.