

## 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”.

Subsec. (b). Pub. L. 106-541, § 212(2), substituted “any proposed uprating” for “the proposed uprating” in first sentence.

Subsecs. (c) to (e). Pub. L. 106-541, § 212(3), (4), added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

## “SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 104-303, set out as a note under section 2201 of this title.

**§ 2322. Single entities**

For purposes of Federal participation in water resource development projects which are to be carried out by the Secretary, benefits which are to be provided to a facility owned by a State (including the District of Columbia and a territory or possession of the United States), county, municipality, or other public entity shall not be treated as benefits to be provided a single owner or single entity. The Secretary shall not treat such a facility as a single owner or single entity for any purpose.