

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”.

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.

(Pub. L. 101-640, title III, §317, 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.

§ 2323. Technical assistance to private entities

(a) Use of Corps research and development labs

The Secretary is authorized to use Corps of Engineers research and development laboratories to provide research and development assistance to corporations, partnerships, limited partnerships, consortia, public and private foundations, universities, and nonprofit organizations operating within the United States, territories or possessions of the United States, and the Commonwealths of Puerto Rico and the Northern Mariana Islands—

(1) if the entity furnishes in advance of fiscal obligation by the United States such funds as are necessary to cover any and all costs of such research and development assistance;

(2) if the Secretary determines that the research and development assistance to be provided is within the mission of the Corps of Engineers and is in the public interest;

(3) if the entity has certified to the Secretary that provision of such research and development assistance is not otherwise reasonably and expeditiously obtainable from the private sector; and

(4) if the entity has agreed to hold and save the United States free from any damages due to any such research and development assistance.

(b) Contract

The Secretary may provide research and development assistance under subsection (a) of this section, or any part thereof, by contract.