

igned first sentence as subsec. (a), inserted heading, and inserted “navigation or” before “hydroelectric”, designated second sentence as subsec. (b) and inserted heading, and added subsec. (c).

#### Statutory Notes and Related Subsidiaries

##### “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), 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), the Secretary shall provide affected State, tribal, and Federal agencies with a copy of the proposed determinations under subsection (a). 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.)

#### Editorial Notes

##### 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 subsec. (c) and (d) and redesignated former subsec. (c) as (e).

#### Statutory Notes and Related Subsidiaries

##### “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.

#### § 2321b. Expediting hydropower at Corps of Engineers facilities

##### (a) Policy

Congress declares that it is the policy of the United States that—

(1) the development of non-Federal hydroelectric power at Corps of Engineers water resources development projects, including locks and dams, shall be given priority;

(2) Corps of Engineers approval of non-Federal hydroelectric power at Corps of Engineers water resources development projects, including permitting required under section 408 of this title, shall be completed by the Corps of Engineers in a timely and consistent manner; and

(3) approval of hydropower at Corps of Engineers water resources development projects shall in no way diminish the other priorities and missions of the Corps of Engineers, including authorized project purposes and habitat and environmental protection.

##### (b) Report

Not later than 2 years after June 10, 2014, and biennially thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report that, at a minimum, shall include—

(1) a description of initiatives carried out by the Secretary to encourage the development of hydroelectric power by non-Federal entities at Corps of Engineers water resources development projects;

(2) a list of all new hydroelectric power activities by non-Federal entities approved at Corps of Engineers water resources development projects in that fiscal year, including the length of time the Secretary needed to approve those activities;

(3) a description of the status of each pending application from non-Federal entities for approval to develop hydroelectric power at Corps of Engineers water resources development projects;

(4) a description of any benefits or impacts to the environment, recreation, or other uses associated with Corps of Engineers water resources development projects at which non-Federal entities have developed hydroelectric power in the previous fiscal year; and

(5) the total annual amount of payments or other services provided to the Corps of Engineers, the Treasury, and any other Federal agency as a result of approved non-Federal hydropower projects at Corps of Engineers water resources development projects.

**(c) Reviewing hydropower at Corps of Engineers facilities**

**(1) Definition of eligible non-Federal interest**

In this subsection, the term “eligible non-Federal interest” means a non-Federal interest that owns or operates an existing non-Federal hydropower facility at a Corps of Engineers water resources development project.

**(2) Evaluation**

**(A) In general**

On the written request of an eligible non-Federal interest, the Secretary shall conduct an evaluation to consider operational changes at the applicable project to facilitate production of non-Federal hydropower, consistent with authorized project purposes. The Secretary shall solicit input from interested stakeholders as part of the evaluation.

**(B) Deadline**

Not later than 180 days after the date on which the Secretary receives a written request under subparagraph (A), the Secretary shall provide to the non-Federal interest a written response to inform the non-Federal interest—

(i) that the Secretary has approved the request to conduct an evaluation; or

(ii) of any additional information necessary for the Secretary to approve the request to conduct an evaluation.

**(3) Operational changes**

An operational change referred to in paragraph (2)(A) may include—

(A) changes to seasonal pool levels;

(B) modifying releases from the project; and

(C) other changes included in the written request submitted under that paragraph that enhance the usage of the project to facilitate production of non-Federal hydropower, consistent with authorized project purposes.

**(4) Cost share**

The eligible non-Federal interest shall pay 100 percent of the costs associated with an

evaluation under this subsection, including the costs to prepare the report under paragraph (6).

**(5) Deadline**

The Secretary shall complete an evaluation under this subsection by the date that is not later than 1 year after the date on which the Secretary begins the evaluation.

**(6) Report**

On completion of an evaluation under this subsection, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the effects of the operational changes proposed by the non-Federal interest and examined in the evaluation on the authorized purposes of the project, including a description of any negative impacts of the proposed operational changes on the authorized purposes of the project, or on any Federal project located in the same basin.

**(7) Savings provision**

Nothing in this subsection—

(A) affects the authorized purposes of a Corps of Engineers water resources development project;

(B) affects existing authorities of the Corps of Engineers, including authorities with respect to navigation, flood damage reduction, environmental protection and restoration, water supply and conservation, and other related purposes; or

(C) authorizes the Secretary to make any operational changes to a Corps of Engineers water resources development project.

(Pub. L. 113-121, title I, §1008, June 10, 2014, 128 Stat. 1215; Pub. L. 116-260, div. AA, title I, §146, Dec. 27, 2020, 134 Stat. 2655.)

**Editorial Notes**

**CODIFICATION**

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

**AMENDMENTS**

2020—Subsecs. (a), (b). Pub. L. 116-260, §146(1), substituted “water resources development” for “civil works” wherever appearing.

Subsec. (c). Pub. L. 116-260, §146(2), added subsec. (c).

**Statutory Notes and Related Subsidiaries**

**“SECRETARY” DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113-121, 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