

“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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

FORECAST-INFORMED RESERVOIR OPERATIONS

Pub. L. 118-272, div. A, title I, §1162, Jan. 4, 2025, 138 Stat. 3047, provided that:

“(a) IN GENERAL.—In updating a water control manual for any reservoir constructed, owned, or operated by the Secretary [of the Army], including a reservoir for which the Secretary is authorized to prescribe regulations for the use of storage allocated for flood control or navigation pursuant to section 7 of the Act of December 22, 1944 (33 U.S.C. 709), the Secretary shall, to the maximum extent practicable, incorporate the use of forecast-informed reservoir operations, subject to the availability of appropriations.

“(b) GUIDELINES.—The Secretary, in coordination with relevant Federal and State agencies and non-Federal interests, shall issue clear and concise guidelines for incorporating the use of forecast-informed reservoir operations into water control manuals for reservoirs described in subsection (a).

“(c) ASSESSMENT.—

“(1) REQUIREMENT.—The Secretary shall carry out an assessment of geographically diverse reservoirs described in subsection (a) to determine the viability of using forecast-informed reservoir operations at such reservoirs.

“(2) PRIORITY AREAS.—In carrying out the assessment described in paragraph (1), the Secretary shall include an assessment of—

“(A) each reservoir located in the South Pacific Division of the Corps of Engineers; and

“(B) reservoirs located in each of the North-western Division and the South Atlantic Division of the Corps of Engineers.

“(3) CONSULTATION.—In carrying out this subsection, the Secretary [of the Army] shall consult with relevant Federal and State agencies and non-Federal interests.

“(d) SAVINGS PROVISION.—Nothing in this section pre-empt or affects any State water law or any interstate compact governing water, or otherwise restricts, affects, or amends any other law or the authority of any department, instrumentality, or agency of the United States related to the operation of reservoirs described in subsection (a).”

EMERGENCY DROUGHT OPERATIONS PILOT PROGRAM

Pub. L. 118-272, div. A, title I, §1164, Jan. 4, 2025, 138 Stat. 3048, provided that:

“(a) DEFINITION OF COVERED PROJECT.—In this section, the term ‘covered project’ means a project—

“(1) that is located in the State of California, the State of Nevada, or the State of Arizona; and

“(2)(A) of the Corps of Engineers for which water supply is an authorized purpose; or

“(B) for which the Secretary [of the Army] develops a water control manual under section 7 of the Act of December 22, 1944 (33 U.S.C. 709).

“(b) EMERGENCY OPERATION DURING DROUGHT.—Consistent with other authorized project purposes and in coordination with the non-Federal interest, in operating a covered project during a drought emergency in the project area, the Secretary may carry out a pilot program to operate the covered project with water supply as the primary project purpose.

“(c) UPDATES.—In carrying out this section, the Secretary may update the water control manual for a covered project to include drought operations and contingency plans.

“(d) REQUIREMENTS.—In carrying out subsection (b), the Secretary [of the Army] shall ensure that—

“(1) operations described in that subsection—

“(A) are consistent with water management deviations and drought contingency plans in the water control manual for the covered project;

“(B) impact only the flood pool managed by the Secretary; and

“(C) shall not be carried out in the event of a forecast or anticipated flood or weather event that would require flood risk management to take precedence;

“(2) to the maximum extent practicable, the Secretary uses forecast-informed reservoir operations; and

“(3) the covered project returns to the operations that were in place prior to the use of the authority provided under that subsection at a time determined by the Secretary, in coordination with the non-Federal interest.

“(e) CONTRIBUTED FUNDS.—The Secretary may receive and expend funds contributed by a non-Federal interest to carry out activities under this section.

“(f) REPORT.—

“(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act [Jan. 4, 2025], the Secretary [of the Army] 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 pilot program carried out under this section.

“(2) INCLUSIONS.—The Secretary shall include in the report under paragraph (1) a description of the activities of the Secretary that were carried out for each covered project and any lessons learned from carrying out those activities.

“(g) LIMITATIONS.—Nothing in this section—

“(1) affects, modifies, or changes the authorized purposes of a covered project;

“(2) affects existing Corps of Engineers authorities, including authorities with respect to navigation, hydropower, flood damage reduction, and environmental protection and restoration;

“(3) affects the ability of the Corps of Engineers to provide for temporary deviations;

“(4) affects the application of a cost-share requirement under section 101, 102, or 103 of the Water Resources Development Act of 1986 (33 U.S.C. 2211, 2212, 2213);

“(5) supersedes or modifies any written agreement between the Federal Government and a non-Federal interest that is in effect on the date of enactment of this Act;

“(6) supersedes or modifies any amendment to an existing multistate water control plan for the Colorado River Basin, if applicable;

“(7) affects any water right in existence on the date of enactment of this Act;

“(8) preempts or affects any State water law or interstate compact governing water;

“(9) affects existing water supply agreements between the Secretary and the non-Federal interest; or

“(10) affects any obligation to comply with the provisions of any Federal or State environmental law, including—

“(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

“(B) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and

“(C) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).”

FORECAST-INFORMED RESERVOIR OPERATIONS

Pub. L. 117–263, div. H, title LXXXI, § 8303(c), Dec. 23, 2022, 136 Stat. 3777, provided that:

“(1) IN GENERAL.—The Secretary [of the Army] is authorized to carry out a research study pilot program at 1 or more dams owned and operated by the Secretary in the North Atlantic Division of the Corps of Engineers to assess the viability of forecast-informed reservoir operations in the eastern United States.

“(2) REPORT.—Not later than 1 year after completion of the research study pilot program under paragraph (1), the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the research study pilot program.”

DAM OPTIMIZATION

Pub. L. 113–121, title I, § 1046(a), June 10, 2014, 128 Stat. 1251, provided that:

“(1) DEFINITION OF PROJECT.—In this subsection, the term ‘project’ means a water resources development project that is operated and maintained by the Secretary [of the Army].

“(2) REPORTS.—

“(A) ASSESSMENT OF WATER SUPPLY IN ARID REGIONS.—

“(i) IN GENERAL.—The Secretary shall conduct an assessment of the management practices, priorities, and authorized purposes at Corps of Engineers reservoirs in arid regions to determine the effects of such practices, priorities, and purposes on water supply during periods of drought.

“(ii) INCLUSIONS.—The assessment under clause (i) shall identify actions that can be carried out within the scope of existing authorities of the Secretary to increase project flexibility for the purpose of mitigating drought impacts.

“(iii) REPORT.—Not later than 1 year after the date of enactment of this Act [June 10, 2014], 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 on the results of the assessment.

“(B) UPDATED REPORT.—

“(i) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall update and make publicly available the report entitled ‘Authorized and Operating Purposes of Corps of Engineers Reservoirs’ and dated July 1992, which was produced pursuant to section 311 of the Water Resources Development Act of 1990 [Pub. L. 101–640] (104 Stat. 4639).

“(ii) INCLUSIONS.—The updated report described in clause (i) shall—

“(I) include—

“(aa) the date on which the most recent review of project operations was conducted and any recommendations of the Secretary relating to that review the Secretary determines to be significant;

“(bb) the activities carried out pursuant to each such review to improve the efficiency of operations and maintenance and to improve project benefits consistent with authorized purposes;

“(cc) the degree to which reviews of project operations and subsequent activities pursuant to completed reviews complied with the policies and requirements of applicable law and regulations; and

“(dd) a plan for reviewing the operations of individual projects, including a detailed schedule for future reviews of project operations, that—

“(AA) complies with the policies and requirements of applicable law and regulations;

“(BB) gives priority to reviews and activities carried out pursuant to such plan where the Secretary determines that there is support for carrying out those reviews and activities; and

“(CC) ensures that reviews and activities are carried out pursuant to such plan;

“(II) be coordinated with appropriate Federal, State, and local agencies and those public and private entities that the Secretary determines may be affected by those reviews or activities;

“(III) not supersede or modify any written agreement between the Federal Government and a non-Federal interest that is in effect on the date of enactment of this Act [June 10, 2014];

“(IV) not supersede or authorize any amendment to a multistate water control plan, including the Missouri River Master Water Control Manual (as in effect on the date of enactment of this Act);

“(V) not affect any water right in existence on the date of enactment of this Act;

“(VI) not preempt or affect any State water law or interstate compact governing water;

“(VII) not affect any authority of a State, as in effect on the date of enactment of this Act, to manage water resources within that State; and

“(VIII) comply with section 301 of the Water Supply Act of 1958 (43 U.S.C. 390b).

“(3) GENERAL ACCOUNTABILITY OFFICE REPORT TO CONGRESS.—The Comptroller General shall—

“(A) conduct an audit to determine—

“(i) whether reviews of project operations carried out by the Secretary prior to the date of enactment of this Act complied with the policies and requirements of applicable law and regulations; and

“(ii) whether the plan developed by the Secretary pursuant to paragraph (2)(B)(i)(I)(dd) complies with this subsection and with the policies and requirements of applicable law and regulation; and

“(B) not later than 2 years after the date of enactment of this Act, submit to Congress a report that—

“(i) summarizes the results of the audit required by subparagraph (A);

“(ii) includes an assessment of whether existing practices for managing and reviewing project operations could result in greater efficiencies that would enable the Corps of Engineers to better prepare for, contain, and respond to flood, storm, and drought conditions; and

“(iii) includes recommendations for improving the review of project operations to improve the efficiency and effectiveness of such operations and to better achieve authorized purposes while enhancing overall project benefits.

“(4) INTERAGENCY AND COOPERATIVE AGREEMENTS.—The Secretary may enter into interagency agreements with other Federal agencies and cooperative agreements with non-Federal entities to carry out this subsection and reviews of project operations or activities resulting from those reviews.

“(5) FUNDING.—

“(A) IN GENERAL.—The Secretary may use to carry out this subsection, including any reviews of project operations identified in the plan developed under paragraph (2)(B)(i)(I)(dd), amounts made available to the Secretary.

“(B) FUNDING FROM OTHER SOURCES.—The Secretary may accept and expend amounts from non-Federal entities and other Federal agencies to carry out this subsection and reviews of project operations or activities resulting from those reviews.

“(6) EFFECT OF SUBSECTION.—

“(A) IN GENERAL.—Nothing in this subsection changes the authorized purpose of any Corps of Engineers dam or reservoir.

“(B) ADMINISTRATION.—The Secretary may carry out any recommendations and activities under this subsection pursuant to existing law.”

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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) shall apply to maintenance, repair, rehabilitation, or reconstruction for which physical construction is initiated after May 1, 1988.

(2) Limitation

Subsections (b) and (c) 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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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§ 2321. Operation and maintenance of navigation and hydroelectric facilities

(a) In general

Activities currently performed by personnel under the direction of the Secretary in connection with the operation and maintenance of navigation or hydroelectric power generating facilities at Corps of Engineers water resources projects are to be considered as inherently governmental functions and not commercial activities.

(b) Major maintenance contracts allowed

This section does not prohibit contracting out major maintenance or other functions which are