

“(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.”

“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) 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

“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 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

currently contracted out or studying services not directly connected with project maintenance and operations.

**(c) Exclusion**

This section does not—

(1) apply to a navigation facility that was under contract on or before October 23, 2018, with a non-Federal interest to perform operations or maintenance; and

(2) prohibit the Secretary from contracting out commercial activities after October 23, 2018, at a navigation facility.

(Pub. L. 101-640, title III, §314, Nov. 28, 1990, 104 Stat. 4641; Pub. L. 115-270, title I, §1151(a), Oct. 23, 2018, 132 Stat. 3787.)

**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

2018—Pub. L. 115-270 inserted “navigation and” before “hydroelectric facilities” in section catchline, designated 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**

REMOTE OPERATIONS AT CORPS DAMS

Pub. L. 118-272, div. A, title I, §1149, Jan. 4, 2025, 138 Stat. 3039, provided that: “During the 6-year period beginning on the date of enactment of this Act [Jan. 4, 2025], with respect to a water resources development project owned, operated, or managed by the Corps of Engineers, the Secretary [of the Army] is authorized to use remote operation activities at a navigation or hydroelectric power generating facility at such project as a replacement for activities performed, as of the date of enactment of this Act, by personnel under the direction of the Secretary at such project, only after the Secretary provides written notice to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate that—

“(1) use of the remote operation activities—

“(A) does not affect activities described in section 314 of the Water Resources Development Act of 1990 (33 U.S.C. 2321);

“(B) will address any cyber and physical security risks to such project in accordance with applicable Federal law and agency guidance; and

“(C) is necessary to increase the availability and capacity, as applicable, of such project, including a project on a lower use waterway; and

“(2) the remote operation activities were developed under a public process that included engagement with such personnel and other stakeholders who may be affected by the use of such activities.”

“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 hydro-

electric 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