

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

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).

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) Implementation of policy

The Secretary shall—

(1) ensure that the policy described in subsection (a) is implemented nationwide in an efficient, consistent, and coordinated manner; and

(2) assess opportunities—

(A) to increase the development of hydroelectric power at existing water resources development projects of the Corps of Engineers with hydroelectric facilities; and

(B) to develop new hydroelectric power at existing nonpowered water resources development projects of the Corps of Engineers.

(c) 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 and to meet the requirements of subsection (b);

(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.

(d) 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).