

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).

(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; Pub. L. 117–263, div. H, title LXXXI, §8123, Dec. 23, 2022, 136 Stat. 3714.)

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

2022—Subsec. (b). Pub. L. 117–263, §8123(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (b)(1). Pub. L. 117–263, §8123(1), inserted “and to meet the requirements of subsection (b)” after “projects”.

Subsecs. (c), (d). Pub. L. 117–263, §8123(2), redesignated subsecs. (b) and (c) as (c) and (d), respectively.

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 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.)

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.

§ 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), or any part thereof, by contract.

(c) Omitted

(Pub. L. 101–640, title III, §318, Nov. 28, 1990, 104 Stat. 4641.)

Editorial Notes

CODIFICATION

Section is comprised of section 318 of Pub. L. 101–640. Subsec. (c) of section 318 of Pub. L. 101–640 amended section 2314a of this title.

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water