

# CRS Issue Brief for Congress

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## **Water Resources Development Act (WRDA): Army Corps of Engineers Authorization Issues in the 109th Congress**

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Nicole T. Carter, Coordinator  
Resources, Science, and Industry Division

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## Water Resources Development Act (WRDA): Army Corps of Engineers Authorization Issues in the 109th Congress

### SUMMARY

Under its civil works program, the Army Corps of Engineers plans, constructs, and operates water resources facilities primarily for flood damage reduction, navigation, and environmental purposes. The 109<sup>th</sup> Congress is considering authorizing Corps planning and construction activities, and is debating changes to Corps policies and practices, through two Water Resources Development Act (WRDA) bills, S. 728 and H.R. 2864. Once Corps activities are authorized, the appropriations process plays a significant role in their realization.

**Legislative Status.** Previous WRDAs have followed a loosely biennial schedule; however, no WRDA has been enacted since 2000. The House passed H.R. 2864 in July 2005; S. 728 was reported by the Senate Environment and Public Works Committee and placed on the Senate calendar in April 2005. Authorization of a few controversial projects and possible changes to Corps policies and practices are shaping the bills' consideration. Hurricane Katrina's impact on WRDA passage is uncertain; the disaster increased interest in flood control and Louisiana projects in the bill, while also increasing interest in streamlining federal spending which has some observers concerned about authorizing more Corps projects.

**Project Development Reform.** Changing how the Corps formulates, reviews, and implements projects has received attention since 2000, but no significant changes have been enacted. Disagreement about the appropriate direction of any changes to Corps practices is continuing as provisions in S. 728 and H.R. 2864 are considered. The provisions receiving the most attention are related to fish

and wildlife mitigation, Corps planning, and independent review of projects.

**Upper Mississippi River-Illinois Waterway (UMR-IWW).** S. 728 and H.R. 2864 include authorization of UMR-IWW navigation and ecosystem restoration investments. Some environmental and taxpayer advocacy groups oppose the navigation improvements. Navigation and agricultural interests insist that these improvements are needed to reduce lock delays and maintain global competitiveness. Whether and how to link UMR-IWW navigation improvements and ecosystem restoration also is part of the discussion.

**Everglades Restoration.** Authorization in S. 728 and H.R. 2864 of two projects — Indian River Lagoon-South and Picayune Strand — also are part of the WRDA debate. These projects were planned as part of a federal-nonfederal restoration effort to restore the Florida Everglades that began with WRDA 2000. The two projects are bringing attention to implementation issues of the larger restoration effort.

**Coastal Louisiana Restoration and Protection.** Authorization of investments in coastal Louisiana restoration are included in S. 728 and H.R. 2864, as well as in other legislation related to the state's disaster response. Provisions in both bills draw upon a Corps report on the feasibility of activities to restore coastal wetlands in Louisiana over the next decade; that report recommended \$1.1 billion in immediate actions, and estimated an additional cost of \$0.9 billion. More extensive proposals, that are estimated to cost up to \$14 billion are being weighed following Hurricanes Katrina and Rita.

## Key Staff

<b>Area of Expertise</b>	<b>Name</b>	<b>CRS Division</b>	<b>Phone</b>
U.S. Army Corps of Engineers	Steve Hughes	RSI	7-7268
	Nicole Carter	RSI	7-0854
Upper Mississippi River-Illinois Waterway	Nicole Carter	RSI	7-0854
Everglades Restoration	Pervaze Sheikh	RSI	7-6070
Coastal Louisiana	Jeff Zinn	RSI	7-7257
	Pervaze Sheikh	RSI	7-6070

RSI = Resources, Science, and Industry Division.

## MOST RECENT DEVELOPMENTS

The Army Corps of Engineers has a prominent role in Hurricane Katrina recovery efforts, including repairing of damaged floodwalls and levees. The Corps has numerous planned or authorized hurricane and flood damage reduction, navigation, and coastal wetlands restoration projects in coastal Louisiana. The coastal wetlands project evolved out of a plan developed with the State of Louisiana and numerous federal agencies. Authorization of initial wetlands restoration elements are included in the pending Water Resources Development Act (WRDA).

Hurricane Katrina's impact on WRDA passage is uncertain; the disaster increased interest in flood control and Louisiana projects in the bill, while also prompting interest in streamlined federal spending and calls for limiting new authorizations. H.R. 2864—WRDA 2005—passed the House in July 2005. The Administration has expressed strong concerns that the bill has more than \$10 billion in new authorizations and does not make to address the Corps' backlog of projects through project formulation and funding priorities. In April 2005, the Senate Environment and Public Works Committee marked up S. 728, WRDA 2005, and the bill was reported with amendments and placed on the Senate calendar. An amendment adopted during markup would limit the Corps' regulatory responsibilities for navigable waters. The language would exclude from the Corps' regulatory authority those activities or structures on private property that do not pose a safety threat to maritime traffic. Three provisions in the WRDA bills to change Corps practices related to fish and wildlife mitigation, independent review, and project planning (often labeled "Corps reform" provisions) are the subject of some debate; the content of the provisions differs in the two bills. Project authorizations in the WRDA 2005 bills receiving the most attention are:

- Coastal Louisiana: more than \$1 billion for immediate actions to restore coastal wetlands in Louisiana over the next decade.<sup>1</sup>
- Everglades: \$1.21 billion for Indian River Lagoon-South project for wetlands and estuarine restoration and \$0.35 billion for Picayune Strand ecosystem restoration project.
- Upper Mississippi River-Illinois Waterway (UMR-IWW): \$2.0 billion for navigation improvements and \$1.58 billion for ecosystem restoration.<sup>2</sup>

## BACKGROUND AND ANALYSIS

The Corps is a federal agency in the Department of Defense with military and civilian responsibilities. At the direction of Congress, the Corps plans, builds, operates, and maintains a wide range of water resources facilities in U.S. states and territories. The

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<sup>1</sup> An authorization amount for coastal Louisiana is not specified in S. 728 (except for \$10 million for one subsection); instead, reference is made to the report by the Corps' Chief of Engineers (known as the Chief's report) that recommended \$1.1 billion in immediate actions and estimated an additional cost of \$0.9 billion. H.R. 2864 would authorize \$1.2 billion.

<sup>2</sup> A House floor amendment to H.R. 2864 to allow construction of UMR-IWW navigation locks only if tonnage, reporting, and other requirements were met failed. An amendment requiring annual reports on comparable progress of UMR-IWW navigation and ecosystem restoration was adopted.

agency's traditional civil responsibilities are creating and maintaining navigable channels and controlling floods; in the last two decades, Congress has increased the Corps' responsibilities in ecosystem restoration, municipal water and wastewater infrastructure, disaster relief, and other activities. The agency's regulatory responsibility for navigable water extends to issuing permits for private actions that might affect wetlands and other water of the United States.<sup>3</sup>

Congressional direction comes primarily through authorization and appropriations legislation and oversight activities. This report focuses on the main legislative vehicle for Corps civil works authorizations, the Water Resources Development Act. After background on WRDA and WRDAs in recent Congresses, this report discusses the current legislative status of WRDA and major issues shaping WRDA consideration in the 109<sup>th</sup> Congress — changes to Corps project development practices and policies, UMR-IWW investments, Everglades restoration projects, and coastal Louisiana restoration activities.

**WRDAs — Legislation Authorizing Corps Studies and Projects.** Congress generally authorizes Corps water resources studies as part of a typically biennial consideration of a WRDA, or in a survey resolution by an authorizing committee — the House Transportation and Infrastructure Committee or the Senate Environment and Public Works Committee. Authorization to construct projects and changes to the policies guiding the Corps civil works program, such as project cost-share requirements, are also typically in WRDAs. The authorization of Corps projects generally do not expire; however, there is a process to deauthorize projects that have not received appropriations for seven years. Although Congress has historically authorized Corps projects as part of a WRDA, authorizations also have been included in appropriations bills, especially in years when passage of a WRDA has been delayed. Corps authorizing committees generally discourage as standard procedure authorizations in appropriations bills; authorization in appropriations bills may be subject to a point of order.

Authorization establishes a project's essential character, which is seldom substantially modified during appropriations. The appropriations process, however, plays a significant role in the realization of a project; appropriations determine which studies and projects receive federal funds.<sup>4</sup> Many authorized activities never receive appropriations. Fiscal priorities and public attitudes in recent decades have resulted in declining federal funding for water resources activities, thus increasing competition for funding among authorized activities.<sup>5</sup> Moreover, during the last 15 years, Congress has authorized not only navigation

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<sup>3</sup> Sections 10 and 13 of the Rivers and Harbors Act of 1899 (22 U.S.C. 407) require that a permit be obtained from the Corps for alteration or obstruction of and refuse discharge in navigable water of the United States. The Corps also has regulatory responsibilities under other laws, notably Section 404 of the Clean Water Act (33 U.S.C. 1344). Since the mid-1960s, court decisions and administrative actions have altered the jurisdictional reach of the Corps' regulatory program and the scope of the agency's consideration in issuing permits.

<sup>4</sup> For more information on the Corps' appropriations, see CRS Report RL32307, *Appropriations for FY2005: Energy and Water Development*, coordinated by Carl Behrens; and CRS Report RL32852, *Energy and Water Development: FY2006 Appropriations*, coordinated by Carl Behrens.

<sup>5</sup> For example, the civil works budget has experienced a substantial decline in *real dollar* amounts; the annual funding for the Corps' construction account fell from an average of \$4 billion (in 2000 (continued...))

and flood control projects, but also ecosystem restoration, environmental infrastructure assistance, and other nontraditional activities, exacerbating competition for construction funds. The Corps now has a “backlog” of more than 500 authorized projects that have not consistently received construction appropriations.

**WRDAs in Recent Congresses.** WRDA 1986 (P.L. 99-662) marked the end of a decade-long stalemate between the Congress and the executive branch regarding authorizations. In addition to authorizing numerous projects, WRDA 1986 resolved long-standing disputes related to cost-sharing, user fees, and environmental requirements. A biennial WRDA cycle has loosely been followed since, with WRDAs enacted in 1988 (P.L. 100-676), 1990 (P.L. 101-640), 1992 (P.L. 102-580), 1996 (P.L. 104-303), 1999 (P.L. 106-53), and 2000 (P.L. 106-541). Many of these WRDAs authorized or modified the authorization of more than a hundred projects. Pressure to authorize new projects, increase authorized funding levels, and modify existing projects is often intense, thus promoting a fairly regular (if not always biennial) consideration of WRDA.

WRDA legislation was considered, but not enacted, during the 108<sup>th</sup> Congress. On September 24, 2003, the House passed H.R. 2557 (H.Rept. 108-265) — WRDA 2003. The Administration did not support the bill, primarily because it viewed the bill as creating false expectations by authorizing appropriations of more than \$4 billion, despite fiscal constraints and the backlog of Corps construction projects. The Senate Environment and Public Works Committee reported WRDA 2004 (S. 2773) on April 25, 2005; it was placed on the Senate’s legislative calendar.

**WRDA in the 109<sup>th</sup> Congress.** Consideration of the two WRDA bills — H.R. 2864 and S. 728 — appears to be shaped by many issues similar to those of the 108<sup>th</sup> Congress: authorized spending (e.g., the amount of authorizations in the bill, and the bill’s potential budgetary impact), change to Corps policies and practices (see “Project Development Reform,” below), and authorization of a few controversial projects (see project-specific sections of this CRS Issue Brief). Hurricane Katrina’s impact on WRDA in the 109<sup>th</sup> Congress is uncertain; the disaster increased interest in the bills’ flood control and Louisiana projects, while also prompting interest in streamlined federal spending and calls for limiting new authorizations. Other issues, of course, may arise during the course of consideration.<sup>6</sup>

The Congressional Budget Office (CBO) estimated the cost to the federal government of S. 728 at \$4.1 billion from 2006 to 2010 and an additional \$7.6 billion from 2011 to 2020. The agency estimated the cost of H.R. 2864 at \$4.1 billion from 2006 to 2010 and an additional \$5.9 billion from 2011 to 2020.

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<sup>5</sup> (...continued)

dollars) in the 1960s and 1970s to less than \$2 billion recently.

<sup>6</sup> For example, §2001 of S. 728 would allow in-kind construction work by nonfederal project sponsors to be credited against local cost-share responsibilities for Corps projects; this may raise the issue of the responsibility of these nonfederal sponsors to pay prevailing wages under the 1931 Davis-Bacon Act (40 U.S.C. §§276a-276a-5). The application of prevailing wages to activities of nonfederal sponsors was an issue that delayed a WRDA bill’s consideration in 2000. For more information on the Davis-Bacon Act, see CRS Report 94-908, *Davis-Bacon: The Act and the Literature*, by William G. Whittaker.

The Administration, in its Statement of Administration Policy for H.R. 2864 released July 2005, expressed concern with the authorization level because it would “create expectation for future appropriations that cannot be met.” The Administration instead recommended new authorizations only for priority projects in the agency’s core mission areas of navigation, flood control, and ecosystem restoration.

**Regulatory Changes.** One issue that is shaping S. 728 consideration in the Senate (that was not an active part of the WRDA debate in the 108<sup>th</sup> Congress) is a proposed reduction of the application of the Corps’ regulatory responsibilities. An amendment adopted during the markup of S. 728 by the Senate Environment and Public Works Committee would limit the Corps’ regulatory responsibilities for navigable waters under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 407). The language added would exclude from the Corps’ regulatory authority those activities or structures on private property that do not pose a safety threat to maritime traffic. Interpretations of the impact of the language and the need to reduce the Corps’ application of the regulatory requirement (i.e., defining a smaller universe of activities and structures as requiring a permit) remain topics of debate. For example, S.Rept. 109-61 for S. 728 includes additional views of seven committee members on what they perceive to be “extremely broad language” with “extensive unintended consequences.” There is no similar provision in H.R. 2864; an amendment to include a similar provision in the bill was ruled nongermane.

**Project Development Reform.** Support for changing the Corps’ practices gained momentum in 2000 in the wake of a series of critical articles in the *Washington Post*, whistleblower allegations, and ensuing investigations. Many of the supporters of these changes, primarily environmental groups, sought to modify Corps project planning (e.g., by changing the cost-benefit analysis and consideration of environmental impacts and benefits) to require additional review of Corps projects (e.g., through external review of Corps feasibility reports), and to strengthen environmental protection (e.g., through modifications to fish and wildlife mitigation requirements); these kinds of changes often were referred to as “Corps reform.” Although Corps reforms were discussed in the 106<sup>th</sup>, 107<sup>th</sup>, and 108<sup>th</sup> Congresses, no significant changes were enacted. Some Members of Congress, along with agriculture and navigation interests, were satisfied with existing practices.

Although the 106<sup>th</sup> Congress did not enact Corps changes, it asked the National Academy of Sciences to review Corps planning in §216 of WRDA 2000. In April 2004, the Academy’s National Research Council (NRC) published four reports from this review. Each report recommended changes in Corps practices and the larger water resources management context. The Corps argues that it has transformed itself by changes it has implemented since 2000; these include refinements in planning, peer review (with the possibility of external review), and internal review.<sup>7</sup>

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<sup>7</sup> The Corps summarizes its efforts at [[http://www.usace.army.mil/inet/functions/cw/hot\\_topics/18apr\\_changes.htm](http://www.usace.army.mil/inet/functions/cw/hot_topics/18apr_changes.htm)], visited on December 6, 2005. The Corps released five new policy documents in 2005 to guide the agency’s planning activities. One was on collaborative planning of Corps projects that is an update to Corps planning guidance. Another set out processes for the peer review of scientific, engineering and economic information and assessments used to inform decision-making. Another established a Civil Works Review Board that approves the final planning reports before submitting them to the Chief of Engineers.

The debate over changing the Corps has evolved since 2000. As shown by S. 753 (Corps of Engineers Modernization and Improvement Act of 2005), some continue to support the Corps reform proposals that largely grew out of the exposure the Corps received in 2000. Others argue that any changes should move the agency in a different direction than the original measures pursued after the 2000 events. These stakeholders, like many nonfederal sponsors of Corps projects, want to increase the predictability of the Corps planning process, by making changes such as standardizing planning procedures, models, and data; limiting the length of studies; and requiring tracking of the agency's construction backlog. Another perspective is that the primary changes needed are those that address the Corps' backlog of projects through project formulation and funding priorities. In other words, there are many, sometimes competing, views of how to change the Corps that derive from fundamentally divergent perspectives of what, if anything, is wrong with Corps' practices.

One view is that Corps projects could be improved by increasing environmental considerations in project planning, implementing external review, and enacting more stringent requirements for fish and wildlife mitigation. Another view supports refinements to Corps planning, review, and mitigation that are aimed at limiting the length and increasing the predictability of the project development process, while not increasing costs. Consequently, the S. 728 and H.R. 2864 provisions that would change Corps planning, review, and fish and wildlife mitigation are the subject of some debate. The provisions in H.R. 2864 are largely the same as in the WRDA 2003 (H.R. 2557) bill that passed the House. Although these provisions increase environmental considerations and review of Corps projects, some environmental advocates argue that the measures are insufficient; supporters of streamlining the Corps practices have argued that the provisions are unnecessary and add only delay, cost, and uncertainty to an already lengthy project development and constructions process.

Although some elements of S. 728 are similar to provisions negotiated during Senate WRDA considerations in the 108<sup>th</sup> Congress, many elements of S. 728 are either new or significantly modified. As a result, there are key differences between the provisions in the House and Senate bills. For example, the independent review provisions in the two bills differ on what would be reviewed, and by whom. (For a more detailed analysis of the provisions, CRS Report RS22129, "*Corps of Engineers Reform*" in *WRDA 2005* (archived), by Nicole T. Carter, can be requested by contacting the author.)

The planning, review, and mitigation provisions are not the only provisions in S. 728 and H.R. 2864 changing Corps practices and policies. Other provisions of the two bills could be analyzed in the context of Corps reform; these include §2005 of S. 728, requiring a Corps fiscal transparency report; §2015 of S. 728, requiring cost-sharing for monitoring of ecosystem restoration projects; and §2025 of H.R. 2864, streamlining environmental review of Corps projects.

The Statement of Administration Policy for H.R. 2864 generally was critical of the bill's provisions regarding formulation and selection of projects. It criticized both the project planning provisions and the environmental streamlining provisions; however, it was supportive of the intent (but not the specifics) of the independent review provision. The Corps guidance released in 2005 comply with the Administration's policy on independent review.

**Upper Mississippi River-Illinois Waterway.**<sup>8</sup> The Upper Mississippi River and Illinois Waterway (UMR-IWW) is at the center of a debate over the future of inland navigation, the restoration of rivers used for multiple purposes, and the reliability and completeness of the Corps analyses justifying investments. Consequently, authorization of investments in navigation and ecosystem restoration of the UMR-IWW is playing a role in WRDA debates in the 109<sup>th</sup> Congress; topics being debated include the urgency, necessity, and national benefit of expanded UMR-IWW navigation capacity and ecosystem restoration.

The UMR-IWW is a 1,200-mile, 9-foot-deep navigation channel created by 37 lock-and-dam sites and thousands of channel structures. The UMR-IWW makes commercial navigation possible between Minneapolis and St. Louis on the Mississippi River, and along the Illinois Waterway from Chicago to the Mississippi River. It permits upper midwestern states to benefit from low-cost barge transport. Since the 1980s the system has experienced increasing traffic delays, purportedly reducing competitiveness of U.S. products in some global markets. The river is also losing the habitat diversity that allows it to support an unusually large number of species for a temperate river. This loss is partially attributable to changes in the distribution and movement of river water caused by navigation structures and operation of the 9-foot navigation channel.

The Corps' Chief of Engineers approved the agency's completed feasibility report on UMR-IWW improvements in December 2004.<sup>9</sup> The Corps' feasibility report failed to significantly reduce the debate over the urgency, necessity, and national benefit of expanded navigation capacity. (For an analysis of the navigation expansion decisions, see CRS Report RL32470, *Upper Mississippi River-Illinois Waterway Navigation Expansion: An Agricultural, Transportation, and Environmental Context*, coordinated by Randy Schnepf.) The Corps' ecosystem restoration plan has been less controversial than the navigation plan. There is general agreement that the ecosystem is declining and support for the 15-year increment of the Corps' 50-year ecosystem restoration plan. Debate over the restoration proposal focuses primarily on implementation strategies, including linkages between the ecosystem restoration and navigation investments, and the federal-nonfederal cost-share for restoration activities. For more information, see CRS Report RL32630, *Upper Mississippi River System: Proposals to Restore an Inland Waterway's Ecosystem*, by Kyna Powers and Nicole T. Carter.

The Corps' UMR-IWW feasibility report has been reviewed for compliance with Administration policy by the Assistant Secretary of the Army (Civil Works), and is being reviewed by OMB. The Statement of Administration Policy for H.R. 2864 was critical of that the bill's estimated 91% federal-9% nonfederal cost-share for ecosystem restoration for the Upper Mississippi River Basin. The Administration recommended a cost-share like the 50%-50% cost-share used for Florida Everglades restoration.

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<sup>8</sup> Prepared by Nicole Carter, Analyst in Environmental Policy, Resources, Science, and Industry Division.

<sup>9</sup> U.S. Army Corps of Engineers, *Final Integrated Feasibility Report and Programmatic Environmental Impact Statement for the UMR-IWW System Navigation Feasibility Study* (Rock Island District, St. Louis District, St. Paul District, Sept. 24, 2004), pp. 230 and 490. Hereafter referred to as UMR-IWW Final Feasibility Report. Available at [[http://www2.mvr.usace.army.mil/umr-iwwsns/documents/FINAL\\_FES\\_EIS\\_Report\\_Cover\(2004\).pdf](http://www2.mvr.usace.army.mil/umr-iwwsns/documents/FINAL_FES_EIS_Report_Cover(2004).pdf)], visited on December 1, 2005.

**UMR-IWW Navigation and Ecosystem Restoration Investments.** The authorizations of navigation ecosystem restoration investments for the UMR-IWW in S. 728 and H.R. 2864 are largely similar.<sup>10</sup> Section 1002 of S. 728 and §8003 of H.R. 2864 would authorize \$2.03 billion for the initial set of navigation improvements — seven new locks, small-scale and non-structural measures, and related environmental mitigation, in general conformance with the feasibility report. The bills, however, do not explicitly mention the adaptive implementation process recommended by the Corps nor many of the monitoring and study recommendations.<sup>11</sup>

Section 1002 of S. 728 and §8004 of H.R. 2864 would authorize \$1.58 billion for ecosystem restoration for the Upper Mississippi River Basin in accordance with the general framework outlined in the Corps feasibility report. However, neither bill mentions the Corps' proposal for an adaptive management approach, nor do they explicitly authorize dual-purpose management of the river for ecosystem restoration and navigation. S. 728 and H.R. 2864 appear to link ecosystem restoration and navigation improvements through a comparable progress provision. For a comparison of the ecosystem restoration and navigation authorization language and the Corps' recommendations, see CRS Report RL32915, *Upper Mississippi River-Illinois Waterway Investments: Legislation in the 109th Congress*, by Nicole T. Carter and Kyna Powers.

**Everglades Restoration.**<sup>12</sup> To date, the Corps' largest authorization for an ecosystem restoration effort has been in the Florida Everglades, with a three-decade, \$7.8 billion restoration program. Congress approved the Corps' implementation of the Comprehensive Everglades Restoration Plan (CERP) as a framework for Everglades restoration in WRDA 2000. For more information on Everglades restoration and implementation issues, see CRS Report RS22048, *Everglades Restoration: The Federal Role in Funding*, by Pervaze A. Sheikh and Nicole T. Carter.

The principal objective of CERP is to redirect and store freshwater currently diverted away from the Everglades to the ocean, and use it to restore the natural hydrologic functions of the south Florida ecosystem. WRDA 2000 authorized an initial set of CERP restoration projects, as well as \$700 million in federal funds to implement them, and established a process for additional projects contemplated in the 1999 CERP plan to be developed and authorized.<sup>13</sup> Authorization language for two of these additional projects — Indian River

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<sup>10</sup> One of the differences is that S. 728 directs that the investments are to be implemented in “general conformance” with Corps documents, while H.R. 2864 directs that implementation be “substantially in accordance with the [Corps documents] and subject to the conditions described therein.”

<sup>11</sup> The feasibility report was the result of a controversial feasibility study process that began in 1993. The final feasibility report stated that sufficient analysis had been completed to support an initial investment decision to be implemented using an adaptive approach that minimizes risk by controlling the magnitude of investment decisions; the report recommended that additional monitoring and study be performed in order to support decisions made under the adaptive implementation approach.

<sup>12</sup> Prepared by Pervaze A. Sheikh, Analyst in Environmental and Natural Resources Policy, Resources, Science, and Industry Division.

<sup>13</sup> U.S. Army Corps of Engineers, *Central and Southern Florida Project Comprehensive Review Study: Final Integrated Feasibility Report and Programmatic Environmental Impact Statement for* (continued...)

Lagoon-South (IRL-S) wetlands and estuarine restoration and the Picayune Strand ecosystem restoration (also known as Southern Golden Gates Estates ecosystem restoration) — is included in S. 728 and H.R. 2864. These two projects are the first projects to be developed under the process established in WRDA 2000; consequently, some view their fate as a test case of the CERP framework. Further, both bills would include the Hillsboro and Okeechobee Aquifer project as a part of CERP, and H.R. 2864 would increase the authorization of that project by \$12.2 million to \$39.2 million. This would place the project within the framework of CERP and the requirements of WRDA 2000.

With regard to modified water deliveries to the Everglades, H.R. 2864 states that the Secretary of the Army shall not raise Tamiami Trail until the project is authorized by law; and that the Secretary shall submit to Congress reports requesting authorization for changes in the projects to improve water deliveries to Everglades National Park, raise Tamiami Trail, and modify the C-111 canal. The Statement of Administration Policy for H.R. 2864 was critical of the Tamiami Trail language.

**Indian River Lagoon.** S. 728 and H.R. 2864 would authorize an IRL-S project estimated at \$1.2 billion (50% federal), as recommended by the Corps. The Corps recommended that Congress authorize this project to restore the IRL-S wetlands and estuary.<sup>14</sup> The Indian River Lagoon is a 156-mile long estuary, located at the mouth of the St. Lucie River in eastern Florida. The IRL-S has been altered by unnaturally large and poorly timed freshwater discharges arriving from the St. Lucie Canal and other elements of the Central and Southern Florida project. These discharges have altered water quality, and may have contributed to depleted water supplies in the Everglades ecosystem. The significance of these ecosystem problems is exacerbated by the high biodiversity found in the IRL-S.<sup>15</sup>

The Corps' report on the feasibility and implementation of the IRL-S has been reviewed for compliance with Administration policy by the Assistant Secretary of the Army (Civil Works), and is being reviewed by OMB. The recommended plan would divert some of the current flow to planned storage reservoirs as well as to disperse water throughout the IRL-S ecosystem. Four artificial reservoirs would store excess freshwater for agricultural uses in the area. Natural storage areas would be restored by acquiring nearly 93,000 acres of land. These storage areas would also improve native habitat (which is a goal of the larger Everglades restoration plan) and reduce phosphorus and nitrogen loads into the IRL-S. Further, the plan calls for removing an estimated 7.7 million cubic yards of "muck" and disposing it elsewhere. The recommended project has evolved since the activities proposed in CERP; in that document, the estimated cost for the activities that now make up the

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<sup>13</sup> (...continued)

*the Indian River Lagoon-South* (Jacksonville, FL, April 1999). Hereafter referred to as Corps, *CERP Plan*. Available at [[http://www.evergladesplan.org/pub/restudy\\_eis.cfm#mainreport](http://www.evergladesplan.org/pub/restudy_eis.cfm#mainreport)], visited on December 6, 2005.

<sup>14</sup> U.S. Army Corps of Engineers, *Final Integrated Project Implementation Report and Environmental Impact Statement for the Indian River Lagoon-South* (Jacksonville, FL: March 2004). Hereafter known as Corps, *IRL-S Final PIR*. Available at [[http://www.evergladesplan.org/pm/studies/irl\\_south\\_pir.cfm](http://www.evergladesplan.org/pm/studies/irl_south_pir.cfm)], visited on December 6, 2005.

<sup>15</sup> Corps, *IRL-S Final PIR*.

recommended IRL-S project was less than \$1 billion and consisted primarily of artificial storage reservoirs.<sup>16</sup>

Some supporters of the Indian River Lagoon restoration project argue that the project will improve the seabed floor and revive bottom-dwelling communities.<sup>17</sup> In the *IRL-S Final PIR*, the Corps states that IRL-S restoration will result in clean water transferred to Lake Okeechobee, thus improving the quality of water that moves through the ecosystem from the lake.<sup>18</sup> Others, however, suggest that even though the project will help the estuarine ecosystem, it will not completely attenuate freshwater flows from Lake Okeechobee, a problem that may have to be dealt with separately. Further, some believe that IRL-S restoration is localized and will have little impact on the Greater Everglades ecosystem. Another concern that has been raised is the increase in project cost.

***Picayune Strand Restoration.*** The Picayune Strand restoration project (also known as the Southern Golden Gates Estates project) is expected to cost \$349 million, of which the federal share would be \$175 million. S. 728 and H.R. 2864 would authorize the Picayune Strand restoration project. The Corps prepared a final Project Implementation Report and Environmental Impact Statement for Picayune Strand and solicited comments through December 19, 2004. After responding to comments and finalizing the report, the Chief of Engineers approved the final report on September 15, 2005; it is being reviewed for Administration policy compliance by the Assistant Secretary of the Army (Civil Works); OMB will perform a subsequent review. The proposal is to remove roads, canals, and other infrastructure, and is expected to increase freshwater flows to natural areas, lower freshwater surges to the ocean, and improve water quality.<sup>19</sup> The non-federal sponsor (the state of Florida) has spent nearly \$100 million of its share on land acquisition; most of the remaining project expenses are for design and construction of the project.<sup>20</sup>

The Picayune Strand project encompasses 86 square miles (approximately 55,000 acres) in Collier County, FL, and includes several federal and state lands, such as the Florida Panther National Wildlife Refuge, 10,000 Islands National Wildlife Refuge, and others. Residential development in the region has altered the landscape, changing the ecosystem. Some alterations include a lower watertable, which has diminished cypress-dominated

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<sup>16</sup> Corps, *CERP Plan*.

<sup>17</sup> For example, testimony of Eric Draper, Director of Policy, Audubon of Florida, before the U.S. Senate, Committee on Environment and Public Works, *U.S. Army Corps of Engineers and Water Resource Programs*, Hearing, 108<sup>th</sup> Cong., 2<sup>nd</sup> Sess., June 18, 2002 (Washington, DC: U.S. GPO).

<sup>18</sup> Corps, *IRL-S Final PIR*.

<sup>19</sup> *Ibid.*

<sup>20</sup> U.S. Army Corps of Engineers, *Southern Golden Gate Estates Hydraulic Restoration Project, Picayune Stand Restoration* (Washington, DC: June 2004), at [[http://www.evergladesplan.org/docs/fs\\_sgge\\_061504\\_english.pdf](http://www.evergladesplan.org/docs/fs_sgge_061504_english.pdf)], visited on December 6, 2005.

wetlands and has led to colonization by invasive species.<sup>21</sup> Other ecosystem alterations are degraded water quality and an increase in the severity and frequency of wildfires.

Some are concerned that unwilling sellers may delay or stall Picayune Strand restoration activities that depend on land acquisition. Nearly 98% of the land needed for restoring Picayune Strand is in public ownership and over 1,800 parcels (representing almost 1,500 landowners) have been acquired through eminent domain.<sup>22</sup> The accessibility of the Picayune Strand for recreation is another controversial issue for local residents. Some are concerned over the potential loss of recreational opportunities due to restoration; the state has responded that it will provide areas for off-road vehicles and other recreational activities.

**Coastal Louisiana Wetlands Restoration and Protection.**<sup>23</sup> Coastal wetlands in Louisiana have been disappearing at a high rate, and those losses are forecast to continue if no actions are taken to reverse current trends. Federal agencies, led by the Corps and in coordination with the state, developed several versions of plans to slow the rate of loss and restore some of these wetlands. The current Corps feasibility report was released in November 2004; it received a favorable recommendation in a Chief's report in late January 2005. The recommended measures in the feasibility report totaled an estimated \$1.997 billion. The Chief's report subdivided this total into three parts; it recommended that projects and programs totaling \$1.123 billion be authorized immediately, an additional \$145 million be spent on already authorized investigations of "large-scale concepts," and future authorization be pursued for ten features totaling \$728 million.

The Corps' feasibility report proposed activities to divert water from the Mississippi River to convey sediments into nearby wetlands, and to help stabilize the coastline. The federal government would pay about 64% of the total estimated cost. In the diversions, wetlands would gradually reestablish themselves on newly deposited sediments. For more information on the status of wetlands in coastal Louisiana and the evolution of the restoration plans, see CRS Report RL32673, *Coastal Louisiana: Attempting to Restore an Ecosystem*, by Jeffrey Zinn, and on the Corps' recommended actions, see CRS Report RS22110, *Coastal Louisiana Ecosystem Restoration: The Recommended Corps Plan*, by Jeffrey Zinn. For information on the impacts of Hurricanes Katrina and Rita on the wetlands, see CRS Report RS22276 *Hurricanes Katrina and Rita and the Coastal Louisiana Ecosystem Restoration*, by Jeffrey Zinn.

Section 1003 of S. 728, as ordered reported with amendments, would authorize the Louisiana Coastal Area program "substantially in accordance with" the Chief's report. The

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<sup>21</sup> U.S. Army Corps of Engineers, *Picayune Stand Restoration Final Integrated Project Implementation Report and Environmental Impact Statement* (Washington, DC: Sept. 2004), at [[http://www.evergladesplan.org/pm/projects/docs\\_30\\_sgge\\_pir\\_final.cfm#pir](http://www.evergladesplan.org/pm/projects/docs_30_sgge_pir_final.cfm#pir)], visited on December 6, 2005.

<sup>22</sup> Florida Dept. of Environmental Protection, *Statement by Florida Department of Environmental Protection Secretary Colleen M. Castille Regarding the Restoration of America's Everglades* (Tallahassee, FL: May 24, 2004); available at [[http://www.dep.state.fl.us/secretary/news/2004/may/0525\\_hardy.htm](http://www.dep.state.fl.us/secretary/news/2004/may/0525_hardy.htm)], visited on December 6, 2005.

<sup>23</sup> Prepared by Jeff Zinn, Specialist in Natural Resources Policy, Resources, Science, and Industry Division.

legislative language does not specify any dollar amounts, or federal and nonfederal shares of the total, so it appears the estimates in the Chief's report would be the authorized amounts. Provisions in §1003 state that of the projects identified in the Chief's report, priority is to be given to critical restoration features, to Mississippi River diversion projects that protect specified population centers and provide coastal environmental benefits, and to coastal barrier projects that are related to diversion projects and protect population centers. It also authorizes non-governmental organizations to pay the nonfederal portion of project costs.

Title VII of H.R. 2864, as introduced, by contrast, does specify dollar amounts, and would authorize a total of \$1.218 billion for many of the same activities that are recommended in the Corps report. It would provide a total of \$828.3 million for five projects that the Corps is ready to initiate. The amounts specified for each project are the same as in the Chief's report. It also would authorize funding levels requested in the Chief's report for demonstration projects and beneficial uses of dredged materials. It also would authorize \$130 million for feasibility studies "substantially in accordance with the Plan."

The Statement of Administration Policy for H.R. 2864 from July 2005 recommended a cost-share closer to 50% federal-50% nonfederal be used, and that the authorization of federal appropriations be limited to \$500, which "would cover the Federal share of roughly half of the costs of the near-term plan." The statement also recommended other changes to the Coastal Louisiana authorization, while generally being supportive of the effort.

Section 1003 of S. 728 also contains additional provisions. It calls on the Secretary, in coordination with the state, to develop a comprehensive plan for protection, preservation, and restoration within one year, to be updated every five years, and specifies that it include discussions of three topics, and consider incorporating related projects into the program laid out in the Chief's report. It would create a federal-state task force to make recommendations to the Secretary on many specified aspects of the coastal Louisiana effort, including the comprehensive plan. The only specific project included in these provisions is the Mississippi River Gulf Outlet (MRGO). The Corps would be required to develop a plan to modify MRGO in ways that would address six listed topics (e.g., hurricane storm surges and salt water intrusion) within a year of enactment. It would create a new science and technology program to develop better information about baseline conditions in coastal Louisiana. An amendment adopted during committee markup adds language describing the content of a National Academy of Sciences study, to be initiated within 180 days of enactment, on the causes and sources of degradation caused by any activities approved by the Secretary. The language in this subsection also would require the Corps to submit a feasibility report on the ten features identified in the Chief's report that are estimated to cost a total of \$728 million, for which the agency anticipates seeking future authorization; §1003 would authorize \$10 million for this report.

Title VII of H.R. 2864 also contains additional provisions, many of which are similar to those in §1003. In addition to having nearly identical requirements for a report on MRGO, it would also require the Corps to submit to Congress reports on the Barataria-Terrebonne Estuary and the Chenier Plain by July 1, 2006. It would require that a comprehensive plan be completed within five years of enactment. Like the House bill, it would create a federal-state task force to make recommendations to the Secretary on many specified aspects of the coastal Louisiana effort, including the comprehensive plan. However, the membership would be slightly different, with two additional federal agencies added to the roster, and the

three state positions being specified. Also, this bill would require a biennial report to Congress, rather than a report every five years. Title VII would also allow credit for certain prior non-federal contributions to projects, and also allow them to be transferred to any other project authorized in this title.

Hurricanes Katrina and Rita altered the debate over restoration proposals and the cost-share for restoration investments. Many restoration proponents are calling for a more extensive effort than the efforts in the WRDA bills; generally, they are supporting a \$14 billion proposal developed in the *Coast 2050 Plan* from 1998. The decisions for Congress will include whether to authorize any coastal Louisiana restoration effort and how extensive should the authorized effort be; these decisions may take place in the context of WRDA or other legislation (e.g., S. 1765 or S. 1766). For more information on how the hurricanes might influence consideration of restoration legislation, see CRS Report RS22276, *Hurricanes Katrina and Rita and the Coastal Louisiana Ecosystem Restoration*, by Jeffrey Zinn.

## LEGISLATION

### 109<sup>th</sup> Congress

#### **H.R. 2864 (Young)**

Water Resources Development Act of 2005. Received by the Senate on July 18, 2004.

#### **S. 728 (Bond)**

Water Resources Development Act of 2005. Placed on the Senate Calendar on April 26, 2005.

#### **S. 753 (Feingold)**

Corps of Engineers Modernization and Improvement Act of 2005. Introduced on April 11, 2005; and referred to the Committee on Environment and Public Works.

## FOR ADDITIONAL READING

### **Background**

CRS Report RS20866, *The Civil Works Program of the Army Corps of Engineers: A Primer*, by Nicole T. Carter and Betsy A. Cody.

CRS Report RL32064, *Army Corps of Engineers Water Resources Activities: Authorization and Appropriations*, by Nicole T. Carter and H. Steven Hughes.

CRS Report RS20569, *Water Resources Issues in the 109<sup>th</sup> Congress*, by Betsy A. Cody and H. Steve Hughes.

### **Authorizations and WRDA**

Congressional Budget Office, *Cost Estimate, H.R. 2557, Water Resources Development Act of 2003, as ordered reported by the House Committee on Transportation and Infrastructure on July 23, 2003*.

Executive Office of the President, Office of Management and Budget, *Statement of Administrative Policy on H.R. 2864* (made on July 14, 2005), available at [<http://www.whitehouse.gov/omb/legislative/sap/109-1/hr2864sap-h.pdf>], visited on December 6, 2005.

### **Project Development Reform**

CRS Report RS22129, “*Corps of Engineers Reform*” in *WRDA 2005* (archived), by Nicole T. Carter.

National Research Council, *New Directions in Water Resources: Planning for the U.S. Army Corps of Engineers* (Washington, DC: National Academy Press, 1999).

— *Adaptive Management for Water Resources Planning* (2004).

— *Analytic Methods and Approaches for Water Resources Project Planning* (2004).

— *River Basins and Coastal Systems Planning Within the U.S. Army Corps of Engineers* (2004).

— *U.S. Army Corps of Engineers Water Resources Planning: A New Opportunity for Service* (2004).

### **Upper Mississippi River-Illinois Waterway**

CRS Report RL32470, *Upper Mississippi River-Illinois Waterway Navigation Expansion: An Agricultural Transportation and Environmental Context*, Coordinated by Randy Schnepf.

CRS Report RL32630, *Upper Mississippi River System: Proposals to Restore an Inland Waterway’s Ecosystem*, by Kyna Powers and Nicole T. Carter.

CRS Report RL32915, *Upper Mississippi River-Illinois Waterway Investments: Legislation in the 109th Congress*, by Nicole T. Carter and Kyna Powers.

National Research Council, *Inland Navigation System Planning: The Upper Mississippi River-Illinois Waterway* (Washington, DC: National Academy Press, 2001).

— *Review of the U.S. Army Corps of Engineers Upper Mississippi-Illinois Waterway Restructured Study: Interim Report* (2003).

— *Review of the U.S. Army Corps of Engineers Restructured Upper Mississippi River-Illinois Waterway Feasibility Study: Second Report* (2004).

### **Everglades Restoration**

CRS Report RS20702, *South Florida Ecosystem Restoration and the Comprehensive Everglades Restoration Plan*, by Nicole T. Carter and Pervaze A. Sheikh.

CRS Report RS22048, *Everglades Restoration: The Federal Role in Funding*, by Nicole T. Carter and Pervaze A. Sheikh.

CRS Report RL32131, *Phosphorus Mitigation in the Everglades*, by Pervaze Sheikh and Barbara Johnson.

**Coastal Louisiana Wetlands Restoration**

CRS Report RS22110, *Coastal Louisiana Ecosystem Restoration: The Recommended Corps Plan*, by Jeffrey Zinn.

CRS Report RL32673, *Coastal Louisiana: Attempting to Restore an Ecosystem*, by Jeffrey Zinn.

CRS Report RS22276, *Hurricanes Katrina and Rita and the Coastal Louisiana Ecosystem Restoration*, by Jeffrey Zinn.

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