



Army Corps of Engineers Water Resource Projects: Authorization and Appropriations

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Summary

The U.S. Army Corps of Engineers undertakes activities to maintain navigable channels, reduce flood and storm damage, and restore aquatic ecosystems. Congress directs the Corps through authorizations, appropriations, and oversight of its studies, construction projects, and other activities. Historically, the agency's authorizations and appropriations have been largely project-based, with the projects being in specific locations. There is some uncertainty about legislation related to the Corps during the 112th Congress, in light of the House Republican Conference standing order in its conference rule and the Senate Republican Conference resolution supporting a moratorium on member earmark requests. This report summarizes congressional authorization and appropriations processes for the Corps and explains the standard Corps project development process. It also discusses agency activities under general authorities.

Authorization of Water Resources Activities. Congress generally authorizes Corps activities and provides policy direction in Water Resources Development Acts (WRDAs). Beginning in 1986, a biennial WRDA consideration was loosely followed; enactment has been less regular. The most recent WRDA was enacted in 2007 (P.L. 110-114). Pressure to authorize new projects, increase authorized funding levels, and modify existing projects promotes fairly regular WRDA consideration. WRDAs historically have been omnibus bills including many provisions for site-specific activities. Authorizations of many Corps activities were included under the House Republican Conference 2010 moratorium on members requesting earmarks. Congress also authorizes some studies through resolutions passed by an authorizing committee.

Annual Agency Appropriations. Federal funding is provided for most Corps civil works activities through annual Energy and Water Development appropriations acts or supplemental appropriations acts. At times appropriations acts also have included Corps authorizations. In part because of competition for funds and because Corps authorizations outpace appropriations, many authorized activities have not received appropriations. There is a backlog of more than 1,000 authorized studies and construction projects. In recent years, few new studies and new construction activities have been included in either the President's budget request or enacted appropriations. Most of the congressionally directed spending items added to the Corps budget have funded the continuation of ongoing Corps activities not included in the President's budget.

Standard Project Development. The standard process for a Corps project requires two separate congressional authorizations—one for investigation and one for construction—as well as appropriations. The investigation phase starts with Congress authorizing a study; if it is funded, the Corps conducts an initial reconnaissance study followed by a more detailed feasibility study. Congressional authorization for construction is based on the feasibility study. For most activities, Congress also requires a nonfederal sponsor to share some portion of study and construction costs. These cost-sharing requirements vary by the type of project. For many project types (e.g., levees), the nonfederal sponsors are responsible for regular operation and maintenance.

Other Corps Activities and Authorities. Although the project development process just described is standard, there are exceptions. Congress has granted the Corps some general authorities to undertake some studies, small projects, technical assistance, and emergency actions such as flood-fighting and repair of damaged levees. Additionally, the Corps conducts emergency response actions directed by the Federal Emergency Management Agency. Congress also has specifically authorized Corps participation in numerous environmental infrastructure projects (e.g., municipal water and wastewater treatment systems).

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Army Corps of Engineers

The U.S. Army Corps of Engineers is an agency in the Department of Defense with both military and civilian responsibilities. Under its civil works program, the Corps plans, builds, operates, and maintains a wide range of water resources facilities. The Corps attracts congressional attention because its projects can have significant local and regional economic benefits and environmental effects, in addition to their water resource development purposes.

Congress directs the Corps through authorizations, appropriations, and oversight of studies, construction projects, and other activities. There is some uncertainty about legislation related to the Corps during the 112th Congress, in light of the House Republican Conference standing order in its conference rule and the Senate Republican Conference resolution supporting a moratorium on member earmark requests.

This report provides an overview of the Corps civil works program. It covers the congressional authorization and appropriation process, the standard project development process, and other Corps activities and authorities. It provides a limited discussion of the earmark debate as it relates to Corps authorizations and appropriations. It describes the limits on the Corps' role in levee accreditation and improvements for the National Flood Insurance Program (NFIP). It also includes an **Appendix** on the evolution of Corps civil works missions and authorities.

Civil Works Responsibilities and Organization

The Corps' long-standing civil works responsibilities are creating and maintaining navigable channels and reducing flood and storm damage. Congress also has provided the Corps with an aquatic ecosystem restoration and environmental protection mission. Other Corps responsibilities include flood emergency and natural disaster response, such as flood-fighting, repair to damaged levees, and emergency water supply assistance. Congress also has authorized Corps participation in select environmental infrastructure projects (e.g., municipal water and wastewater treatment systems) and other nontraditional activities. The civil works program is led by a civilian Assistant Secretary of the Army for Civil Works. A military Chief of Engineers oversees the Corps' civil and military operations and reports on civil works matters to the Assistant Secretary for Civil Works. A Director of Civil Works reports to the Chief of Engineers. The Corps' civil works responsibilities are organized under eight divisions that are further divided into 38 districts.¹

Authorizations and Water Resources Development Acts

The Corps must have an authorization to undertake an activity. However, authorizations by themselves are usually insufficient for a Corps study or construction project to proceed; these typically must receive funding to proceed. Congress authorizes most Corps civil works activities in Water Resources Development Acts (WRDAs).² In addition, an authorizing committee can authorize a study to reexamine a geographic area previously studied by the Corps for a similar

¹A division map and district links are available at <http://www.usace.army.mil/about/Pages/Locations.asp>.

²WRDAs are distinguished from each other by referencing the year of enactment; that is, WRDA 1986 refers to the act passed in 1986, while WRDA 2007 refers to the last enacted WRDA from November 2007 (P.L. 110-114).

purpose.³ Some Corps studies that review operations of completed projects can proceed under general study authorizations without congressional action.⁴ Authorizations at times have appeared in appropriations bills, especially in years when a WRDA is not enacted. Authorizations in appropriations bills, however, are discouraged. If they are included in a bill, they can be subject to a point of order on the floor for being non-germane.

WRDAs generally authorize Corps studies, projects, and programs and establish policies for Corps civil works activities, such as cost-share requirements. A WRDA for the most part is not a reauthorization bill, but an authorization bill. That is, it authorizes new activities that are added to the pool of existing authorized activities. Project authorizations in WRDAs usually fall into three general categories: studies, projects, and modifications to existing authorizations. WRDAs also can contain general civil works policy provisions. WRDAs do not appropriate funds for activities; WRDAs simply provide the authority for funds to subsequently be provided and used.

WRDA Process

Beginning in 1986, a biennial WRDA cycle was loosely followed for a number of years. WRDAs were 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).⁵ Pressure to authorize new projects, increase authorized funding levels, and modify existing projects is often intense, thus promoting a fairly regular biennial consideration of WRDA, although enactment has been less consistent. Controversial project authorizations and disagreements over the need for and direction of changes to the way the Corps plans, constructs, and operates projects contributed to WRDA bills not being enacted in the 107th, 108th, and 109th Congresses. The 110th Congress enacted WRDA 2007 in November 2007, overriding a presidential veto. It authorized \$29.8 billion in Corps activities.⁶ With enactment of WRDA 2007, the Corps now has an estimated “backlog” of more than 1,000 authorized activities, with authorized funding estimated to exceed \$80 billion.⁷

Once a committee of jurisdiction—the House Transportation and Infrastructure (T&I) Committee or the Senate Environment and Public Works (EPW) Committee—decides to consider a WRDA, members of Congress may request that the appropriate committee chair include general provisions or site-specific study authorizations, project authorizations, or project modifications.⁸ Starting with WRDA 2007, the member or members of Congress requesting site-specific provisions generally have been listed in a table of congressional earmarks included in the report accompanying reported WRDA bills.

³ Sec. 4 of the Rivers and Harbors Act of 1913 (37 Stat. 801, 33 U.S.C. §542).

⁴ Section 216 of the Flood Control Act of 1970 (P.L. 91-611, 33 U.S.C. §549a).

⁵ WRDA 1986 marked the end of a stalemate between the Congress and the executive branch regarding authorizations. It resolved long-standing disputes related to cost-sharing, user fees, and environmental requirements. Prior to 1986, disputes over these and other matters had largely prevented enactment of major civil works legislation since 1970. Biennial authorizations were resumed after WRDA 1986 to avoid long delays between the planning and execution of projects and so that Congress could review proposed projects on a regular basis.

⁶ Data provided by the Corps to CRS in March 2010. The \$29.8 billion total represents \$21.8 billion in federal investments and \$8 billion in nonfederal investments.

⁷ Estimates of the Corps backlog vary widely; \$58 billion was cited before passage of WRDA 2007.

⁸ If the Administration proposes a WRDA, Congress generally receives the proposal during February of the second year of a Congress, at the same time as the President’s budget. There have been no Administration-proposed WRDA bills transmitted to Congress in recent years.

Most Recent WRDA Consideration

The authorizing committee develops a bill for introduction. Drafting often occurs after the committee receives member requests for specific activities or general provisions, and at times after receiving draft legislative language from the Administration. The Water Resources Development Act of 2010, H.R. 5892, was reported on September 29, 2010. Its sponsors estimated that the bill contained \$6 billion in authorizations. The Congressional Budget Office estimated the bill as reported would cost \$1.3 billion to implement from 2011 to 2015.⁹ The Senate EPW Committee accepted member requests for a WRDA bill in spring 2010 and held a hearing on November 17, 2010.

Consideration of WRDA 2010 in the House was complicated by the House Republican Conference moratorium on members requesting congressional earmarks in 2010, which included requests for both authorizations and appropriations.¹⁰ WRDAs historically have been omnibus bills including many provisions for site-specific activities. H.Rept. 111-654, accompanying the House Transportation and Infrastructure Committee-reported version of H.R. 5892, included a statement of “minority views” that cited numerous reasons, including economic conditions, for not supporting the bill at the time.

Others express concerns about the growing backlog of already authorized Corps projects and suggest that another WRDA could exacerbate the backlog. These interests argue that the primary purpose of the next WRDA bill should be to establish authorization and funding priorities, manage the backlog, and improve performance at the project and agency level.

In contrast, some stakeholders contend that consideration of a new WRDA is warranted. They note that WRDA is an authorization bill and that federal appropriations related to these Corps activities are handled separately through appropriations legislation. Some of these stakeholders also assert that WRDA 2007 addressed pent-up demand for project authorizations that had accumulated since passage of WRDA 2000, and that another WRDA is needed to re-establish regular authorization of Corps projects to address the nation’s water resources needs. These stakeholders also argue that water resource projects can provide both short-term employment and long-term economic and environmental benefits.

A number of other issues also are sources of support for consideration of a WRDA. These include unresolved issues regarding management of the Inland Waterways Trust Fund¹¹ and Corps projects that require or desire congressionally authorized modifications. Other drivers include interest in actions supporting a national levee safety policy and interest among some communities affected by FEMA floodplain remapping in Corps assistance with levee technical assistance and improvements.

⁹ H.Rept. 111-654, p. 89.

¹⁰ The House Republican Conference moratorium in the 111th Congress reportedly referred to the House Rules XXI for defining the term earmark. That House rule defined an earmark to include provisions or committee reports “authorizing” some activities. The House Republican Conference moratorium for the 112th Congress and House Rule XXI for the 112th Congress are similarly worded. The Senate Rule XLIV paragraph 5 similarly defines a “congressionally directed spending item” to include some authorizing provisions; for the full definition, see <http://rules.senate.gov/public/index.cfm?p=RuleXLIV>.

¹¹ For more information on issues associated with inland waterways, see CRS Report R41430, *Inland Waterways: Recent Proposals and Issues For Congress*, by Charles V. Stern.

Energy and Water Development Appropriations

The rate of Corps authorizations exceeds the rate of the agency's annual appropriations. Consequently, only a subset of authorized activities are included in the President's budget request and funded by enacted appropriations. This results in competition for funds among authorized activities during the appropriations process. To concentrate limited resources and to move ongoing projects toward completion, budget requests by the George W. Bush and Obama Administrations have focused funding on projects near completion, and limited new studies and projects. Both Administrations also have focused funds on projects within the Corps' primary missions of flood and storm damage reduction, navigation, and aquatic ecosystem restoration. CRS Report R41150, *Energy and Water Development: FY2011 Appropriations*, and CRS Report R40216, *Water Infrastructure Funding in the American Recovery and Reinvestment Act of 2009*, discuss issues associated with recent Corps civil works appropriations.

Enacted annual Corps civil works appropriations (excluding supplemental appropriations) have remained steady or increased slightly over the last decade, ranging from \$4.5 to \$5.5 billion in recent years. As Corps inventory of infrastructure grows and ages, an increasing share of the agency's appropriations is used for operations and maintenance; these activities represented 44% of the agency's FY2010 civil works appropriations.

Roughly 85% of the Corps budget is for geographically specified studies or projects. Such studies and projects generally are identified in justification materials submitted as part of the Administration's budget request and in reports accompanying Energy and Water Development appropriations bills. Geographically specific projects added by Congress often have been a significant part of the congressional direction provided in appropriations legislation. This has made the agency's funding part of the debate over earmarking (also referred as congressionally directed spending). Site-specific line items added or altered by Congress have been subject to House and Senate chamber rules on earmark disclosure.

Recent congressional appropriations have funded a larger set of Corps studies and projects than proposed by the Administration, but few of these have been for recently authorized studies or projects, which are often referred to as "new starts." The congressionally directed additions have largely been to continue ongoing activities not included in the President's budget. This means that the majority of the new studies and construction projects authorized in WRDA 2007 have received no appropriations.

Congress generally has included a few new starts in enacted appropriations bills in addition to the few new starts included in the President's Budget. In FY2011, however, the Senate Appropriations Committee proposed not only adding no new congressional starts but also deleting two new construction starts in the Administration's budget request.¹²

¹² U.S. Congress, Senate Committee on Appropriations, *S.Rept. 111-228*, Report to accompany S. 3635, 111th Cong., 2nd sess., July 22, 2010. In the 111th Congress, the House did not report an FY2011 Energy and Water Development Appropriations bill.

Nonfederal Funds: A Possible Route for Some Unbudgeted Corps Activities to Proceed Under an Earmark Moratorium?

A few limited general authorities exist that allow nonfederal project sponsors using nonfederal funds to conduct navigation and flood control studies or perform construction work that would more typically be performed by the Corps. These authorities may receive some attention during the 112th Congress as stakeholders seek ways to proceed with water resources activities not included in the President's budget request for the Corps or otherwise funded through congressional appropriations. These authorities include the following.

- § 211 of WRDA 1996, as amended (P.L. 104-303, 33 U.S.C. § 701b-13) provides that a nonfederal interest may undertake flood control activities, including studies and construction, and later may be reimbursed (subject to the availability of federal funds) or credited for its portion of the work subject to the approval of the Secretary of the Army.
- § 203 of WRDA 1986 (P.L. 99-662, 33 U.S.C. § 2231) provides that a nonfederal interest may use its funds to undertake a study of a proposed harbor or inland harbor project and may be credited for its portion of the work subject to the Secretary's approval.
- § 204 of WRDA 1986, as amended (P.L. 99-662, 33 U.S.C. § 2232) provides that a nonfederal interest may perform navigation construction activities for authorized projects with the Secretary's approval, and may be reimbursed for the nonfederal portion of the construction work if federal funds become available.

These authorities, especially the navigation authorities, have not been used widely; they come with risks and challenges and can require significant up-front financing by nonfederal interests. For example, Corps studies and construction projects must comply with applicable federal laws and regulations, a process which is not simple. Producing a compliant study or construction project may be a challenge for many nonfederal interests that lack the Corps' experience. One way the above authorities have been used in the past is for the nonfederal interest to use its own funds to hire the Corps to perform some of the work. Currently, there are uncertainties about whether nonfederal interests can use their funds to hire the Corps to perform work to support study or construction activities undertaken under the above authorities. It depends on the interpretation and implementation of § 211 of the Water Resources Development Act of 2000 (P.L. 106-541, 31 U.S.C. 6505), commonly known as the Thomas Amendment. This provision limits the Corps to performing only those specialized or technical services that cannot be reasonably and quickly provided by the private sector, and it requires the Secretary to certify that the Corps is uniquely equipped to perform the services. Similarly, some uncertainty exists about the mechanism and how quickly reimbursement may take place, given both the current fiscal climate and restrictions on Corps reprogramming activities in recent years.

Standard Corps Project Development Process

This section and its subsections describe the study and construction process for most Corps water resources projects. The next section describes some exceptions to the standard process. The standard process has the following basic steps (also see **Table 1**):

- Congressional study authorization is obtained in WRDA or a committee resolution.
- The Corps performs a reconnaissance study using appropriated funds.
- The Corps performs a feasibility study if the reconnaissance study is favorable and funds are appropriated.
- Congressional construction authorization is pursued. The Corps can perform preconstruction engineering and design while construction authorization.
- Congress authorizes construction, and the Corps constructs the project using appropriated funds.

Table 1. Corps Project Phases, Average Duration, and Federal Cost

	Reconnaissance	Feasibility	Preconstruction Engineering and Design	Construction	O&M
Avg. Duration (years)	1	2-3	approx. 2	varies	authorized project duration
Federal Share of Costs	100%	50% ^a	varies by project purpose ^b	varies, see Table 2	varies, see Table 2

- a. Inland waterways feasibility studies are a 100% federal responsibility (33 U.S.C. § 2215). These projects are not considered “local” by their nature.
- b. In most cases, preconstruction planning and engineering costs shares are the same as the construction cost-shares in **Table 2**.

The process is not automatic. Appropriations are required to perform studies and to undertake construction; that is, congressional study and construction authorizations are necessary but insufficient for the Corps to pursue a project. For most activities, the Corps also needs a nonfederal sponsor to share the study and construction costs. Nonfederal sponsors generally are state, tribal, county, or local agencies or governments. Although sponsors typically need to have some taxing authority, some Corps activities can be cost-shared with nonprofit and other entities. Since WRDA 1986 (P.L. 99-662), nonfederal sponsors are responsible for a significant portion of the financing of studies, construction, and operation and maintenance (O&M) of most projects.

Study Authority to Initiate a Corps Project

A Corps project starts with a study of the water resource issue and alternatives to address it. The purpose of the Corps study process is to inform federal decision-makers on whether there is a federal interest in authorizing a Corps construction project. The Corps generally requires two types of congressional action to initiate a study—study authorization and then appropriations. Interest in Corps assistance with a water resource need often originates with a request from a local or state government entity or community, business, or other local interests.

If the Corps has performed a study in the geographic area before, a new study can be authorized by a resolution (known commonly as a “survey resolution”) of either the House T&I Committee or the Senate EPW Committee.¹³ To be eligible for a resolution authorization, the new study must stay within the scope of the authorization of the original completed report. If the Corps has not previously investigated, Congress needs to authorize the study in legislation, typically WRDA.

Once a study is authorized, appropriations are sought through the annual Energy and Water Development appropriations acts. Within the Corps, projects are largely planned at the district level, then approved at the division and Corps headquarters. Early in the study process, the Corps assesses the level of interest and support of nonfederal entities that may be potential sponsors. The reconnaissance study, feasibility study, and preconstruction engineering and design are

¹³ To request a study’s inclusion in a resolution, a member of Congress may send a letter to the chairman of the House Committee on Transportation and Infrastructure or the Senate Committee on Environment and Public Works. The number of studies authorized by resolution varies by Congress. The 108th Congress authorized 63 studies via survey resolutions; the 109th Congress authorized 29.

conducted under a single congressional study authorization. The length of each phase varies by project, with larger and more complex projects typically requiring a longer process.

Reconnaissance Study

The reconnaissance study investigates the nature of the water resources problem and assesses the federal government's interest. The reconnaissance study also examines the interest of nonfederal sponsors, who are involved in all phases of project development. Corps policy is to complete most reconnaissance studies within 12 months. The costs of reconnaissance studies and their related project study plans generally are limited to \$100,000 at full federal expense. Around one-third of reconnaissance studies eventually lead to feasibility studies; only 16 of every 100 reconnaissance studies lead to constructed projects.¹⁴

Feasibility Study and Construction Authorization

If a nonfederal sponsorship is secured and the Corps recommends proceeding, a feasibility study begins. The cost of the feasibility study (including related environmental studies) is split equally between the Corps and the nonfederal project sponsor, as shown in **Table 1**. The objective of the feasibility study is to formulate and recommend solutions to the water resources problem identified in the reconnaissance phase. During the first few months of a feasibility study, the local Corps district formulates alternative plans, investigates engineering feasibility, conducts benefit-cost analyses, and assesses environmental impacts under the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. § 4321).¹⁵ The evaluation of federal water resources projects, including Corps activities, is governed by the 1983 *Principles and Guidelines for Water and Related Resources Implementation Studies*, written by the Water Resources Council, and policy direction provided in WRDA bills and other enacted legislation.¹⁶ An important outcome of the feasibility analysis is determination of whether the project warrants further federal investment (i.e., whether it has sufficient national economic development benefits).

The feasibility phase ends when the Chief of Engineers signs a final recommendation on the project, known as the Chief's Report. The Corps sends an informational copy of the Chief's Report to Congress when it transmits the report to the Assistant Secretary and the Office of Management and Budget (OMB). Since the mid-1990s, Congress has authorized a significant number of projects based on these informational copies, prior to the projects receiving a full review by the Assistant Secretary and OMB. Congress also has authorized construction of projects prior to the availability of information copies of feasibility studies; these construction authorizations generally are contingent on a favorable Chief's Report or a determination of feasibility by the Secretary of the Army.

¹⁴ General Robert B. Flowers, Army Corps Chief of Engineers, oral statement, *Reforms to Address the Corps of Engineers Feasibility Studies*, hearing before Senate Environment and Public Works Subcommittee on Transportation and Infrastructure on March 15, 2001, available at http://epw.senate.gov/stm1_107.htm. More recent statistics are not publicly available.

¹⁵ Generally, the district produces an environmental impact statement (EIS) during the feasibility phase. Preparation includes public meetings to determine the view of local interests on the extent and type of improvement desired.

¹⁶ Available at <http://www.usace.army.mil/CECW/Pages/pgr.aspx>. Pursuant to WRDA 2007, the Administration is updating the *Principles and Guidelines*; information on the revision process is available at <http://www.whitehouse.gov/administration/eop/ceq/initiatives/PandG>.

Cost Shares for Construction and Operation and Maintenance

The feasibility study also evaluates how construction costs will be split between the federal government and the nonfederal sponsor. The split of federal and nonfederal financial responsibilities for construction and O&M varies by project purpose, as shown in **Table 2**. The Corps' project development process is organized around projects with primary purposes of navigation, flood and hurricane damage reduction, and/or aquatic ecosystem restoration. While these are the primary purposes, the agency has the authority to undertake activities with other purposes as part of multi-purpose projects. **Table 2** lists these additional project purposes, which can be added to a project that has at least one of the three primary purposes at its core.

How to allocate the construction and O&M costs of Corps projects among nonfederal sponsors and the federal government has been debated for decades. WRDA 1986 significantly increased local cost-share requirements; some subsequent WRDAs made further adjustments in cost sharing. The waiving of cost-share requirements for individual projects is infrequent and requires specific authority. Congress has established that the cost shares shall be subject to the nonfederal sponsors' ability to pay (33 U.S.C. §2213(m)(2)).¹⁷ Which contributions should be credited toward the nonfederal cost share—for example, in-kind services and work performed prior to the signing of a construction agreement—has also been debated; Section 2003 of WRDA 2007 (42 U.S.C. § 1962d-5b) provided congressional direction on this subject.

Engineering and Design

The study phase—preconstruction engineering and design—that follows the feasibility analysis takes two years, on average, and is conducted while pursuing congressional authorization for the project and construction funding (33 U.S.C. 2287). The preconstruction costs are distributed between the federal and nonfederal sponsor in the same proportion as the cost-share arrangement for the construction phase. Once the project receives congressional authorization, federal funds for construction are sought in the annual Energy and Water Development Appropriations Act. The federal cost share for construction varies by project purpose. Nonfederal parties are responsible for all operation and maintenance expenses, absent a few exceptions mainly for harbors and inland waterways.

Changes After Construction Authorization

A project is likely to undergo some changes after authorization. If project features or the estimated cost changes significantly, additional congressional authorization may be necessary. Authorization for a significant modification is typically sought in a WRDA. For less significant modifications, additional authorization is often not necessary. Section 902 of WRDA 1986 (33 U.S.C. § 2280) allows for increases in total project costs of up to 20% without additional authorization for modifications that do not *materially* change the project's scope or function.

¹⁷ The most recent publicly available guidance on how the Corps implements the ability to pay provision is from 1989, which is available at <http://140.194.76.129/publications/eng-regs/er1165-2-121/toc.htm>. It does not reflect enacted changes in the Corps authority, including those in Sec. 2019 of WRDA 2007.

Table 2. Cost-Shares for Construction and Operation of New Corps Projects

Project Purpose	Maximum Federal Share of Construction	Maximum Federal Share of O&M
Navigation		
Coastal Ports—		
<20 ft. harbor	80% ^a	100% ^b
20-45 ft. harbor	65% ^a	100% ^b
>45 ft. harbor	40% ^a	50% ^b
Inland Waterways	100% ^c	100%
Flood and Hurricane Damage Reduction		
Inland Flood Control	65%	0%
Coastal Hurricane and Storm Damage Reduction except Periodic Beach Nourishment	65% 50%	0% 0%
Repair of Damaged Flood and Coastal Storm Projects		
Locally Constructed Flood Projects	not applicable	80% ^d
Federally Constructed Flood and Coastal Projects	not applicable	100% ^d
Aquatic Ecosystem Restoration	65%	0%
Multi-Purpose Project Components		
Hydroelectric Power	0% ^e	0%
Municipal and Industrial Water Supply Storage	0%	0%
Agricultural Water Supply Storage	65% ^f	0%
Recreation at Corps Facilities	50%	0%
Aquatic Plant Control	not applicable	50%
Environmental Infrastructure (typically municipal water and wastewater infrastructure)	75% ^g	0%

Source: 33 U.S.C. §§ 2211-2215, unless otherwise specified below.

- a. These percentages reflect that the nonfederal sponsors pays (10%, 25%, or 30%) during construction and an additional 10% over a period not to exceed 30 years.
- b. Appropriations from the Harbor Maintenance Trust Fund, which is funded by collections on commercial cargo imports at federally maintained ports, are used for 100% of these costs.
- c. Appropriations from the Inland Waterway Trust Fund, which is funded by a fuel tax on vessels engaged in commercial transport on designated waterways, are used for 50% of these costs.
- d. 33 U.S.C. § 701n. Repair assistance is restricted to projects eligible for and participating in the Corps' Rehabilitation and Inspection Program and to fixing damage caused by natural events, not regular maintenance or betterments.
- e. Hydroelectric capital costs initially are federally funded and are repaid by fees collected from power customers.
- f. For the 17 western states where reclamation law applies, irrigation costs initially are funded by the Corps but repaid by nonfederal water users.
- g. Most environmental infrastructure projects are authorized with a 75% federal cost share; a few have a 65% federal cost share.

Study and Project Deauthorization

Although WRDA is generally an authorization bill, Congress at times has used WRDA to reauthorize activities that would soon expire under established deauthorization processes or that have already been deauthorized. Authorizations of Corps construction projects generally are not time-limited; however, there is a process to begin deauthorization of projects that have been without funding for five years. In WRDA 1986, as modified by later legislation, Congress established deauthorization processes for Corps studies and projects unless congressional appropriations action is taken. Under 33 U.S.C. § 2264, every year the Secretary of the Army transmits a list to Congress of incomplete authorized studies that have not received funds for five full fiscal years. The study list is not published in the *Federal Register*. Congress has 90 days after submission to appropriate funds; otherwise the study is deauthorized. Under 33 U.S.C. § 579a(b)(2), every year the Secretary also transmits to Congress a list of authorized projects and separable elements of projects that have not received funding during the last full five fiscal years. The project deauthorization list is published in the *Federal Register*. If funds are not obligated for the planning, design, or construction of the project or element during the fiscal year following that in which the list is transmitted, the project or element is deauthorized.

Other Corps Activities and Authorities

Although the project development process described above is standard, there are exceptions. The Corps has some general authorities to undertake small projects, technical assistance, and emergency actions. Congress also has specifically authorized the Corps to undertake numerous municipal water and wastewater projects. These exceptions are described herein.

Small Projects Under Continuing Authorities Programs

The Corps' authorities to undertake small projects are called Continuing Authorities Programs (CAPs). Projects under these authorities can be conducted without obtaining a project-specific study or construction authorization or project-specific appropriations; these activities can be performed at the discretion of the Corps. For most CAP authorities, Congress has limited the size and scope of the projects, as shown in **Table 3**.¹⁸ The CAPs are typically referred to by the section number in the bill where the CAP was first authorized. In recent years, Congress has reduced the Corps' discretion in managing the CAPs by directing funds to particular CAP projects. Congress also increasingly has authorized specific CAP projects. Some of these project-specific authorizations under the CAPs are used to apply special rules to a project or to ensure that a project is considered eligible under a particular CAP. Demand for CAP projects have increased in recent years. **Table 3** shows the backlog of projects competing for CAP funding.

¹⁸ There is also an authority under 33 U.S.C. § 610 for the Corps to control noxious aquatic plant growths at a 70% federal - 30% nonfederal cost share; the authority is capped at \$15 million annually. This authority has not been operated as a CAP. Most, but not all, of the work under this authority has been for research.

Table 3. Select Corps Continuing Authorities Programs

(in \$ millions)

Authority	Eligible Activities	Max. Federal Construction Cost Share	Per-Project Federal Limit	Annual Federal Program Limit	FY2010 Approp.	Est. Federal Backlog of Active Projects ^a	Est. Federal Backlog of Un-started Projects ^b
Sec. 14	Streambank and shoreline erosion of public works and nonprofit services	65%	\$1.5	\$15.0	\$5.8	\$37.2	\$35.5
Sec. 103	Beach erosion and hurricane storm damage reduction	65%	\$5.0	\$30.0	\$3.9	\$39.7	\$12.0
Sec. 107	Navigation improvements	Varies as shown in Table 2 for commercial navigation; 50% for recreational navigation	\$7.0	\$35.0	\$6.3	\$101.1	\$23.9
Sec. 111	Prevention or mitigation of shore damage caused by federal navigation projects	Shared in the same portion as the project causing the damage	\$5.0	n.a.	\$6.0	\$46.7	\$0.8
Sec. 204, Sec. 207, Sec. 993	Regional sediment management/beneficial use of dredged material	65%	\$5.0	\$30.0	\$7.8	\$30.0	\$4.2
Sec. 205	Flood control	65%	\$7.0	\$55.0	\$37.8	\$310.4	\$93.8
Sec. 206	Aquatic ecosystem restoration	65%	\$5.0	\$50.0	\$27.1	\$369.8	\$98.7
Sec. 208	Removal of obstructions, clearing channels for flood control	65%	\$0.5	\$7.5	\$0.0	\$0.4	\$2.0
Sec. 1135	Project modifications for improvement of the environment	75%	\$5.0	\$40.0	\$24.2	\$173.1	\$41.5

Source: CRS, compiled from H.Rept. 111-278, and Corps documents, including Appendix F of Planning Guidance Notebook, Engineering Regulation 1105-2-100, available at <http://140.194.76.129/publications/eng-regs/er1105-2-100/a-f.pdf>, and Corps provided data to CRS in May 2010.

Note: n.a. = not applicable

- a. This backlog is the federal share of active projects (i.e., projects that have received some CAP funds in the last four fiscal years) before the FY2010 appropriations.
- b. This backlog is the federal share of un-started projects (i.e., projects for which nonfederal sponsors have approached the Corps and that received no CAP funding prior to FY2010) before the FY2010 appropriations.

Technical Assistance

Congress has also granted the Corps some general authorities to provide technical assistance. The Corps does not need project-specific authority to undertake activities that are eligible under the authorities listed in **Table 4**.

Table 4. Corps Technical Assistance Authorities

(in \$ millions)

Program	Activities Authorized	Maximum Federal Cost Share	Federal Share Per-Project Limit	Annual Federal Program Limit	FY2010 Appropriations
Planning Assistance to States	Technical assistance to states and communities with water resources planning on a regional and comprehensive scope	50%	\$0.5 annually per state	n.a.	\$7.161
Flood Plain Management Service	Technical assistance on flood and floodplain issues	100% for eligible activities	n.a.	\$15.0	\$8.059
Tribal Partnership Program	Studies of water projects that benefit Indian tribes	50% ^a	\$1.0	n.a.	\$0.852

Source: CRS, compiled from H.Rept. 111-278, and Corps documents, including Appendix G of Planning Guidance Notebook, Engineering Regulation 1105-2-100, available at <http://140.194.76.129/publications/eng-regs/er1105-2-100/a-g.pdf>.

Note: n.a. = not applicable

- a. Section 203 of WRDA 2000 (P.L. 106-541) states that any cost sharing for this CAP shall be subject to the ability of the nonfederal entity to pay. A draft "Ability to Pay" rule is under development. When finalized, this rule will apply to these studies. Until then, reductions in nonfederal costs are not to be applied.

Natural Disaster and Emergency Response Activities

National Response Framework Activities Under FEMA

The Stafford Act (42 U.S.C. § 5170b) authorizes the Federal Emergency Management Agency (FEMA) to direct the Department of Defense to provide assistance for a major disaster or under an emergency declaration by the President. Under the National Response Framework,¹⁹ the Corps coordinates emergency support for *public works and engineering*. This includes technical assistance, engineering, and construction management as well as emergency contracting, power, and repair of public water and wastewater and solid waste facilities. The Corps also assists in monitoring and stabilizing damaged structures and demolishing structures designated as immediate hazards to public health and safety. It also provides technical assistance in clearing, removing, and disposing of contaminated and uncontaminated debris from public property, and

¹⁹ The framework is available at http://www.dhs.gov/xprepresp/committees/editorial_0566.shtm.

establishing ground and water routes into affected areas; contaminated debris management is coordinated with the U.S. Environmental Protection Agency. The Corps' funding for these activities is provided through FEMA appropriations, often through supplemental appropriations.

Flood-Fighting and Emergency Response

In addition to work performed as part of the National Response Framework, P.L. 84-99 (33 U.S.C. § 701n) provides the Corps with authority for emergency response and disaster assistance.²⁰ P.L. 84-99 authorizes disaster preparedness, advance measures, emergency operations (disaster response and post-flood response), rehabilitation of flood control works threatened by floods, protection or repair of federally authorized shore protection works threatened by coastal storms, emergency dredging, and flood-related rescue operations. These activities are limited to actions to save lives and protect improved property (public facilities/services and residential or commercial developments). Most of the disaster response work performed under this authority (including the repair program described below) is funded through supplemental appropriations provided directly to the Corps.

Repair of Damaged Levees and Other Flood and Storm Projects

P.L. 84-99 also authorizes the Corps to rehabilitate damaged flood control works (e.g., levees) and federally constructed hurricane or shore protection projects (e.g., federal beach nourishment projects) and to conduct related inspections. This authority is referred to as the Rehabilitation and Inspection Program (RIP). To be eligible for rehabilitation assistance, the project must be in active status at the time of damage by wind, wave, or water action other than ordinary nature.²¹ Active RIP status is maintained by proper project maintenance as determined during an annual or semiannual inspection and by the correction of deficiencies identified during periodic inspections.²² Approximately 14,000 miles of levees participate in RIP—2,250 miles of locally constructed and operated levees; 9,650 miles of Corps-constructed, locally operated levees; and 2,100 miles of federally operated levees.²³

For locally constructed projects, 80% of the cost to repair the damage is paid using federal funds and 20% by the levee owner (as shown in **Table 2**). For federally constructed projects, the repair cost is entirely a federal responsibility (except for cost of obtaining the sand or other material used in the repair). For damage to be repaired, the Corps must determine that repair has a favorable benefit-cost ratio. Local sponsors assume any rehabilitation cost for damage to an active project attributable to deficient maintenance.

²⁰ The Corps also has other limited authorities related to emergency response (e.g., an Emergency Streambank and Shoreline Erosion Protection program) and recovery (e.g., a Snagging and Clearing for Flood Control program).

²¹ 33 U.S.C. § 701n. For more information on RIP, see U.S. Army Corps of Engineers, Engineer Regulation 500-1-1, *Emergency Employment of Army and Other Resources Civil Emergency Management Program*, available at <http://140.194.76.129/publications/eng-regs/>.

²² An aspect of RIP implementation receiving attention is the Corps' guidance on vegetation on levees. Some levee owners are having difficulty conducting regular maintenance and emergency repairs while also complying with environmental laws, such as the Endangered Species Act. In some areas, the vegetation on and near levees provides species habitat and other environmental benefits. This and other environmental issues associated with levee maintenance are beyond the scope of this report.

²³ Corps data provided to CRS on April 30, 2010. In January 2009, the Corps published a temporary extension of RIP to locally operated levees with deficient conditions if the owner is making system-wide improvements. It is available at <http://www.iwr.usace.army.mil/nfrmp/docs/HQS-ECOPY3150-Exchange-01132009-162045.pdf>.

A common issue under RIP is levee owners' interest in not only levee repair but also levee improvements, which is prohibited under RIP. The Corps' authority is expressly restricted to repair or restoration to the pre-disaster level of protection; no betterments or levee setbacks are allowed under this authority. The RIP program is not designed to evaluate the federal interest in investments to further reduce the flood risk at a location. If federal participation is sought in increasing protection, the typical route would be to pursue a Corps flood damage reduction study, thus triggering the standard Corps project development process previously described.

Corps Authorities and NFIP Levee Accreditation

The Federal Emergency Management Agency (FEMA) must accredit a levee in order for it to appear on FEMA's floodmaps for the National Flood Insurance Program as providing protection from the 100-year flood (i.e., 1% chance flood). These floodmaps are used for a variety of purposes, including determining flood insurance premiums and mandatory purchase requirements. Since late 2005, FEMA has increased the amount of information it requires to accredit a levee. In particular, it requests more information on the structural integrity of the levee and the hydrology and hydraulics to which the levee is exposed (44 C.F.R. 65.10 (b)).

Preparing levee accreditation packages, including data certifications, is the responsibility of the levee owner. Local owners of some levees previously accredited by FEMA are having trouble obtaining and paying for accreditation. They face a lack of readily available data on their levees' construction, materials, and structural integrity and are confronting assessments indicating a lower level of protection than previously thought. Prior to 2006, FEMA often had accepted the Corps' inspection of levees for its Rehabilitation and Inspection Program (RIP) as sufficient for the data certification used as the basis for FEMA's levee accreditation. Corps RIP inspections are insufficient to meet the additional information sought by FEMA for levee accreditation after 2005.

Some interests have looked to the Corps to assist with levee data certification. The Corps currently has no general authority to perform NFIP-compliant data certifications using discretionary appropriations and is restricted from performing FEMA data certification on a reimbursable basis for nonfederal entities if the work can be provided by the private sector. This restriction is established for all Corps civil works activities of §211 of Water Resources Development Act of 2000 (P.L. 106-541, 31 U.S.C. 6505), commonly known as the Thomas Amendment. Whether the Corps should be authorized to perform NFIP levee data certifications for locally operated levees, and who would bear (or share) the costs, are matters of active debate. The Corps does perform data certification for federally operated levees, for levees that are part of an ongoing Corps study, and at the request of another federal agency.

Some interests also have looked to the Corps for assistance with levee improvements needed to obtain levee accreditation. The Corps has no general authority to make levee improvements; most Corps participation in levee improvements is through congressionally authorized flood damage reduction projects.

Environmental Infrastructure/Municipal Water and Wastewater Projects

Since 1992 Congress has authorized and appropriated funds for the Corps to assist with design and construction of municipal drinking water and wastewater infrastructure projects (including treatment facilities such as recycling and desalination plants, and distribution and collection facilities such as stormwater collection and recycled water distribution) and surface water protection and development projects. These projects are broadly labeled *environmental infrastructure*. Although no Administration has included environmental infrastructure in a Corps budget request since the first authorization in 1992, Congress has regularly included Corps environmental infrastructure funds in appropriations bills. Environmental infrastructure funding has been repeatedly called out by various Administrations as a low priority for the agency and by

the co-chairs of the National Commission on Fiscal Responsibility and Reform as illustrative cut of activities to terminate.²⁴

Most Corps environmental infrastructure projects are authorized for a specific geographic location (e.g., city or county) under Section 219 of WRDA 1992 (P.L. 102-580), as amended; however, other similar authorities, sometimes covering regions or states, exist in multiple sections of WRDAs and in select Energy and Water Development Appropriations acts. Management of the Corps and nonfederal financing varies according to the specifics of the authorization. Under Section 219, the Corps performs the authorized work; for environmental infrastructure projects authorized in other provisions, the Corps often can use appropriated funds to reimburse nonfederal sponsors for perform the work.

The Corps is now authorized to contribute to more than 400 of these projects and programs, with authorized appropriations totaling more than \$5 billion. The Corps received \$140 million for environmental infrastructure projects in FY2010 and \$200 million in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5).

Because environmental infrastructure activities are not part of a Corps program per se, there are no clear and consistent general eligibility criteria. Because the activities are not traditional Corps water resources projects, they are not subject to the Corps planning process (e.g., a benefit-cost analysis is not performed). The projects, however, are subject to federal laws, such as the National Environmental Policy Act (NEPA). Under most Corps environmental infrastructure authorizations, financing is 75% federal and 25% nonfederal, as indicated in **Table 2**.

²⁴ National Commission on Fiscal Responsibility, *CoChairs' Proposal: \$200 Billion in Illustrative Savings, Draft Document*, November 12, 2010, <http://www.fiscalcommission.gov/news/cochairs-proposal>.

Appendix. Evolution of the Army Corps Civil Works Mission

The Corps' oldest civil responsibilities are creating navigable channels and flood control projects. Navigation projects include river deepening, channel widening, lock expansion, dam operations, and disposal of dredged material. Flood control projects are intended to reduce riverine and coastal storm damage; these projects range from levees and floodwalls to dams and river channelization. Many Corps projects are multipurpose—that is, they provide water supply, recreation, and hydropower in addition to navigation or flood control. Its environmental activities involve wetlands and aquatic ecosystem restoration and environmental mitigation activities for Corps facilities. The agency's regulatory responsibility for navigable waters extends to issuing permits for private actions that might affect wetlands and other waters of the United States.

Navigation and Flood Control (1802-1950s)

In the 19th century, the Corps' mission evolved into civil and military building for the nation. In 1824, Congress passed legislation charging military engineers with planning roads and canals to move goods and people. In 1850, Congress directed the Corps to engage in its first planning exercise—flood control for the lower Mississippi River. During the 1920s, Congress expanded the Corps' ability to incorporate hydropower into multipurpose projects and authorized the agency to undertake comprehensive surveys to establish river-basin development plans. The modern era of federal flood control emerged with the Flood Control Act of 1936 (49 Stat. 1570), which declared flood control a “proper” federal activity in the national interest. The 1944 Flood Control Act (33 U.S.C. § 708) significantly augmented the Corps' involvement in large multipurpose projects and authorized agreements for the temporary use of surplus water. The Flood Control Act of 1950 (33 U.S.C. § 701n) began the Corps' emergency operations through authorization for flood preparedness and emergency operations.²⁵ The Water Supply Act of 1958 (43 U.S.C. § 390b) gave the Corps authority to include some storage for municipal and industrial water supply in reservoir projects at 100% local cost.

Changing Priorities (1960-1986)

By the late 1960s, construction of major waterworks had declined. Changing national priorities and local needs, increasing construction costs, and completed projects at most prime locations decreased the attractiveness of water projects. Water supply for traditional off-stream uses, such as domestic, commercial, industrial, and agricultural uses, was increasingly in direct competition with in-stream uses, such as recreation, fisheries, and wildlife habitat. From 1970 to 1985, Congress authorized no major water projects, scaled back several authorized projects, and passed laws that altered project operations and water delivery programs to protect the environment. The 1970s marked a transformation in Corps project planning. The 1969 National Environmental Policy Act and the Endangered Species Act of 1973 (16 U.S.C. § 1531) required federal agencies to consider environmental impacts, increase public participation in planning, and consult with other federal agencies. Executive orders (E.O. 11988 and E.O. 11990) united the goals of

²⁵ Emergency response activities are also conducted under the Disaster Relief Act of 1974 (42 U.S.C. § 5121), also known as the Stafford Disaster and Emergency Assistance Act.

reducing flood losses and environmental damage by recognizing the value of wetlands and required federal agencies to evaluate potential effects of actions on floodplains and to minimize impacts on wetlands.

Corps Regulatory Activities: Permits and Their Authorities

The Corps has several different regulatory responsibilities and issues several different types of permits. 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 U.S. navigable waters. 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. For more information on the Corps' Clean Water Act authorities, see CRS Report 97-223, *The Army Corps of Engineers' Nationwide Permits Program: Issues and Regulatory Developments*, by Claudia Copeland and CRS Report RL33483, *Wetlands: An Overview of Issues*, by Claudia Copeland

Environmental Mission and Local Responsibility (1986-2000)

Congress fundamentally transformed the ground rules for Corps water project planning and funding through WRDA 1986 (33 U.S.C. § 2211) by establishing new cost-share formulas, resulting in greater financial and decision-making roles for local stakeholders. WRDA 1986 reestablished the tradition of a biennial omnibus authorization bill. Congress has since enacted WRDAs in 1988, 1990, 1992, 1996, 1999, 2000, and 2007. WRDA 1986 also provided the Corps with authority to determine if changes can be made in existing structures or operations to improve environmental quality. WRDA 1990 (33 U.S.C. §§ 1252, 2316) explicitly expanded the Corps' mission to include environmental protection and increased the Corps' responsibility for contamination cleanup, dredged material disposal, and hazardous waste management. WRDA 1992 (33 U.S.C. § 2326) authorized the Corps to use the "spoils" from dredging in implementing projects for protecting, restoring, and creating aquatic and ecologically related habitats, including wetlands. WRDA 1996 (33 U.S.C. § 2330) gave the Corps the authority to undertake aquatic ecosystem restoration projects. While the Corps has been involved with numerous environmental restoration projects in recent years, WRDA 2000 approved a restoration program for the Florida Everglades that represented the agency's first multiyear, multibillion-dollar effort of this type. These legislative changes have given the Corps an aquatic ecosystem restoration and environmental protection mission.

Evolving Demands (2001-present)

The agency's aging infrastructure and efforts to enhance the security of its infrastructure from terrorism and natural threats have expanded Corps activities in infrastructure rehabilitation, maintenance, and protection. WRDA 2007 continued the expansion of the Corps' ecosystem restoration activities by authorizing billions of dollars for ecosystem restoration activities, including large-scale efforts in coastal Louisiana and in the Upper Mississippi River. The Corps also is retooling its approach to its long-standing flood control mission in response to congressional direction in WRDA 2007 and disasters like Hurricanes Katrina, Rita, and Ike and the significant floods in the Midwest. The agency is adopting and promoting a flood risk management approach. This approach emphasizes a greater appreciation and accountability for the shared responsibilities across levels of government for managing flood risks and making decisions about tolerable risks for communities and investments when making infrastructure investment and development choices.

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