



Statement of

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Before

Committee on Environment and Public Works  
U.S. Senate

Hearing on

# **“Water Infrastructure Needs and Challenges”**

January 10, 2018

**Congressional Research Service**

<https://crsreports.congress.gov>

TE10022

Chairman Barrasso, ranking member Carper, and members of the committee, my name is Nicole Carter. I am a Specialist in Natural Resources Policy at the Congressional Research Service (CRS). Thank you for inviting CRS to testify. The committee requested that CRS focus on the legislative process for a Water Resources Development Act (a WRDA) as well as related issues in 2018.

In serving the U.S. Congress on a nonpartisan and objective basis, CRS takes no position on legislation. CRS remains available to assist the committee in its development and consideration of water resource and other legislation.

I will start by providing a WRDA primer, then discuss executive branch reports relevant to WRDA deliberations, and end with some context for water authorization deliberations in 2018.

## WRDA Primer

Congress is often involved at the project level when it comes to the U.S. Army Corps of Engineers (Corps). Congress authorizes the agency to perform geographically specific projects to improve navigation, reduce flood and storm damage, and restore aquatic ecosystems. Congress typically authorizes new Corps studies and projects in statute prior to providing federal funding. Congress generally authorizes these studies and projects, modifies existing project authorities, and provides policy direction to the agency in an omnibus Corps authorization bill, generally called a Water Resources Development Act. Authorization, however, does not guarantee federal appropriations for a study or project.

Most WRDA authorities do not require reauthorization; however, Congress for a limited, but growing, number of Corps authorities has established dates on which some authorities or their authorization of appropriations expire. A small number of these time-limited authorities and authorization of appropriations end in the 2018 and 2019 calendar years. WRDAs also have established deauthorization processes for incomplete Corps studies and unconstructed project elements.

Although Congress does not use WRDAs to appropriate funds, WRDA provisions may affect appropriations indirectly: for example, WRDAs have shaped how two navigation trust funds are used and have established the split of financial and other responsibilities between the federal government and the nonfederal project sponsors of Corps studies and projects.

The timing of enactment of WRDAs has varied. WRDA 1986 marked the end of a decade-long stalemate between Congress and the executive branch on cost-sharing, user fees, and environmental requirements for Corps projects. Since WRDA 1986, Congress has aimed to avoid long delays between the planning and the execution of projects. Congressional enactment of a WRDA biennially was roughly followed from 1986 until the early 2000s; since then, enactment has been less regular.

Controversial project authorizations and disagreements over the need for and direction of change in how the Corps planned, constructed, and operated projects contributed to WRDA bills not being enacted in the 107<sup>th</sup>, 108<sup>th</sup>, and 109<sup>th</sup> Congresses. In the 110<sup>th</sup> Congress, President George W. Bush vetoed WRDA 2007, indicating his view that it lacked fiscal discipline and failed to set priorities that focused on projects with the greatest merit and federal responsibility. However, Congress overrode the veto to enact WRDA 2007 (P.L. 110-114).

Since WRDA 2007, Congress has enacted two Corps authorization bills. An issue that complicated enactment of WRDA in the 111<sup>th</sup> and 112<sup>th</sup> Congresses was how to develop a bill without congressionally directed, geographically specific activities (commonly referred to as earmarks). In response, the 113<sup>th</sup> Congress developed reporting and oversight processes to identify new studies, projects, and project modifications for authorizations. The 113<sup>th</sup> Congress enacted the Water Resources Reform and Development Act of 2014 (WRRDA 2014; P.L. 113-121) in June 2014. In addition to the aforementioned process changes, this legislation authorized 34 construction projects with a combined federal construction

cost of \$25.7 billion and modified several other Corps project authorities. It also expanded opportunities for nonfederal entities to lead projects and authorized the use of innovative financing approaches, including a pilot for public-private partnerships. The 114<sup>th</sup> Congress enacted the next WRDA as a title in the broader Water Infrastructure Improvements for the Nation Act (WIIN; P.L. 114-322) in December 2016. WRDA 2016 authorized 30 new construction projects at a federal cost of more than \$10 billion, as well as dozens of studies identified through the new processes established in WRRDA 2014. Provisions in WRDA 2016 further altered how nonfederal project sponsors may participate in the financing of water infrastructure activities; other provisions changed authorities for crediting and reimbursing nonfederal entities for project-related expenditures.

## Reports Relevant to WRDA Deliberations

Three principal types of reports from the executive branch that the 115<sup>th</sup> Congress may use in crafting a WRDA bill are

- reports by the Chief of Engineers recommending new construction projects;
- executive branch reports proposing modification to authorized projects; and
- the Secretary of the Army's annual reports to Congress pursuant to Section 7001 of WRRDA 2014.

### Chief's Reports for New Construction Projects

In 1954, Congress established a policy to generally base construction authorizations for Corps projects on completed feasibility reports that are favorably recommended by the Chief of Engineers (33 U.S.C. §701b-8). Each of the 64 new project construction authorizations in WRRDA 2014 and WRDA 2016 was based on a completed report by the agency's Chief of Engineers. A Chief's Report is informed by a final agency feasibility report and documentation assessing environmental impacts.

Since enactment of WRDA 2016, the Chief of Engineers has completed reports for five projects recommended for congressional construction authorization:

- Houston-Galveston Navigation Channel, TX (navigation);
- Sabine Pass to Galveston Bay, TX (hurricane and coastal storm damage reduction);
- St. Johns County, FL (hurricane and coastal storm damage reduction);
- St. Lucie County, FL (hurricane and coastal storm damage reduction); and
- Mamaroneck and Sheldrake River Basins, NY (flood risk management).

The cost associated with each of these projects varies; they range from less than \$15 million to more than \$3 billion. Based on data from the Corps in October and December 2017, an additional 12 to 18 Chief's Reports may be completed by the end of calendar year 2018. Some of these projects are in areas affected by hurricanes in 2017.

### Reports for Modifications to Authorized Projects

Congress also authorizes in WRDAs significant changes in either the construction costs or project features of previously authorized projects.

## Increases in Authorization of Appropriations

If a Corps project has experienced growth in construction cost above a certain threshold, Congress must authorize an increase in the authorization of appropriations. This requirement is pursuant to Section 902 of WRDA 1986, as amended (33 U.S.C. §2280), which generally allows for increases in total project costs of up to 20% (after accounting for inflation of construction costs) without additional congressional authorization. If the allowable threshold in cost increases is exceeded, the Corps typically pursues an increase in the authorization of appropriations (known as a “902 fix”) and will not proceed with new contracts for the project until the amended authorization is enacted. The Corps has completed a report recommending that Congress increase the authorization of appropriations for the Savannah Harbor Expansion Project. CRS was unable to obtain from the Corps information on other pending and anticipated Administration reports recommending congressional increases in authorization of appropriations.

## Changes to Project Features

CRS was unable to identify any pending completed reevaluation reports by the Corps that recommend project modifications (other than 902 fixes) that have been submitted to the authorizing committees or that are anticipated in calendar year 2018.

## Section 7001 Annual Reports

Section 7001 of WRRDA 2014 required the Secretary of the Army to report annually to the authorizing committees on publicly submitted proposals for Corps studies, project authorizations, and project modifications; the Section 7001 annual reports also include completed executive branch reports for activities that require congressional authorization. Congress included in WRDA 2016 authorizations for studies of new projects and project modifications based on public proposals submitted through the Section 7001 process and identified in Section 7001 annual reports submitted in 2015 and 2016.

The most recent Section 7001 annual report was delivered to the authorizing committees in March 2017; it includes 13 public proposals for new feasibility studies and project modifications. The deadline in statute for the next Section 7001 annual report to be submitted to the authorizing committees is February 1, 2018.

## Context for Deliberations in 2018

Many topics may shape deliberations on water resource authorizations in 2018, including the use of the two navigation trust funds, the operation of Corps dams for water supply and recreation, and civil works permissions and permits for high-profile public and private infrastructure projects. Three broad topics of relevance to deliberations in 2018 on Corps and water resource projects are an infrastructure initiative, nonfederal expectations and partnerships, and floods and disasters.

## Infrastructure Initiative

Water project authorization deliberations may be taking place at the same time as efforts to develop and move a broader infrastructure initiative. Related questions for federal policymakers are, How may a broad infrastructure initiative relate to authorized Corps water resource projects and to investments in aging federally owned infrastructure? If Corps projects are part of an initiative, how would nonfederal cost-shares and contributions to trust funds for water resource projects factor into an infrastructure investment initiative? Would the initiative support Corps projects of the traditional type, or would the initiative promote new funding and project delivery arrangements for water resources projects? Historically, the

Corps has led the design and construction of its projects; nonfederal project sponsors traditionally participate in but do not lead project planning and construction for Corps projects. The Corps generally has not participated in water resource projects by providing grants or loans. Expanded and new authorities in WRRDA 2014 and WRDA 2016 allow nonfederal entities to lead in some or all aspects of an authorized Corps project. WRRDA 2014 also expanded the authority for nonfederal financing opportunities for water resource projects. WRRDA 2014 established the Water Infrastructure Finance and Innovation Act (or WIFIA) authority to provide direct loans and loan guarantees to nonfederal entities for partial funding of certain qualifying water infrastructure projects. WRRDA 2014 also authorized various pilot efforts for nonfederal study and project leadership and public-private partnerships. The Corps has faced various challenges in developing guidance and determining a path forward for agency participation in public-private partnerships and WIFIA. While the U.S. Environmental Protection Agency (EPA) has published guidance, received appropriations, and issued a request for projects to begin implementing the EPA-WIFIA program, the Corps-WIFIA program has no published guidance or federal funding. The final WIFIA authorization of appropriations for the Corps and EPA is for FY2019.

## Nonfederal Expectations and Partnerships

Numerous Corps projects authorized for construction by previous Congresses have yet to receive federal funds to begin construction. Some \$75 billion in authorized Corps construction projects and an additional \$20 billion in Corps dam safety work are eligible for annual Corps construction appropriations, which have averaged \$1.8 billion in recent years. In response, Congress has attempted to advance navigation, ecosystem restoration, and levee projects by allowing nonfederal entities to work on and fund projects by expanding credit and reimbursement opportunities, with few changes to the underlying federal-nonfederal division of costs. The Government Accountability Office (GAO) in December 2016 reported that nonfederal sponsors have led or are leading \$4 billion in Corps-related studies and projects and that the federal government has reimbursed \$400 million to cover some of the federal costs related to these projects. GAO did not report what would be the total reimbursement level to cover the federal cost-share associated with these studies and projects. What will the federal government expect of nonfederal project sponsors in coming years, and what can nonfederal entities expect from the federal government?

## Floods and Disasters

Local and regional floods and hurricanes in recent months and years have illustrated the nation's flood risk and its economic and social costs. Dam safety concerns (e.g., failing spillways at California's Oroville Dam and Puerto Rico's Guajataca Dam) have raised questions regarding the condition and performance of the nation's existing water infrastructure. Nonfederal and federal liability questions associated with flooding and flood control projects (e.g., Corps-operated Addicks and Barker reservoirs near Houston, Texas) are shaping discussions regarding who will pay for and be responsible for the next generation of flood risk reduction infrastructure and flood recovery efforts. In recent years, through supplemental appropriations, Congress not only has funded the emergency response and repair activities of the Corps, but also has provided the Corps with funding to study and construct projects that reduce flood risks in areas recently affected by natural disasters. Potential questions that may shape water infrastructure authorization deliberations in 2018 include the following:

- How effective and efficient are current project development and funding processes for identifying and supporting priority investments to reduce the nation's flood risk?
- What are the federal roles and priorities for flood risk management investments, and how may these roles and priorities be shaped by efforts to respond to and recover from recent hurricanes and floods?

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- What incentives and disincentives to prepare for floods and manage flood risks do federal projects and programs provide to U.S. states, territories, tribes, local governments, private entities, and individuals?

This concludes my statement. I would be happy to answer any questions you may have.

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