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Water Resources Development Acts: Primer

Congress often titles omnibus legislation that authorizes U.S. Army Corps of Engineers (USACE) civil works activities as a Water Resources Development Act (WRDA). WRDAs are distinguished from each other by referencing the year of enactment (e.g., WRDA 1986). WRDA provisions generally add to or amend the pool of existing USACE authorizations and refine congressional policy direction to the agency. Other provisions may deauthorize inactive unconstructed projects. Although most USACE authorizations do not expire, some are time-limited. WRDA provisions may extend these time-limited authorities. Most USACE water resource projects require two types of congressional authorization: one for studying feasibility and a subsequent one for construction. Drivers for enactment of a new WRDA typically include nonfederal and congressional interest in new studies and construction projects and support for adjustments to existing projects, programmatic authorities, and policies. Since WRDA 1986, Congress often has considered WRDA legislation on a biennial cycle; however, the timing of enactment of WRDAs has varied. For more on WRDAs, see box titled “WRDAs and WRDA Titles in Broader Bills.”

Recent Developments

In July 2020, the House passed H.R. 7575 (WRDA 2020); it was considered under suspension of the rules. The Senate Committee on Environment and Public Works (Senate EPW) reported S. 3591, America’s Water Infrastructure Act of 2020 (AWIA 2020), in May 2020. AWIA 2020’s Title I and WRDA 2020 focus on authorizing USACE activities and alter USACE policy direction provided by Congress. Both bills would authorize a suite of USACE studies and projects and would adjust the Inland Waterways Trust Fund (IWTF) contribution for inland and intracoastal waterway construction projects from 50% to 35% to allow for more federal investment toward these projects. The WRDA 2020 IWTF contribution reduction would apply in FY2021 through FY2027. For more on waterways, see CRS In Focus IF11593, *Inland and Intracoastal Waterways: Primer and Issues for Congress*.

WRDA 2020 also would change the budget enforcement rules through a budget cap adjustment for the appropriations provided to USACE from the Harbor Maintenance Trust Fund (HMTF) for activities designated as harbor operations and maintenance. WRDA 2020 also would allow for the HMTF to pay for a broader set of activities and alter the distribution of HMTF funds across various categories of eligible activities. (For more information on the HMTF, see CRS Report R41042, *Harbor Maintenance Trust Fund Expenditures*.) WRDA 2020 would require USACE to update the agency’s guidance on assessing sea level rise for coastal project planning. It also would require the agency to adopt

procedures to include more consideration of environmental and social goals and effects in project planning and establish cost-sharing and planning requirements for natural and nature-based features. For more on these topics, see CRS In Focus IF10221, *Principles, Requirements, and Guidelines (PR&G) for Federal Investments in Water Resources*, and CRS Report R46328, *Flood Risk Reduction from Natural and Nature-Based Features: Army Corps of Engineers Authorities*.

AWIA 2020 would expand USACE authorities to perform rural water supply projects and to address aquatic and terrestrial invasive species. It also would require an annual report from the Administration to congressional authorizing and appropriations committees that identifies USACE authorized studies and projects available for appropriations. Title II and Title III of the bill would authorize water infrastructure and restoration activities of the U.S. Environmental Protection Agency (EPA) and other federal agencies, including tribal water infrastructure investments. For more on AWIA 2020’s non-USACE provisions, see CRS Insight IN11437, *Water Infrastructure Legislation in the 116th Congress: EPA, Reclamation, and U.S. Army Corps of Engineers Provisions*.

WRDAs and WRDA Titles in Broader Bills

Historically, most Water Resources Development Act provisions have focused on USACE’s water resource activities, not the agency’s regulatory responsibilities (e.g., issuing permits under Section 404 of the Clean Water Act). An exception is WRDA 1992 (P.L. 102-580), which included a title on contaminated sediment and ocean dumping authorizing both EPA and USACE activities. Since 1992, Congress generally has not used WRDAs to alter the scope of USACE’s regulatory authorities. Since 1992, WRDA provisions related to USACE’s regulatory program have primarily involved the processing of permit applications (e.g., authorizing USACE to accept funds to expedite processing). The most recent “stand-alone” USACE authorization bills were enacted in 2000, 2007, and 2014. Although most titles of the Water Resources Reform and Development Act of 2014 (WRRDA 2014; P.L. 113-121) were USACE-focused, some titles addressed other agencies. WRDA 2016 (Title I of P.L. 114-322, *Water Infrastructure Improvements for the Nation Act* [WIIN Act]) and WRDA 2018 (Title I of P.L. 115-270, *America’s Water Infrastructure Act of 2018* [AWIA 2018]) were enacted as USACE-focused titles in broader water bills with titles and provisions authorizing water programs and activities of multiple agencies and departments, such as EPA, the Department of the Interior, and the Federal Energy Regulatory Commission. For more on WRDAs, see CRS Report R45185, *Army Corps of Engineers: Water Resource Authorization and Project Delivery Processes*.

Congress and USACE Activities

USACE's civil works activities historically have focused on three primary purposes: improving navigation, reducing flood risk, and restoring aquatic ecosystems. Many USACE projects are multipurpose—that is, they may provide water supply storage, recreation, and hydropower, among other benefits, in addition to one or more of the three primary purposes. USACE is directly engaged in the planning and construction of water resource projects. The majority of USACE appropriations (e.g., more than 85% of annual FY2020 appropriations for USACE civil works) is directed toward performing work on USACE studies and projects authorized by Congress.

In WRDAs, Congress establishes the broad structure for how USACE is to perform its work on water resource projects (e.g., setting standard federal and nonfederal cost shares). Congress also provides the authorization for USACE to perform specific studies and projects. After Congress has authorized the study or construction of a project, however, USACE generally is unable to proceed until it receives funding for that project phase. Congress provides appropriations for the agency through the annual Energy and Water Development appropriations process and, at times, through supplemental appropriations. For more on USACE funding, see CRS Report R46320, *U.S. Army Corps of Engineers: Annual Appropriations Process and Issues for Congress*.

WRDA Development and Process to Propose Activities for Authorization

To develop recent WRDAs, H.R. 7575, and S. 3591, the authorizing committees—the House Committee on Transportation and Infrastructure and the Senate EPW—held hearings to obtain testimony from stakeholders and reviewed reports transmitted by the Administration. The authorizations for most USACE studies and projects are geographically specific (e.g., a flood risk reduction project for a specific community along a river or coast). Scrutiny of congressionally directed spending that benefits a specific entity or locality (known as *earmarking*) has altered the development of USACE authorization legislation since WRDA 2007 (P.L. 110-114). During the development of such legislation over the last decade, authorizing committees have been explicit regarding their use of Administration reports and processes as the basis for including most geographically specific USACE authorizations. For example, Congress has identified favorable reports by the Chief of Engineers (*Chief's reports*) and other USACE decision documents as the basis for new project construction authorizations.

In WRRDA 2014, Congress established a new process to assist the congressional authorizing committees in identifying USACE studies and projects to authorize. In Section 7001, Congress required the Administration to transmit each February to the authorizing committees an annual report on publicly submitted USACE study and project proposals and USACE-developed project decision documents that require congressional authorization. In WRDA 2016 and WRDA 2018, Congress expanded the Section 7001 process to include modifications to USACE *environmental infrastructure* assistance authorities, which

allow USACE to assist with municipal drinking water and wastewater infrastructure projects in designated communities, counties, and states. WRDA 2020 and A WIA 2020 would draw upon the Section 7001 reports as the basis for authorizing various geographically specific USACE activities, including environmental infrastructure assistance. For more on the Section 7001 process, see CRS Insight IN11118, *Army Corps of Engineers: Section 7001 Annual Report on Future Studies and Projects*.

Nonfederal Responsibilities

Current law requires nonfederal sponsors to share costs and assume other responsibilities for most USACE projects. Nonfederal sponsors generally are required to provide the land and other real estate interests needed for a project and to share study and construction costs. Most studies are cost-shared 50% federal and 50% nonfederal. Congress has set the cost shares for construction and the nonfederal responsibilities following construction for the various USACE project purposes. For instance, Congress has set the cost sharing for construction for flood risk reduction projects at a maximum of 65% federal and minimum of 35% nonfederal; for ecosystem restoration, the cost sharing is fixed at 65% federal and 35% nonfederal. For most USACE flood control and restoration projects, operations, maintenance, repair, and rehabilitation are 100% a nonfederal responsibility.

Deliberations and Considerations Related to USACE

Although WRDAs often have received significant support in both chambers, in the past some issues have complicated deliberations and enactment. For example, Congress overcame a presidential veto to enact WRDA 2007. Various topics may shape deliberations in 2020 and the future, including the status and authorization of specific projects, post-flood levee repair and study authorities, and effects of bill provisions on discretionary spending and/or mandatory receipts. Numerous studies and projects authorized for construction in previous WRDAs remain unfunded. Nonfederal sponsors often remain interested in pursuing these unfunded studies and construction activities. A challenge for policymakers is whether, and if so how, to advance these studies and construction activities.

WRRDA 2014, WRDA 2016, and WRDA 2018 expanded the opportunities for interested nonfederal entities, including private entities, to have greater roles in USACE project development, construction, and financing. Although some of these authorities may expedite project progress, they also have the potential to constrain federal discretion and prioritization of USACE activities. The status of efforts under these and other authorities that would allow for loans and loan guarantees for water resource projects is among the topics that may continue to shape deliberations on USACE authorities. Additionally, Administration proposals and actions and court decisions may shape congressional direction to USACE.

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