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Water Resources Development Act of 2020

Congress commonly titles omnibus legislation that authorizes U.S. Army Corps of Engineers (USACE) civil works activities as a Water Resources Development Act (WRDA). Since WRDA 1986, Congress often has considered a WRDA biennially. Drivers for enactment typically include nonfederal and congressional interest in new studies and construction projects and adjustments to existing projects, programmatic authorities, and policies. Congress passed the Water Resources Development Act of 2020 (WRDA 2020) as Division AA of H.R. 133, an omnibus appropriations and authorization act, signed by President Trump on December 27, 2020. The 116th Congress had considered other versions of a USACE authorization bill. For example, the House passed S. 1811 in early December 2020 and H.R. 7575 in July 2020. The Senate Committee on Environment and Public Works reported S. 3591 in May 2020.

Like most previously enacted WRDAs, WRDA 2020 not only authorized USACE studies and projects but also refined congressional policy direction for USACE and adjusted existing USACE civil works authorities. In addition to USACE-related provisions, a limited number of WRDA 2020 provisions are associated primarily with other agencies (e.g., §§ 507, 508, 510).

Navigation Trust Funds

Commercial shippers and barge operators contribute toward paying for navigation improvements through taxes that are deposited into two trust funds. Monies from the trust funds are made available for eligible activities through appropriations legislation. WRDA 2020 altered various aspects of the trust funds.

For coastal and inland harbors, WRDA 2020 (§ 101) changed the budget enforcement rules for two types of discretionary spending through budget cap adjustments. In the CARES Act (P.L. 116-136, § 14003), Congress directed that funds from the Harbor Maintenance Trust Fund (HMTF) for activities designated as harbor operations and maintenance in an amount up to the prior fiscal year's HMTF deposits would not count against annual discretionary budget limits. WRDA 2020 altered the HMTF adjustment to be the sum of (1) the amount of the deposits into the fund two years prior (which were \$1.8 billion in FY2019) and (2) an amount starting at \$500 million in FY2021 and increasing by \$100 million annually to \$1.5 billion for FY2030 and thereafter. At the start of FY2021, the HMTF estimated balance was roughly \$9.2 billion. WRDA 2020 also made an adjustment for funding for certain additional measures at qualifying ports; the adjustment applies for 10 years and expands from \$50 million to \$70 million annually.

WRDA 2020 (§ 102) authorized HMTF expenditures to pay for a broader set of activities. It also provided direction on the use of harbor operations and maintenance funds for various categories of navigation projects (e.g., at least 13% for the Great Lakes Navigation System, unless otherwise directed in an appropriations act). For more on the HMTF, see CRS In Focus IF11645, *Distribution of Harbor Maintenance Trust Fund Expenditures*.

For inland and intracoastal waterways, WRDA 2020 (§ 109) adjusted the Inland Waterways Trust Fund (IWTF) contribution to waterway construction projects to allow more federal investment toward these projects. It reduced the IWTF contribution from 50% to 35% for any waterway construction project funded from FY2021 through FY2031. The change increased the contribution from the general fund from 50% to 65% for these projects. For more on waterways, see CRS In Focus IF11593, *Inland and Intracoastal Waterways: Primer and Issues for Congress*.

Policy Direction

How Congress directs USACE to plan and evaluate federal water resource investments can affect what the USACE Chief of Engineers recommends to Congress for construction. WRDA 2020 (§ 113) required USACE to update the agency's guidance on assessing sea level rise and inland flooding to reflect the best available peer-reviewed science. WRDA 2020 (§ 110) also required USACE to adopt procedures to include more consideration of environmental and social goals and regional economic benefits during project planning and selection of the preferred alternative. WRDA 2020 (§ 115) set nonfederal costs for natural and nature-based features at a maximum of 35%. 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*.

Study and Project Authorizations

The broad cessation of congressionally directed spending that benefits a specific entity or locality (known as *earmarking*) altered the development of USACE authorization legislation. Enacted WRDAs since 2014 have been explicit regarding their use of Administration reports and processes as the basis for including most geographically specific USACE authorizations. WRDA 2020 (§ 401) authorized the construction of 46 water resource development projects identified in Chief of Engineers' reports completed since WRDA 2018. Among these projects, several had federal costs greater than \$400 million: three coastal storm damage reduction projects (two in NY, one in VA); two navigation projects (both in TX); and one ecosystem restoration project (IL). WRDA 2020

also authorized eight modifications to construction projects (§401) and conditionally authorized six projects developed by nonfederal project sponsors (§403).

WRDA 2020 authorized USACE to conduct feasibility studies (§201) and modified four feasibility studies (§203). It also directed USACE to expedite other authorized studies (e.g., §202) and to conduct a coastal resilience study for the Great Lakes (§211) and five river basin studies—Lower Mississippi River (§213), Upper Mississippi River (§214), Lower Missouri River Basin (§216), Upper Missouri River (§216), and Sacramento River (§209).

Programs for Economically Distressed and Rural and Small Communities

Some USACE projects in disadvantaged communities and rural areas have been unable to meet the economic justification criteria for USACE riverine and coastal flood risk reduction projects, and for some communities, the required nonfederal contributions to the costs of USACE studies and construction projects can be a barrier. WRDA 2020 (§118) established pilot programs for studying and recommending riverine and coastal flood risk for economically disadvantaged communities and rural communities. WRDA 2020 (§165) authorized a pilot program that allows USACE to conduct 10 projects with federal costs of \$10 million or less for small and disadvantaged communities.

Environmental Infrastructure

Since 1992, Congress has authorized and provided appropriations for USACE environmental infrastructure assistance (e.g., planning, design, and construction of municipal drinking water and wastewater projects) in designated communities, counties, and states. WRDA 2020 (§352) amended 14 environmental infrastructure authorities to increase authorization of appropriations and, for some authorities, to expand geographic scope and authorized activities (e.g., stormwater systems).

Invasive Species

Invasive species can impact water resource projects by outcompeting native species, clogging water pipes, and affecting water quality and recreation. WRDA 2020 altered and expanded invasive species efforts by USACE and other agencies. It directed periodic updates to USACE's Invasive Species Policy (§501) and amended USACE's invasive species research authority (§502). WRDA 2020 authorized the Brandon Road Project, designed to prevent invasive species transfer between the Mississippi River and Great Lakes basins (§401). It also authorized federal-state actions for the control or eradication of invasive species in certain river basins (§§504, 505, 506) and invasive species pilot programs (§§503, 505, 507, 508, 509, 510).

Backlog of Authorized Projects

USACE has an estimated \$98 billion backlog of authorized unconstructed water resources projects. After Congress authorizes the study or construction of a project, USACE generally is unable to proceed until it receives funding for that project. Congress provides appropriations for the agency through the annual Energy and Water Development appropriations process and, at times, through supplemental

appropriations. Numerous studies and projects authorized for construction in previous legislation remain unfunded. Nonfederal sponsors often remain interested in pursuing these unfunded studies and construction activities. WRDA 2020 (§222) includes a requirement for an annual report to identify authorized studies and projects that USACE could carry out if funds were available. Given the demand for USACE projects, a challenge for policymakers is whether, and if so how, to advance authorized studies and construction activities that remain unfunded or whether to deauthorize the activities.

WRDA 2020 (§301) addressed the authorization of various types of projects in the backlog. The act

- established a process for the deauthorization of unconstructed projects with federal costs of at least \$10 billion;
- deauthorized projects authorized prior to November 17, 1986, that had not been started or were unfunded for 10 years; and
- required USACE to provide Congress with a post-authorization change report that reflects updated economic and environmental analyses before carrying out a project that had not been initiated within 20 years of the project's authorization.

WRDA 2020 (§360) amended various existing authorities related to USACE study and project deauthorization processes, including repealing many of the deauthorization processes enacted in 2014, 2016, and 2018.

Processes for Identifying Studies and Projects

Adherence to earmark moratoriums has altered how Congress identifies activities for inclusion in a WRDA. In Section 7001 of P.L. 113-121 (33 U.S.C. §2282d), Congress established an annual process for identifying proposals for USACE studies and projects that are related to the agency's missions and authorities that require specific congressional authorization. Congress has used the annual Section 7001 reports to identify activities for authorization in WRDAs.

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. WRDA 2020 (§127) directs that the Section 7001 reports are to include proposals submitted for projects with municipal or agricultural water supply purposes that are consistent with the agency's mission and authorities.

WRDA Implementation and Oversight

Congress establishes the broad structure for how USACE is to perform its water resource activities. After enactment of a WRDA, USACE often develops guidance that describes how the agency plans to implement various provisions, and Congress often engages in oversight.

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