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Army Corps of Engineers: Continuing Authorities Programs

The U.S. Army Corps of Engineers (USACE) undertakes water resource development projects pursuant to authorizing statutes and the receipt of appropriations. The standard process for a USACE project requires two separate congressional authorizations—one for studying feasibility and a subsequent one for construction—as well as appropriations for both (see CRS Report R45185, *Army Corps of Engineers: Water Resource Authorization and Project Delivery Processes*). Additionally, Congress has granted USACE programmatic authorities to undertake cost-shared projects of limited scope and cost without requiring project-specific congressional authorization. These programmatic USACE authorities are referred to as Continuing Authorities Programs (CAPs). Congress has consistently funded USACE CAPs above the President’s request since FY2013.

Types of CAP Projects

Purposes of CAP projects may include reducing damage to life and property from flooding, improving navigation, and protecting and restoring aquatic ecosystems, among others (see **Table 1**). CAPs typically are referred to by the section number of the law in which the CAP was first authorized.

Requesting a CAP Project

Generally, Congress appropriates funding for CAP programs and USACE identifies which CAP projects it will perform using the program’s appropriations. At times, Congress has specified individual CAP projects that the appropriations should support (e.g., Community Project Funding/Congressionally Directed Spending [CPF/CDS] in FY2022 annual appropriations). For a nonfederal sponsor (e.g., a local government or nonprofit entity with local government consent) to initiate a CAP project, the nonfederal sponsor sends a letter to the appropriate USACE district describing the water resource problem and requesting assistance with a project. (Many USACE district websites include CAP letter templates.) USACE determines if there is federal interest to proceed with the requested project, if the project fits under a CAP authority, and if funding is available.

Project Process: Feasibility and Construction

CAP projects move through a feasibility phase, a design phase, and a construction phase. During the feasibility phase, USACE develops alternative plans to achieve project goals, initial design and cost estimations, environmental impact analyses, and real estate evaluation. The feasibility phase concludes with USACE identifying the preferred project alternative. For CAP projects, the design and construction phases can immediately follow the feasibility phase (i.e., without project-specific congressional authorization), subject to the availability of appropriations.

The design and construction phases include the final design and specifications, real estate acquisition, and project contracting and physical construction. According to USACE, funded CAP projects generally take three years from feasibility phase initiation to construction completion.

Table 1. Selected Continuing Authorities Programs

CAP	Eligible Activities	Authority
§14	Streambank erosion and shoreline protection of public works and nonprofit services	33 U.S.C. §701r
§103	Beach erosion control	33 U.S.C. §426g
§107	Navigation improvement	33 U.S.C. §577
§111	Prevention/mitigation of shore damage by federal navigation projects	33 U.S.C. §426i
§204	Regional sediment management/beneficial use of dredged material	33 U.S.C. §2326
§205	Flood control (including ice jam prevention)	33 U.S.C. §701s
§206	Aquatic ecosystem restoration	33 U.S.C. §2330
§208	Removal of obstructions and clearing channels for flood control	33 U.S.C. §701g
§1135	Project modifications for improvement of the environment	33 U.S.C. §2309a

Source: Congressional Research Service (CRS).

Note: CAPs typically are referred to by the section number of the law in which the CAP was first authorized.

Nonfederal Responsibilities

The CAP authorities, similar to the standard USACE project authorities, require a nonfederal sponsor to share project feasibility and construction costs and other responsibilities, including obtaining real estate interests. Federal funds pay for the first \$100,000 of the feasibility phase, with additional feasibility costs generally shared 50% federal and 50% nonfederal.

The nonfederal sponsor and USACE sign a project partnership agreement prior to construction. Cost sharing for construction varies by CAP authority, as shown in **Table 2**. Nonfederal sponsors may fulfill cost-share contributions with cash; work-in-kind credit; and/or lands, easements, rights-of-way, relocations, and disposal areas.

Upon construction completion, USACE transfers the project to the sponsor, who is responsible for operations, maintenance, and most repairs and rehabilitation (except for commercial navigation pursuant to Section 107 CAP).

In some cases, Congress has provided for certain USACE project costs, including CAP project costs, to be undertaken at a greater federal expense (e.g., 33 U.S.C. §2310 and 33 U.S.C. §2267b). Section 165(a) of the Water Resources Development Act of 2020 (WRDA 2020; Division AA of P.L. 116-260) authorized a pilot program for USACE to conduct 10 CAP projects at full federal expense for small or economically disadvantaged communities.

Table 2. CAP Project and Program Limits, FY2022 Enacted Annual Appropriations, FY2023 Request
(in millions of dollars)

CAP	Max. Federal Cost Share	Per Project Federal Limit	Annual Federal Program Limit ^a	FY2022 Annual Appropriations (A) and FY2023 Request (R)
§14	65%	\$5.0	\$25.5	\$8.0 (A); \$0.0 (R)
§103	65%	\$10.0	\$38.0	\$1.0 (A); \$0.0 (R)
§107	Varies ^b	\$10.0	\$63.0	\$2.5 (A); \$0.0 (R)
§111	Varies ^c	\$12.5	NA	\$2.5 (A); \$0.0 (R)
§204	65%	\$10.0	\$63.0	\$10.0 (A); \$1.0 (R)
§205	65%	\$10.0	\$69.3	\$10.0 (A); \$1.0 (R)
§206	65%	\$10.0	\$63.0	\$11.0 (A); \$1.0 (R)
§208	65%	\$0.50	\$8.0	\$0.0 (A); \$0.0 (R)
§1135	75%	\$10.0	\$50.5	\$8.0 (A); \$1.5 (R)

Sources: CRS using statutes, Engineer Pamphlet I 105-2-58, explanatory statement accompanying enacted FY2022 appropriations, and FY2023 Budget Request.

Notes: NA = not applicable.

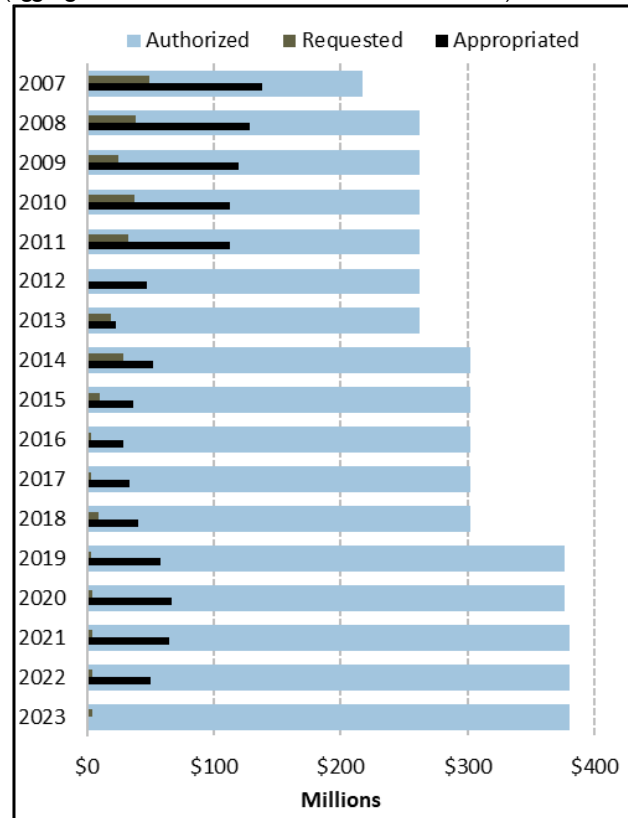
- a. Division AA of P.L. 116-260 increased annual CAP funding authorization levels for FY2021 through FY2024 by \$500,000 compared with FY2020 levels; FY2023 levels are shown here.
- b. Varies based on depth and 50% for recreational navigation.
- c. Same as the project causing the damage.

Annual Appropriations for CAPs

Congress has limited the per project federal funding for CAP authorities (Table 2). Each CAP, except for Section 111, has an annual program funding authorization limit (Table 2). As shown in Figure 1, the Administration budget requests and annual appropriations from Congress have included less funding for CAPs than the authorized funding levels. Since FY2015, Administrations have requested less than \$10 million annually for CAPs combined. The Biden Administration did not request FY2023 funding for Section 14, 103, 107, 111, and 208 projects. In annual appropriations, Congress has continually provided more CAP funding than requested. For example, Congress appropriated a total of \$53.0 million for FY2022 annual appropriations, compared with the Administration’s request of \$4.5 million. Of the amount Congress provided, \$3.2 million was for 16 CPF/CDS requested CAP projects.

Figure 1. CAP Funding Authorizations, Budget Requests, and Annual Appropriations

(aggregated amounts for CAPs in nominal dollars)



Source: CRS using statutes, USACE Budget Press Book, and reports accompanying enacted USACE appropriations.

Note: Funding does not include §111 (due to no authorized annual program limit) or supplemental appropriations.

Supplemental Appropriations for CAPs

In some supplemental appropriations provided for USACE, Congress has directed appropriations for CAPs or specified up to a certain amount of construction appropriations for CAPs. For example, Congress provided \$465 million in the Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58) for seven CAPs and WRDA 2020 Section 165(a) CAP pilot program. Of the \$465 million, IIJA identified \$115 million for Section 206 CAP projects at full federal expense and no project cost limit to remove in-stream barriers for fish and wildlife passage and to provide technical assistance to nonfederal entities for these activities. Of the CAP appropriations, USACE’s FY2022 IIJA spend plan allocated \$203 million to at least 178 CAP projects (of which only \$5 million is for an unspecified number of new CAP projects and the rest is for ongoing CAP projects) and \$500,000 for technical assistance. For the Disaster Relief Supplemental Appropriations Act, 2022 (Division B of P.L. 117-43), Congress stipulated that USACE could allocate up to \$65 million of the \$3 billion provided for construction appropriations to CAP projects for flood and storm risk reduction (at 100% federal expense if an ongoing project). As of June 2022, USACE reports no allocation of funding to CAP projects in its P.L. 117-43 spend plan.

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