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Continuing Authorities Programs (CAPs) of the U.S. Army Corps of Engineers

The U.S. Army Corps of Engineers (USACE) can study and implement certain types of water resource projects without project-specific congressional authorization under its programmatic authorities, known as *continuing authorities programs* (CAPs). Pursuant to congressionally established CAPs, USACE has authority to plan and implement projects of limited size, cost, scope, and complexity. There are CAPs for reducing flood damages, improving navigation, and protecting and restoring aquatic ecosystems, among other purposes (**Table 1**). CAPs typically are referred to by the section number of the law authorizing the CAP. For most CAP authorities, Congress has limited projects' federal cost and scope.

As part of the annual Energy and Water Development appropriations process, CAP authorities typically are funded by a line item for each CAP in the USACE Construction account. At times, some CAPs have been funded through supplemental appropriations. Because CAPs are typically funded as a program, USACE often has discretion regarding which CAP projects to fund using the appropriations provided by Congress for that program. At times, Congress has specified individual CAP projects to receive appropriations through community project funding/congressionally directed spending (CPF/CDS) items (e.g., in FY2022-FY2024 annual appropriations).

Table 1. USACE CAPs Funded by FY2024 Enacted Annual Appropriations
(in millions of dollars)

CAP	Project Types	Nonfederal Construction Cost Share	Federal Limit Per Project	Annual Federal Program Limit	FY2024 Annual Approp.
§14	Emergency streambank erosion and shoreline protection of public works and nonprofit services (33 U.S.C. §701r)	35%	\$10.00	\$25.00	\$5.00
§103	Shore protection/Beach erosion control (33 U.S.C. §426g)	35%	\$10.00	\$37.50	\$0.50
§107	Navigation improvement (33 U.S.C. §577)	Varies ^a	\$10.00	\$62.50	\$1.50
§111	Mitigation (and prevention) of shore damage by federal navigation projects (33 U.S.C. §426i)	Same as the project causing the damage	\$12.50	NA	\$2.10
§204	Beneficial use of dredged material (33 U.S.C. §2326) ^b	35% ^b	\$10.00 ^b	\$62.50	\$18.00
§205	Flood control projects, including ice jam prevention (33 U.S.C. §701s)	35%-50% for structural; 35% for nonstructural	\$10.00	\$68.75	\$12.00
§206	Aquatic ecosystem restoration (33 U.S.C. §2330)	35%	\$10.00	\$62.50	\$8.00
§208	Removal of obstructions and clearing channels for flood control (33 U.S.C. §701g)	35%	\$0.50 ^b	\$7.50	\$0.25
§1135	Project modifications for improvement of the environment (33 U.S.C. §2309a)	25%	\$10.00	\$50.00	\$7.50

Sources: CRS based on statutes; USACE, "Planning: Continuing Authorities Program," Engineer Pamphlet 1105-2-58, March 1, 2019; and explanatory statement accompanying the Consolidated Appropriations Act, 2024 (P.L. 118-42).

Notes: CAP = continuing authorities program; NA = not applicable; USACE = U.S. Army Corps of Engineers.

- For navigation features, cost share varies based on depth: 10% for improvements less than 20 ft. deep, 25% between 20 ft. and 50 ft., and 50% for more than 50 ft; in addition, 10% over a period not to exceed 30 years. Cost share is 50% for recreational navigation.
- Projects under the CAP consist of regional sediment management as part of construction to reduce storm damage, protect aquatic ecosystems, and improve environmental conditions (§204), and beneficial use of dredged material from federal water resource projects (§204(d)). 35% for costs beyond the base disposal plan costs (which is 100% federal cost of the least costly typical disposal). \$10.0 million per construction activity, and \$10.0 million per beneficial use/placement under §204(d). Multiple placements allowed under §204(d). \$500,000 for any tributary in a fiscal year.

Initiating a CAP Project

To initiate a CAP project, USACE typically requires a nonfederal sponsor (e.g., local government or nonprofit entity with local government consent) to send a letter to the local USACE district describing the water resource problem and requesting assistance with a project. (Many USACE district websites include letter templates.) USACE determines whether there is federal interest in a project, if the project fits under a CAP authority, and whether funding is available. Although USACE does not need any additional authorization to perform projects under CAPs, Congress has referenced specific CAP projects in some omnibus USACE water resources authorization bills (i.e., Water Resources Development Acts, or WRDAs).

Project Process: Study and Construction

Once funded, CAP projects generally take two to three years for the study phase. The construction phase often takes two to five years. During the study phase, USACE identifies alternative project plans and develops initial cost estimates, environmental impact analyses, and a real estate evaluation, among other project formulation actions. The study phase typically consists of developing a *feasibility report* as the decision document, in which USACE identifies the preferred project alternative. For CAP projects, project design and construction can immediately follow the study phase (i.e., without project-specific congressional authorization), subject to the availability of appropriations. Design and construction include final project design and specifications, real estate acquisition, project contracting, and physical construction.

Nonfederal Responsibilities

The CAP authorities require the nonfederal sponsor to share project study and construction costs and to assume other responsibilities, including obtaining real estate interests. The CAP study phase is initially federally funded up to \$100,000. Thereafter, the remaining study cost share for most CAPs is 50% nonfederal, with some exceptions. For example, studies under the Section 204 CAP require no nonfederal cost share. For studies under Section 111, after the first \$100,000 in costs (which are federally funded), costs are shared at the same ratio as in construction of the navigation project causing the damage.

Before construction begins, the nonfederal sponsor and USACE sign a *project partnership agreement*. Cost sharing for construction varies by CAP authority, as shown in **Table 1**. Nonfederal sponsors often 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, which is responsible for operations, maintenance, and most repairs and rehabilitation (except for the general navigation feature improvements under the Section 107 CAP).

In some cases, Congress has provided for certain CAP project costs to be undertaken at a higher federal cost share (e.g., 33 U.S.C. §2310 for territories and tribes, and 33 U.S.C. §2267b for post-disaster watersheds). In addition, Congress authorized a 10-year pilot program for USACE to carry out projects at 100% federal cost under various CAPs

for up to 20 economically disadvantaged communities (Section 165(a) of WRDA 2020, as amended; 33 U.S.C. §2201 note). Congress included projects pursued under CAP Sections 14, 103, 204, 205, 206, 208, and 1135 under this program. A June 2023 notice requested pilot project proposals under Section 165(a); after an extension, submissions were due by October 2023.

Appropriations for CAPs

Congress usually funds several USACE CAPs above the amount requested by the President. Funding for some CAPs may not be included in the President's request or receive annual appropriations. For example, the President's FY2025 request for CAPs was \$16.50 million. No FY2025 funds were requested for the Sections 14, 103, 107, 111, 204, or 208 CAPs. In FY2024, the CAPs referenced in **Table 1** received an aggregate of \$52.75 million (explanatory statement accompanying Consolidated Appropriations Act, 2024 [P.L. 118-42]). Of this amount, Congress directed a total of \$2.05 million to 11 specific CAP projects through CPF/CDS items. For more on USACE appropriations, see CRS Report R46320, *U.S. Army Corps of Engineers: Annual Appropriations Process*. In addition to providing FY2024 appropriations for the CAPs, the explanatory statement accompanying P.L. 118-42 assigned \$34.8 million of previously enacted CAP appropriations that were unobligated and unallocated to the FY2024 Construction account.

In some supplemental appropriations provided for USACE, Congress has directed appropriations for CAPs or specified that up to a certain amount of construction appropriations be used for CAPs. For example, Congress provided \$465 million in the Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58) for seven CAPs and the aforementioned Section 165(a) pilot. Of the \$465 million, IIJA specified that \$115 million was for Section 206 CAP projects to remove in-stream barriers for fish and wildlife passage and to provide technical assistance to nonfederal entities for these activities, at full federal expense and without a project cost limit. In the Disaster Relief Supplemental Appropriations Act, 2022 (Division B of P.L. 117-43), Congress stipulated that USACE could allocate up to \$65 million to CAP projects for flood and storm risk reduction. As of early 2024, USACE had not identified funding for CAP projects in its P.L. 117-43 spend plan. A summer 2023 spend plan for IIJA funds identified funding for CAP projects, while also noting the termination of some CAP projects identified for funding in earlier IIJA spend plans.

Other Small Project Authorities

Apart from the regularly funded CAPs, Congress has established other authorities that share many CAP characteristics or are authorized in conjunction with CAPs. For a discussion of these, see "Other Small Project Authorities" in CRS Report R47946, *Process for U.S. Army Corps of Engineers (USACE) Projects*.

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