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# **Army Corps of Engineers Water Resources Projects: Authorization and Appropriations**

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## Summary

Congress authorizes and appropriates funds for the U.S. Army Corps of Engineers (Corps) to conduct water resources studies and projects for navigation, flood and storm damage reduction, ecosystem restoration, and an array of other purposes. This report explains how the congressional authorization and appropriations process overlays the Corps' project development process. Special attention is given to initiating a water resources study, the Water Resources Development Act (WRDA) process, civil works appropriations, and emergency response activities.

**Authorization of Water Resources Activities.** Congress generally authorizes Corps studies as part of a WRDA or in a survey resolution passed by an authorizing committee. WRDAs also include authorizations to construct projects and changes to policies guiding the Corps civil works program, such as the split of project costs between the federal government and the nonfederal project sponsors.

Beginning in 1986, a biennial WRDA cycle was loosely followed for a number of years. Pressure to authorize new projects, increase authorized funding levels, and modify existing projects is often intense, thus promoting a fairly regular biennial consideration of WRDA. Controversial projects and policy changes contributed to a seven-year gap in enactment between WRDA 2000 in December 2000 and WRDA 2007 in November 2007 (P.L. 110-114).

**Annual Agency Appropriations.** Federal funding is provided for Corps civil works activities primarily through the annual Energy and Water Development Appropriations Act. These acts also may include authorizations of Corps activities; authorization provisions in appropriations provisions, however, may be subject to points of order on the Senate or House floor. Due in part to competition for limited funding, many authorized activities do not receive appropriations, resulting in a backlog of authorized construction and maintenance activities. Few new studies and new construction activities have been included in the President's budget request in recent years.

**Natural Disaster and Emergency Response Activities and Appropriations.** In addition to its role in water resources development, the civil works responsibilities of the Corps include emergency and natural disaster response; some of this work is conducted through mission assignments directed by Federal Emergency Management Agency (FEMA), and other work is conducted independently through the Corps' natural disaster response authority. This work is primarily funded through supplemental appropriations acts.

## **Contents**

Army Corps of Engineers and Its Civil Works Program .....	1
Initiating a Corps Project: Study Authorization .....	1
Corps Project Development Process .....	2
Reconnaissance Study .....	2
Feasibility Study and Construction Authorization .....	3
Engineering and Design .....	4
Changes After Construction Authorization .....	4
Continuing Authorities Programs .....	4
Water Resources Development Acts .....	4
WRDA in the 111 <sup>th</sup> Congress? .....	5
Energy and Water Development Appropriations .....	5
Natural Disaster and Emergency Response Activities and Appropriations .....	6
National Response Framework Activities .....	6
Corps Natural Disaster and Emergency Response Authority .....	7

## **Tables**

Table 1. Project Phases, Average Duration, and Federal Cost .....	3
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## **Contacts**

Author Contact Information .....	7
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## **Army Corps of Engineers and Its Civil Works Program**

The U.S. Army Corps of Engineers (Corps) is a unique agency in the Department of Defense with military and civilian responsibilities. Under its civil works program, the Corps plans, builds, operates, and maintains a wide range of water resources facilities.<sup>1</sup> The Corps attracts much congressional attention because its projects can provide significant economic stimulation, locally and regionally, in addition to their basic resource development purposes. Congress plays a significant role in the direction of the agency, particularly through the authorization and appropriations of studies and projects. In addition to its role in water resources development, the civil works responsibilities of the Corps include emergency and natural disaster response, such as flood fighting operations, structural repairs to levees, and water supply assistance.

Within the Corps, projects are largely planned at the district level and approved at the divisions and in headquarters.<sup>2</sup> The civil works program is headed by a civilian Assistant Secretary of the Army for Civil Works. A military Chief of Engineers oversees the Corps' civil and military operations and reports on civil works matters to the Assistant Secretary for Civil Works. The agency's traditional civil responsibilities are creating and maintaining navigable channels and managing flood risks. More recently, Congress has increased Corps responsibilities in the areas of ecosystem restoration, environmental protection, environmental infrastructure (e.g., municipal water and wastewater treatment systems), disaster relief, and other nontraditional activities.

### **Initiating a Corps Project: Study Authorization**

A Corps project often begins with a request for assistance from a community (e.g., citizens or businesses) or a local or state government entity with a water resource need (e.g., navigation, flood or storm protection, or ecosystem restoration) beyond its capability. Congressional sponsorship is generally necessary to successfully initiate a study. The Corps generally requires two types of congressional authority to initiate a study—study authorization, then appropriations.

A study authority allows the Corps to investigate a problem and determine if there is a federal interest. If the Corps has performed a study in the geographic area before, a new study can be authorized by a resolution (known commonly as a "survey resolution") of either the House Transportation and Infrastructure Committee or the Senate Environment and Public Works Committee.<sup>3</sup> If the Corps has not previously investigated, the study needs to be authorized in an

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<sup>1</sup> For more information on the Corps, its civil works program, and the types of projects that it undertakes, see CRS Report RS20866, *The Civil Works Program of the Army Corps of Engineers: A Primer*, by Nicole T. Carter and Betsy A. Cody.

<sup>2</sup> The Corps has 9 civil works divisions and 41 districts. A division and district map is available at <http://www.usace.army.mil/about/Pages/Locations.aspx>.

<sup>3</sup> To request a study's inclusion in a resolution, a Member of Congress may send a letter to the Chairman of the House Committee on Transportation and Infrastructure or the Senate Committee on Environment and Public Works. The number of studies authorized by resolution varies by Congress. The 108<sup>th</sup> Congress authorized 63 studies via survey resolutions; the 109<sup>th</sup> Congress authorized 29. A survey resolution is permitted under the Rivers and Harbors Act of 1913 (33 U.S.C. §542) for the examination and review of an earlier Corps report. To be eligible for authorization in a resolution, the new study must stay within the scope of the authorization of the original report.

act of Congress, typically a Water Resources Development Act (WRDA).<sup>4</sup> Once authorized, appropriations for Corps studies are sought through the annual Energy and Water Development Appropriations Acts. The purpose of the study is to inform decisionmakers on whether to authorize a Corps project for construction. Early in the study process, the Corps assesses the level of interest and support of nonfederal entities that may be potential sponsors. Nonfederal sponsors generally are state, tribal, county, or local agencies or governments. Corps studies typically do not require reauthorization because the authorities are not time-limited; however, there is a process to begin deauthorization of studies that have not received funding for five years.

## Corps Project Development Process

Nonfederal sponsors are involved in not only identifying the water resources needs, but also contributing to each phase of the development process. Since WRDA 1986 (P.L. 99-662), nonfederal sponsors are responsible for a significant portion of the financing of studies, construction, and operation and maintenance (O&M) of most projects. Moreover, nonfederal support is useful in shepherding a project through the many stages from study initiation to final project construction.

There are three phases that a project passes through before construction begins: reconnaissance study, feasibility study, and preconstruction engineering and design, as shown in **Table 1**.<sup>5</sup> All three are conducted under a single congressional study authorization. The length of each phase varies project by project, with the size and the complexity of a project typically resulting in a longer process.

### Reconnaissance Study

The reconnaissance study is used to understand the nature of the water resources problem and determine the federal government's interest. The reconnaissance study also examines the interest of nonfederal sponsors who are involved in all phases of project development. Corps policy is to complete most reconnaissance studies within 12 months; the cost of reconnaissance studies and their related project study plans generally are limited to \$100,000 at full federal expense. Around a third of the reconnaissance studies eventually lead to feasibility studies; only 16 of every 100 reconnaissance studies lead to constructed projects.<sup>6</sup>

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<sup>4</sup> These acts are commonly distinguished from each other by including a reference to the year of enactment; for example, WRDA 1986 refers to the act passed in 1986. The most recent WRDA was enacted in November 2007 (P.L. 110-114). For more information on WRDA 2007, see CRS Report RL33504, *Water Resources Development Act (WRDA) of 2007: Corps of Engineers Project Authorization Issues*, coordinated by Nicole T. Carter.

<sup>5</sup> More information on the planning process is available in the *Planning Guidance Notebook* (ER 1105-2-100), at [http://www.iwr.usace.army.mil/waterresources/docs\\_wr/11052100.pdf](http://www.iwr.usace.army.mil/waterresources/docs_wr/11052100.pdf), and the *Project Partnership Kit* (IWR Report 96-R-10), at <http://www.lm.usace.army.mil/pao/outreach/pdf/ProjectPartnershipKit.pdf>. Corps policies are available in *Digest of Water Resources Policies and Authorities* (EP 1165-2-1), at <http://140.194.76.129/publications/eng-pamphlets/ep1165-2-1/toc.htm>.

<sup>6</sup> General Robert B. Flowers, Army Corps Chief of Engineers, "Oral Statement," *Reforms to Address the Corps of Engineers Feasibility Studies*, hearing before Senate Environment and Public Works Subcommittee on Transportation and Infrastructure on March 15, 2001. The hearing is hereafter referred to as Reform of Feasibility Studies hearing, March 15, 2001. The testimony is available at [http://www.senate.gov/~epw/stm1\\_107.htm#03-15-01](http://www.senate.gov/~epw/stm1_107.htm#03-15-01).

**Table 1. Project Phases, Average Duration, and Federal Cost**

	Reconnaissance	Feasibility	Preconstruction and Engineering Design	Construction	O&M
Avg. Duration (years)	1	2-3	approx. 2	varies	authorized project duration
Federal Share of Costs <sup>a</sup>	100%	50% <sup>b</sup>	varies by project purpose	varies by project purpose	0% with some exceptions

- a. For more information on federal and nonfederal cost-share responsibilities for various project purposes, see CRS Report RS20866, *The Civil Works Program of the Army Corps of Engineers: A Primer*, by Nicole T. Carter and Betsy A. Cody.
- b. Inland waterways feasibility studies are a 100% federal responsibility (33 U.S.C. §2215). These projects are not considered "local" by their nature.

## Feasibility Study and Construction Authorization

If a nonfederal sponsorship is secured and the Corps recommends proceeding, a feasibility study begins. Its objective is to formulate and recommend solutions to the water resources problem. During the first few months of a feasibility analysis, the local Corps district formulates alternative plans, investigates engineering feasibility, conducts benefit-cost analyses, and assesses environmental impacts under the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. §4321).<sup>7</sup> The evaluation of federal water resources projects, including Corps activities, is governed by the 1983 *Principles and Guidelines for Water and Related Resources Implementation Studies*, written by the Water Resources Council.<sup>8</sup> An important outcome of the feasibility analysis is the determination of whether the project warrants further federal investment (i.e., if the project has sufficient National Economic Development benefits).

The cost of the feasibility and environmental studies is split equally between the Corps and the nonfederal project sponsor. The feasibility phase ends when the Chief of Engineers signs a final recommendation on the project, known as the Chief's Report. In recent years, the Congress has used a favorable Chief's Report as the basis for authorizing projects.

The Corps sends an informational copy of the Chief's Report to Congress when it transmits the report to the Assistant Secretary and the Office of Management and Budget (OMB). Since the mid-1990s, Congress has authorized a significant number of projects based on these informational copies, prior to the projects receiving a full review by the Assistant Secretary and OMB. Some recent WRDAs have also included authorizations for projects that were still undergoing feasibility analyses; these projects generally were authorized contingent on a Chief's Report being available by December 31 of the year the WRDA was enacted.

<sup>7</sup>Generally, the district produces an environmental impact statement (EIS) during the feasibility phase. Preparation includes public meetings to determine the view of local interests on the extent and type of improvement desired.

<sup>8</sup> Available at <http://www.usace.army.mil/CECW/Pages/pgr.aspx>. Pursuant to WRDA 2007, the Administration is updating the Principles and Guidelines; information on the revision process is available at <http://www.whitehouse.gov/administration/eop/ceq/initiatives/PandG>.

## **Engineering and Design**

The study phase—preconstruction engineering and design—that follows the feasibility analysis takes about two years, on average, and is conducted while pursuing congressional authorization for the project and construction funding. The preconstruction costs are distributed between the federal and nonfederal sponsor in the same proportion as the cost-share arrangement for the construction phase. Once the project receives congressional authorization, federal funds for construction are sought annually in the Energy and Water Development Appropriations Act. The federal cost-share for construction varies by project purpose. Nonfederal parties are responsible for all operation and maintenance expenses, absent a few exceptions mainly for harbors and inland waterways.

## **Changes After Construction Authorization**

A project is likely to undergo some changes after authorization. If project features or the estimated project cost changes significantly, an additional congressional authorization may be necessary. Authorization of a significant modification is typically sought in a WRDA. For less significant modifications, however, additional authorization is often not necessary. Section 902 of WRDA 1986 allows for increases in total project costs of up to 20% due to modifications that do not *materially* change the project's scope or function without requiring additional authorization. The authorization of Corps construction projects generally are not time-limited; however, there is a process to begin deauthorization of projects without funding for five years.

## **Continuing Authorities Programs**

Although the two-step authorization process is the typical process, some technical assistance and small projects can be conducted under the Corps' Continuing Authorities Programs (CAPs). Projects under these authorities can be performed at the Corps' discretion based on the availability of funds. That is, Congress does not need to specifically authorize either the study or the construction of the project for the Corps to initiate a CAP project. The CAPs include beach erosion, navigation, flood control, streambank and shoreline protection, snagging and clearing, modifications to existing projects for the benefit of the environment, and aquatic ecosystem restoration. In recent years, Congress has reduced some of the Corps' discretion in managing the CAPs by directing funds to particular CAP projects.

## **Water Resources Development Acts**

WRDAs are legislative vehicles that typically are exclusively dedicated to authorizing Corps activities and establishing policies for Corps civil works activities, such as cost-share requirements. Authorizations in WRDA usually fall under four general categories: studies, projects, modifications to existing authorizations, and programmatic authorizations. Although Congress has historically authorized Corps projects in a WRDA, authorizations also have appeared in appropriations bills, especially in years when WRDA passage has been delayed. Authorizations in appropriations bills, however, generally are discouraged as standard procedure and may be subject to a point of order on the floor.

Beginning in 1986, a biennial WRDA cycle was loosely followed for a number of years. WRDAs were enacted in 1988 (P.L. 100-676), 1990 (P.L. 101-640), 1992 (P.L. 102-580), 1996 (P.L. 104-303), 1999 (P.L. 106-53), and 2000 (P.L. 106-541).<sup>9</sup> Pressure to authorize new projects, increase authorized funding levels, and modify existing projects is often intense, thus promoting a fairly regular biennial consideration of WRDA, although enactment has been less consistent. Controversial projects and policy changes contributed to WRDA bills in the 107<sup>th</sup>, 108<sup>th</sup>, and 109<sup>th</sup> Congresses not being enacted. The 110<sup>th</sup> Congress enacted WRDA 2007 in November 2007, by overriding a presidential veto. It authorized \$23 billion in Corps activities. (For more information on WRDA 2007, see CRS Report RL33504, *Water Resources Development Act (WRDA) of 2007: Corps of Engineers Project Authorization Issues*, coordinated by Nicole T. Carter.)

Once the House Transportation and Infrastructure (T&I) Committee or the Senate Environment and Public Works Committee decides to consider a WRDA, Members of Congress may make a request to the appropriate committee chair for the inclusion of a study authorization, project authorization, or project modification.<sup>10</sup> The House T&I Committee accepted Member requests for a WRDA bill through December 2009. After receiving Member requests, the committee develops a bill for introduction. The bill reported by the committee generally passes that chamber with few changes. Although the appropriations process determines which studies and projects receive federal funds, the essential character of a project is established during the authorization process and is seldom modified substantially during appropriations.

### **WRDA in the 111<sup>th</sup> Congress?**

In late 2009, the House T&I Committee requested submission of requests for items to be included in a WRDA, and its Subcommittee on Water Resources and Environment held a hearing on November 18, 2009. Many in Congress viewed WRDA 2007 as primarily addressing pent-up demand for project authorizations that had accumulated since the last WRDA in 2000, and feel that another WRDA is needed to reestablish the regular authorization of Corps projects to address the nation's water resources needs. Others express concerns about the growing backlog of already authorized Corps projects and suggest that another WRDA could exacerbate the backlog; these interests argue that if another WRDA is enacted, its purpose should be to establish priorities for managing the backlog and improving the performance of existing projects. The debate over the necessity of a WRDA and what to include is likely to continue, especially as infrastructure investments continue to be considered among avenues for economic stimulus.

## **Energy and Water Development Appropriations**

Congress, through a WRDA and survey resolutions, typically authorizes dozens or hundreds of new projects; however, many new studies and new construction projects do not receive

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<sup>9</sup> WRDA 1986 marked the end of a decade or more of stalemate between the Congress and the Executive Branch regarding authorizations. In addition to authorizing numerous projects, WRDA 1986 resolved long-standing disputes related to cost-sharing, user fees, and environmental requirements. Prior to 1986, disputes over these and other matters had largely prevented enactment of major civil works legislation since 1970. Biennial authorizations were resumed after WRDA 1986 to avoid long delays between the planning and execution of projects and for Congress to review proposed projects on a regular basis.

<sup>10</sup> If the Administration chooses to make a WRDA proposal, Congress generally receives the proposal during February of the second year of a Congress, at the same time as the President's budget.

appropriations. Fiscal priorities and public attitudes in recent decades have resulted in declining federal funding for water resources activities, thus increasing competition for funding among authorized activities. Moreover during the 1990s and in 2000, Congress authorized not only navigation and flood control projects, but also ecosystem restoration, environmental infrastructure assistance, and other nontraditional activities. With enactment of WRDA 2007, the Corps now has an estimated “backlog” of roughly 1,000 authorized activities.

To concentrate limited resources and to move projects through construction, the Bush Administration focused its budget request on funding priority projects and those projects near completion for flood and storm damage reduction, navigation, and environmental restoration. It also substantially reduced appropriation requests for studies and eliminated the start of most new studies and construction projects.

Civil works funding often is contentious between the Administration and Congress, with final appropriations typically providing more than requested, regardless of which political party controls the White House and Congress. Given the project backlog and the limited federal budget resources, decisionmakers are sometimes forced to make difficult choices among competing authorized activities as they prepare annual appropriations. Members of Congress may request that appropriations for a Corps activity be included (or altered) in an Energy and Water Development appropriations bill by sending a letter to the Subcommittee Chairman or the Ranking Member of the Appropriations Subcommittee on Energy and Water Development. In recent years, recommended deadlines for these requests have been in March or April. Once appropriations have been allocated for a Corps activity, funding requests for subsequent years are typically accorded priority until the study or construction is complete. However, fiscal constraints and Administration priorities result in deviations from this pattern.

CRS Report R40669, *Energy and Water Development: FY2010 Appropriations*, provides a discussion of regular Corps civil works appropriations. CRS Report R40216, *Water Infrastructure Funding in the American Recovery and Reinvestment Act of 2009*, discusses the economic stimulus funds that Corps civil works activities received through the American Recovery and Reinvestment Act of 2009 (P.L. 111-5).

## **Natural Disaster and Emergency Response Activities and Appropriations**

### **National Response Framework Activities**

The Stafford Act (42 U.S.C. §5170b) authorizes FEMA to direct Department of Defense to provide assistance in the event of a major disaster or emergency declaration by the President. Under the National Response Framework,<sup>11</sup> the Corps is designated as the coordinator for emergency support for *public works and engineering*. This includes technical assistance, engineering, and construction management as well as emergency contracting, power, and repair

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<sup>11</sup> Section 502(6) of the Homeland Security Act of 2002 authorized the Secretary of Homeland Security to consolidate federal emergency response plans. The framework is available at [http://www.dhs.gov/xprepresp/committees/editorial\\_0566.shtm](http://www.dhs.gov/xprepresp/committees/editorial_0566.shtm).

of public water and wastewater and solid waste facilities. The Corps also is charged with assistance to monitor and stabilize damaged structures and demolish structures designated as immediate hazards to public health and safety. It also provides technical assistance in clearing, removing, and disposing of contaminated and uncontaminated debris from public property, and establishing ground and water routes into affected areas; contaminated debris management is coordinated with the U.S. Environmental Protection Agency (EPA). The Corps' funding for these activities is provided through FEMA appropriations, often through supplemental appropriations.

## **Corps Natural Disaster and Emergency Response Authority**

In addition to work performed as part of the National Response Framework, P.L. 84-99 (33 U.S.C. §701n) provides the Corps authority for emergency response and disaster assistance.<sup>12</sup> It authorizes disaster preparedness, advance measures, emergency operations (disaster response and post-flood response), rehabilitation of flood control works threatened or destroyed by floods, protection or repair of federally authorized shore protection works threatened or destroyed by coastal storms, emergency dredging, and flood-related rescue operations. These activities are limited to actions to save lives and protect improved property (public facilities/services and residential or commercial developments). Although the Corps' account paying for these activities may receive some appropriations in the annual Energy and Water Development Appropriations acts, most of the disaster response work is funded through supplemental appropriations bills.

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<sup>12</sup> The Corps also has other authorities that have emergency response (e.g., an Emergency Streambank and Shoreline Erosion Protection program) and recovery-related components (e.g., a Snagging and Clearing for Flood Control program).