DEPARTMENT OF THE ARMY

COMPLETE STATEMENT

OF

THE HONORABLE JOHN PAUL WOODLEY, JR.
ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS)

BEFORE

THE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES

ON

THE ARMY CIVIL WORKS PROGRAM
FISCAL YEAR 2008

FEBRUARY 14, 2007

Madam Chairwoman and distinguished members of the Subcommittee:

Thank you for the opportunity to testify before the Subcommittee, and to present the President's Budget for the Civil Works program of the Army Corps of Engineers for Fiscal Year (FY) 2008.

OVERVIEW

The FY 2008 Budget for Army Civil Works provides funding for development and restoration of the Nation's water and related resources within the three main Civil Works program areas, namely, commercial navigation, flood and coastal storm damage reduction, and aquatic ecosystem restoration. The Budget also supports hydropower, recreation, environmental stewardship, and water supply services at existing water resources projects owned or operated by the Corps. Finally, the Budget provides for protection of the Nation's regulated waters and wetlands; cleanup of sites contaminated as a result of the Nation's early efforts to develop atomic weapons; and emergency preparedness. The budget does not fund work that should be the responsibility of non-Federal interests or other Federal agencies, such as wastewater treatment and municipal and industrial water treatment and distribution.

Total new discretionary funding in the FY 2008 Budget is $4.871 billion for FY 2008, the highest amount ever in a Civil Works budget. Within this total, we have allocated $2.471 billion to activities funded in the operation and maintenance (O&M) account. This is the highest funding level for operation and maintenance ever proposed in a President's budget or enacted by the Congress. It is 9 percent above the FY 2007 Budget level for the O&M account and $206 million above FY 2006 enacted, after accounting for the $296 million that the Budget has proposed to transfer in FY 2008 from construction to operation and maintenance.

The Budget also includes a FY 2007 recommendation to re-allocate up to $1.3 billion of emergency supplemental appropriations enacted in FY 2006. This would enable the Corps to use available, unobligated funds for measures that will provide a better overall level of protection for the New Orleans metropolitan area in the near-term. This proposal is discussed further below.

A five-year budget development plan (FYDP) is under development and will be provided to the relevant Committees of Congress. The FYDP includes two scenarios or projections: one based on the President's proposed FY 2008 Budget; and one above that level based on the most recently enacted appropriations (FY 2006) at the time the budget was prepared. The projections are formula driven. They do not represent budget decisions or budget policy beyond FY 2008, but they can provide perspective on the Army Civil Works program and budget.

Enclosure 1 displays the current estimate for the distribution of new discretionary funding among eight appropriation accounts, eight program areas plus executive direction and management, and five sources including the general fund of the Treasury and trust funds. Enclosure 2 is a crosscut between appropriation accounts and program areas.

PERFORMANCE-BASED BUDGETING

The FY 2008 Budget reflects a performance-based approach to budgeting. Competing investment opportunities for studies, design, construction, and operation and maintenance were evaluated using multiple metrics. We used objective, performance criteria to guide the allocation of funds among construction projects (see below).

The Budget includes initiatives leading to the development of a more systematic, performance-based budget and improved asset management. For instance, to improve investment decision making, the Budget funds the development of economic models for navigation and methods for evaluating the benefits of aquatic ecosystem restoration efforts. To help identify, evaluate, and establish priorities for the maintenance and rehabilitation of existing flood and storm damage reduction, commercial navigation, and hydropower assets, the Budget provides funding to develop asset management systems and risk-based condition indices. Finally, the Budget presents information for operation and maintenance activities by river basin and by mission area, setting the stage for improved management of Civil Works assets and more systematic budget development in future years.

The focus on Civil Works program performance has a number of foundations. First, the Civil Works Strategic Plan, which was updated in 2004, provides goals, objectives, and performance measures that are

specific to program areas as well as some that are crosscutting. Second, each program area has been assessed using the Program Assessment Rating Tool (PART). Summaries of all completed civil works program assessments can be found on the Administration's new website, www.ExpectMore.gov. Both the Civil Works Strategic Plan and the PART-based program evaluations are works in progress and will continue to be updated.

HIGHLIGHTS – WATER RESOURCES DEVELOPMENT ACCOUNTS

Studies and Design

The FY 2008 Budget provides $90 million for the Investigations account and $1 million for studies in the Mississippi River and Tributaries account. The Budget funds the 67 most promising studies and preconstruction engineering and design (PED) activities. Performance was assessed based on the likelihood in the near-term of meeting the construction guidelines discussed below. For instance, among the projects in PED, the projects with benefit-cost ratios of 3.0 to 1 or higher received funding.

Within the $90 million, $13 million is for the Louisiana Coastal Area study and science program for coastal wetlands restoration; $22 million is for other project-specific studies and design; $10 million is to continue the national inventory of flood and storm damage reduction projects; $17 million is for research and development; and $28 million is for other coordination, data collection, and study activities. Priorities within research and development include the Navigation Economic Technologies research program and the development of benefit evaluation methods for aquatic ecosystem restoration.

Construction

The Budget provides $1.523 billion in the Construction account and $108 million for construction projects in the Mississippi River and Tributaries account.

Many more construction projects have been authorized, initiated, and continued than can be constructed efficiently at any one time. The funding of projects with low economic and environmental returns and of projects

that are not within Civil Works main mission areas has led to the postponement of benefits from the most worthy projects, and has significantly reduced overall program performance.

To remedy this situation and to achieve greater value to the Nation from the Civil Works construction program, the Budget focuses significant funding on the projects that yield the greatest return to the Nation, based upon objective performance criteria. The budget again proposes performance guidelines to allocate funds among construction projects. The most significant change is the inclusion of benefit-cost ratio (BCR) as a metric, rather than remaining benefit-remaining cost ratio. The BCR compares the total benefits to the total costs of a project at its inception, and provides a way to establish priorities among projects.

Under the guidelines, the Budget allocates funds among construction projects based primarily on these criteria: their BCR; their contribution to addressing a significant risk to human safety or to dam safety assurance, seepage control, or static instability correction concerns; and the extent to which they cost-effectively contribute to the restoration of nationally or regionally significant aquatic ecosystems that have become degraded as a result of Civil Works projects, or to a restoration effort for which the Corps is otherwise uniquely well-suited. The construction guidelines are provided in Enclosure 3.

The construction projects funded in the Budget include 6 national priorities; 11 dam safety assurance, seepage control, and static instability correction projects; and 41 other, high-performing projects. The budget also funds ongoing continuing contracts, but no new contracts, for 11 projects with BCRs between 1.5 to 1 and 3.0 to 1.

Operation and Maintenance

The Budget proposes $2.471 billion for the Operation and Maintenance account and $151 million for maintenance activities in the Mississippi River and Tributaries account. Even after adjusting for the reassignment of work, discussed below, this amount is the highest funding level for operation and maintenance ever proposed in a President's budget.

The Budget emphasizes performance of existing projects by focusing on the maintenance of key commercial navigation, flood and storm damage

reduction, hydropower, and other facilities. The proposed funding would enable the Army Corps of Engineers to carry out priority maintenance, repairs, and rehabilitations, and priority initiatives such as the development of asset management systems.

The operation and maintenance program now includes four types of activities that were funded in the Construction program until last year. The Budget transfers responsibility and funding for these activities – compliance with Biological Opinions at operating projects pursuant to the Endangered Species Act, rehabilitation of existing projects, use of maintenance dredging material, and replacement of sand due to the operation and maintenance of Federal navigation projects – because they are integrally connected to the operation and maintenance of Corps projects. The reassignment to the Operation and Maintenance program is needed to improve accountability and oversight, reflect the full cost of operation and maintenance, and support an integrated funding strategy for existing projects. The Budget includes proposed appropriations language to cover funding for these activities in the Operation and Maintenance account.

The Budget proposes that Congress allocate operation and maintenance funding by river basin, rather than on a project-by-project basis. The justification materials present a current estimate for each basin of the distribution of proposed funding among the flood and coastal storm damage reduction, commercial navigation, hydropower, stewardship, recreation, and water supply program areas. Should operation and maintenance work be funded using this framework, managers in the field would be better able to adapt to uncertainties and better able to address emergencies as well as other changed conditions over the course of the fiscal year, consistent with congressional appropriations decisions. The Corps has displayed its current project-by-project estimates for the FY 2008 operation and maintenance program on its website.

HIGHLIGHTS -- PROGRAM AREAS

The Army Civil Works program includes eight program areas, plus the oversight/executive direction and management function. The eight program areas are commercial navigation, flood and coastal storm damage reduction, environment, recreation, hydropower, water supply, emergency management, and the regulatory program. Budget proposals for the nine areas are discussed below.

Flood and Coastal Storm Damage Reduction, and Emergency Management

The FY 2008 Budget provides $1.384 billion for flood and coastal storm damage reduction, and $45 million for emergency management.

Among the 69 construction projects funded in the FY 2008 budget, 46 are for flood and coastal storm damage reduction, including 8 dam safety and seepage control projects and 34 projects that address a significant risk to human safety or have high benefit-cost ratios.

The Budget emphasizes natural disaster preparedness and flood and coastal storm damage prevention. Specifically, the Budget includes $40 million in the Flood Control and Coastal Emergencies account to fund preparedness for flood and coastal emergencies and other disasters. This is a 25 percent increase for preparedness activities compared to the FY 2007 Budget, and is needed to maintain and improve our ability to respond to disasters. The Budget also includes $20 million in multiple accounts to apply lessons learned from Hurricanes Katrina and Rita (including the 12 follow-on actions identified by the Chief of Engineers and stepped-up cooperation with Federal Emergency Management Agency programs for flood plains), $10 million to continue to inventory and assess flood and storm damage reduction projects across the Nation, and $10 million to continue to assess the safety of the Corps portfolio of dams (including improving ordinary, but essential, inspection procedures).

The Budget provides funding for all work currently planned to remedy the most serious (Action Class I and II) dam safety, seepage, and static instability problems at Corps dams. The planning, design, and construction of these projects are funded at the maximum amount that the Corps estimates that it can use efficiently and effectively.

The Budget continues to support Federal participation in initial construction, but not in re-nourishment, at beach nourishment projects that provide storm damage reduction or ecosystem restoration outputs.

Commercial Navigation

The FY 2008 Budget provides $2.009 billion for the commercial navigation program area.

The amount budgeted for inland waterway construction projects (replacements and expansions in the Construction Account, and rehabilitations in the Operation and Maintenance account) is about $418 million, the highest amount ever included in a President's budget. Half of the funding, or $209 million, would be derived from the Inland Waterways Trust Fund. The funding in the Inland Waterways Trust Fund will not be sufficient after FY 2008 to support this level of investment in our principal inland waterways.

The Administration is developing and will propose legislation to require the barges on the inland waterways to pay a user fee. The user fee will address the decline in the balance in the Inland Waterways Trust Fund, which affects the government's ability to finance a portion of the continuing Federal capital investment in these waterways. The legislation will be offered this spring for consideration by Congress.

The Budget focuses operation and maintenance funding on those waterway segments and commercial harbors that support high volumes of commercial traffic, with emphasis on the heavily-used Mississippi, Ohio, and Illinois waterways. The Budget also funds harbors that support significant commercial fishing, subsistence, public transportation, harbor of refuge, national security, or safety benefits.

The Budget continues the policy of funding beach replenishment, including periodic re-nourishment, where the operation and maintenance of Federal navigation projects is the reason for the sand loss on shorelines.

Environment

The FY 2008 Budget provides $514 million for the environment program area.

The Budget includes $274 million for aquatic ecosystem restoration, of which $162 million is for the Corps of Engineers share of the South Florida/Everglades restoration effort. Of this amount, $35 million is for the Modified Water Deliveries project, a key element of this effort that both the National Park Service and the Corps are funding. The Budget provides $23 million for the Upper Mississippi restoration program and $13 million for the Louisiana Coastal Area restoration effort and its science program.

The costs of compliance with Biological Opinions at existing projects are not included in the above figures. The Budget includes these costs as part of the joint operation and maintenance costs of the affected projects and allocates these costs among the program areas served by the projects.

The Budget provides $110 million for environmental stewardship. Corps of Engineers-administered lands and waters cover 11 million acres, an area equal in size to the States of Vermont and New Hampshire. Funded activities include shoreline management, protection of natural resources, support for endangered species, continuation of mitigation activities, and protection of cultural and historic resources.

The Budget provides $130 million for the Formerly Utilized Sites Remedial Action Program (FUSRAP) to clean up contamination at sites resulting largely from the early atomic weapons program. This funding will enable continued progress toward completion of remedial actions at a number of sites.

Regulatory Program

The FY 2008 Budget provides $180 million to the Corps Regulatory Program to protect wetlands and other waters of the United States. This represents a $22 million increase over the FY 2006 enacted level of $158 million, and a $55 million increase since 2001. The funding will be used for permit processing, for enforcement and compliance actions and for jurisdictional determinations, including additional workload necessitated by the Supreme Court's Carabell and Rapanos decisions.

Investing in the Regulatory Program is a win-win proposition. The added funds will enable most public and private development to proceed with minimal delays, while ensuring that the aquatic environment is protected consistent with the nation's water quality laws.

Recreation

The FY 2008 Budget provides $267 million for recreation operations and related maintenance.

To help finance recreation modernizations, the Budget includes an initiative based on a promising model now used by other major federal

recreation providers such as the National Park Service and the Forest Service. The Administration is re-proposing legislation for the Corps to generate additional revenue to help upgrade and modernize the recreation facilities at the sites where this money is collected. Specifically, the legislation includes authority for the Corps to charge entrance fees and other types of user fees where appropriate, and to cooperate with non-Federal park authorities and districts. The Corps would keep collections above an annual baseline amount.

Hydropower

Hydropower is a renewable source of energy. The Civil Works program is the Nation's largest producer of hydroelectric energy, and provides three percent of the Nation's total energy needs.

The FY 2008 Budget provides $291 million for hydropower. This total includes $159 million for hydropower operation and maintenance costs, $43 million for the costs of replacements at four hydropower projects, and $89 million for the costs allocated to hydropower from multipurpose projects and programs. The replacement projects will help to reduce the forced outage rate, which is well above the industry average.

Water Supply

On average, Civil Works projects provide four billion gallons of water per day to meet the needs of municipal and commercial users across the country. The Budget includes $4 million for operation and maintenance costs allocable to water storage.

Executive Direction and Management

The FY 2008 budget provides $177 million for the Expenses account.

Within this amount, $171 million is for the management and executive direction expenses of the Army Corps of Engineers, both at its Headquarters and Major Subordinate Divisions, as well as support organizations such as the Humphreys Engineer Center Support Activity, the Institute for Water Resources, and the Finance Center.

In addition, the Budget proposes to consolidate funding for activities related to oversight and general administration of the Civil Works program within the Expenses account, including funding for the Office of the Assistant Secretary of the Army (Civil Works). Of the $177 million for the Expenses account, $6 million is for the Office of the Assistant Secretary of the Army (Civil Works), including some indirect and overhead costs that previously were centrally funded by the Army.

OTHER BUDGET HIGHLIGHTS

Protection of Greater New Orleans

The FY 2008 Budget also recommends, as part of an FY 2007 Supplemental appropriations package, enactment of a statutory provision to authorize the Secretary of the Army to reallocate up to $1.3 billion of the emergency supplemental appropriations that were provided in FY 2006, but that remain unobligated. The recommended statutory language would reallocate unobligated funds appropriated by Public Law 109-234 (the "fourth emergency supplemental appropriations act of 2006") to fund activities specified in Public Law 109-148 (the "third emergency supplemental act of 2006"), and would reallocate unobligated funds among certain activities specified in the third emergency supplemental appropriations act of 2006. Within the total amount that would be reallocated, $270 million would be reallocated from the Construction account to the Flood Control and Coastal Emergencies account.

The FY 2006 emergency supplemental appropriations were initially allocated based on "rough order of magnitude" estimates by the Corps of the amount of work that would be required to rebuild, complete, and raise the levees in New Orleans. Their estimate of the cost of the work necessary to accomplish these objectives is expected to increase greatly as a result of various engineering forensic investigations and assessments, a review of new storm surge data, increased material costs, and other factors. The earlier cost and schedule estimates have proven to be low, and actionable re-estimates will not be available until this summer. Without the reallocation of the FY 2006 funds that were allocated in law, important work to increase the level of protection in some areas could not be completed in concert with similar work in other areas. The proposed re-allocation would enable the Corps to best apply available funding to those

measures that will increase in the near-term the overall level of protection for the New Orleans metropolitan area.

General Provisions

The Budget includes bill language to authorize continuation of limits on reprogramming with certain changes; replace the continuing contract authority of the Corps with multi-year contracting authority patterned after the authority available to other Federal agencies; and prohibit committing funds for ongoing contracts beyond the appropriated amounts available, including reprogramming.

The Budget also includes bill language to authorize the following: continuation of the national levee inventory and assessment; continuation of activities in Missouri River Basin to comply with the Endangered Species Act; completion of the two Chicago Sanitary and Ship Canal invasive species barriers in Illinois, subject to appropriate cost-sharing; and completion of the McAlpine Lock and Dam, Kentucky and Indiana, project.

WATER RESOURCES DEVELOPMENT ACT PROPOSAL

I am working with others in the Administration towards the goal of developing a legislative framework that will reflect the Administration's priorities for a Water Resources Development Act for your consideration. Our proposal will support the Budget's recommendations for the Civil Works program as addressed in my testimony today.

In the coming weeks I hope to be able to make a proposal that will help accomplish the principles, policies, and practices that have proven to be successful in the past, and will seek to create incentives for their improvement. Working together, I believe the Administration and the Congress can make very substantial improvements in the Civil Works program, and I look forward to offering a proposal that I trust you will find helpful.

PRESIDENT'S MANAGEMENT AGENDA

The Army Civil Works program is pursuing five government-wide management initiatives, as are other Federal agencies, plus a sixth

initiative on real property asset management. "Scorecards" for the Army Corps of Engineers and other Federal agencies can be found at http://www.whitehouse.gov/results/agenda/scorecard.html.

Under these initiatives, the Corps is improving its efficiency through recently completed public-private competitions. In addition, the Corps is undertaking two efforts (for Logistics Management and the Operation and Maintenance of Locks and Dams) to improve its performance through re-engineering of internal business processes, rather than through public-private competitions.

The Corps has also made great progress in working with the Office of the Department of Defense Inspector General on the FY 2006 audit. The Corps is continuing to work towards the goal of obtaining an unqualified opinion, on its accounts, and has been a leader within the Department of Defense in this area. The Corps is committed to addressing any concerns that may arise during the audit.

CONCLUSION

In developing this Budget, the Administration made explicit choices based on performance. The increase in O&M funding, transfer of activities from construction to O&M, emphasis on high-performing construction projects, and increase for preparedness for flood and hurricane emergencies and other natural disasters, for example, all reflect a performance-based approach.

At $4.871 billion, the FY 2008 Army Civil Works budget is the highest Civil Works budget in history. This Budget provides the resources for the Civil Works program to pursue investments that will yield good returns for the Nation in the future. The Budget represents the wise use of funding to advance worthy, mission-based objectives. I am proud to present it.

Thank you, Madam Chairwoman and members of the Subcommittee, for this opportunity to testify on the President's Fiscal Year 2008 Budget for the Civil Works program of the Army Corps of Engineers.

ENCLOSURE 1
DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS – CIVIL WORKS BUDGET, FY 2008

SUMMARY

Requested New Appropriations by Account:		
Investigations		90,000,000
Construction		1,523,000,000
Operation and Maintenance		2,471,000,000
Regulatory Program		180,000,000
Flood Control, Mississippi River and Tributaries		260,000,000
Expenses		177,000,000
Flood Control and Coastal Emergencies		40,000,000
Formerly Utilized Sites Remedial Action Program		130,000,000
TOTAL		4,871,000,000
Requested New Appropriations by Program Area:		
Commercial Navigation		2,009,000,000
(Inland and Intracoastal Waterways)	(1,052,000,000)	
(Channels and Harbors)	(957,000,000)	
Flood and Coastal Storm Damage Reduction		1,384,000,000
(Flood Damage Reduction)	(1,356,000,000)	
(Coastal Storm Damage Reduction)	(28,000,000)	
Environment		514,000,000
(Aquatic Ecosystem Restoration)	(274,000,000)	
(FUSRAP)	(130,000,000)	
(Stewardship)	(110,000,000)	
Hydropower		291,000,000
Recreation		267,000,000
Water Supply		4,000,000
Emergency Management		45,000,000
(Flood Control and Coastal Emergencies)	(40,000,000)	
(National Emergency Preparedness)	(5,000,000)	
Regulatory Program		180,000,000
Executive Direction and Management		177,000,000
TOTAL		4,871,000,000
Sources of New Appropriations:		
General Fund		3,889,000,000
Harbor Maintenance Trust Fund		735,000,000
Inland Waterways Trust Fund		209,000,000
Special Recreation User Fees		37,000,000
Disposal Facilities User Fees		1,000,000
TOTAL		4,871,000,000
Additional New Resources:		
Rivers and Harbors Contributed Funds		445,000,000
Coastal Wetlands Restoration Trust Fund		81,000,000
Permanent Appropriations		9,000,000
TOTAL		535,000,000
Total New Program Funding		5,406,000,000

ENCLOSURE 2
DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS – CIVIL WORKS BUDGET, FY 2008

CROSSCUT BETWEEN APPROPRIATION ACCOUNTS AND PROGRAM AREAS

	Navi-gation	Flood/ Storm	Recre-ation	Aq. Ec. Restor.	Stew-rdshp.	FUS-RAP	Hydro-Power	Water Supply	Emerg. Mgmt.	Regul. Prog.	Ovrsgt/ ED&M	TOT
Investigations	19	41		30								90
Construction	572	665		241			45					1523
Operation & Maint.	1383	475	251	1	106		246	4	5			2471
MR&T – I		1										1
MR&T – C	10	96		2								108
MR&T – M	25	106	16		4							151
FUSRAP						130						130
FC&CE									40			40
Regulatory										180		180
Expenses											177	177
TOTAL	2009	1384	267	274	110	130	291	4	45	180	177	4871

ENCLOSURE 3
DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS – CIVIL WORKS BUDGET, FY 2008

CONSTRUCTION PERFORMANCE GUIDELINES

1. *Project rankings.* All ongoing specifically authorized construction projects, including projects funded in the Mississippi River and Tributaries account, will be assigned based upon their primary purpose to one of the main mission areas of the Corps (flood and storm damage reduction; commercial navigation; aquatic ecosystem restoration) or to hydropower. Flood and storm damage reduction, commercial navigation, and hydropower projects will be ranked by their total benefits divided by their total costs (BCR), calculated at a seven percent real discount rate. Aquatic ecosystem restoration projects will be ranked by the extent to which they cost-effectively contribute to the restoration of a nationally or regionally significant aquatic ecosystem that has become degraded as a result of a civil works project, or to a restoration effort for which the Corps is otherwise uniquely well-suited (e.g., because the solution requires complex alterations to the hydrology and hydraulics of a river system).

2. *Projects funded on the basis of their economic and environmental returns.* Ongoing flood and storm damage reduction, commercial navigation, and hydropower construction projects with a BCR of 1.5 or higher and ongoing aquatic ecosystem restoration construction projects that are cost-effective in contributing to the restoration of a nationally or regionally significant aquatic ecosystem that has become degraded as a result of a civil works project or to a restoration effort for which the Corps is otherwise uniquely well-suited will receive at least the amount needed to pay estimated contractor earnings required under ongoing contracts and related costs. In allocating funds among these projects, priority will be given to those with the highest economic and environmental returns.

3. *Projects funded to address significant risk to human safety.* Flood and storm damage reduction projects that are funded to address significant risk to human safety will receive sufficient funding to support an uninterrupted effort during the budget year.

4. *Projects with low economic and environmental returns.* Ongoing flood and storm damage reduction, commercial navigation, and hydropower construction projects with a BCR below 1.5 will be considered for deferral, except for flood and storm damage reduction projects that are funded to

address significant risk to human safety. Likewise, ongoing aquatic ecosystem restoration construction projects that do not cost-effectively contribute to the restoration of a nationally or regionally significant aquatic ecosystem that has become degraded as a result of a civil works project, and do not cost-effectively address a problem for which the Corps is otherwise uniquely well-suited, will be considered for deferral.

5. *New starts and resumptions.* The budget could include funds to start up new construction projects, or to resume work on ongoing construction projects on which the Corps has not performed any physical work under a construction contract during the past three consecutive fiscal years, only if the project would be ranked that year in the top 20 percent of the ongoing construction projects in its mission area. The term "physical work under a construction contract" does not include activities related to project planning, engineering and design, relocation, or the acquisition of lands, easements, or rights-of-way. For non-structural flood damage reduction projects, construction begins in the first fiscal year in which the Corps acquires lands, easements, or rights-of-way primarily to relocate structures, or performs physical work under a construction contract for non-structural project-related measures. For aquatic ecosystem restoration projects, construction begins in the first fiscal year in which the Corps acquires lands, easements, or rights-of-way primarily to facilitate the restoration of degraded aquatic ecosystems including wetlands, riparian areas, and adjacent floodplains, or performs physical work under a construction contract to modify existing project facilities primarily to restore the aquatic ecosystem. For all other projects, construction begins in the first fiscal year in which the Corps performs physical work under a construction contract.

6. *Other cases.* Projects will receive the amount needed to ensure that they comply with treaties and with biological opinions pursuant to the Endangered Species Act, and meet authorized mitigation requirements. Dam safety assurance, seepage control, and static instability correction projects that are funded in the construction program will receive the maximum level of funding that the Corps can efficiently and effectively spend in each year.