



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

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July 14, 2017

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment
FROM: Staff, Subcommittee on Water Resources and Environment
RE: Hearing on “Building a 21st Century Infrastructure for America: Implementation of the Water Resources Reform and Development Act of 2014 and the Water Resources Development Act of 2016”

PURPOSE

The Subcommittee on Water Resources and Environment will meet on Wednesday, July 19, 2017, at 10:00 a.m. in 2167 Rayburn House Office Building, to receive testimony from the Senior Official Performing the Duties of the Assistant Secretary of the Army for Civil Works and the Chief of Engineers for the U.S. Army Corps of Engineers (Corps) on implementation of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) and the Water Resources Development Act of 2016 (WRDA 2016), which is Title I of the Water Infrastructure Improvements for the Nation Act (WIIN Act).

BACKGROUND

Army Corps of Engineers

Corps Overview

Currently, the Corps maintains more than 25,000 miles of channels for commercial navigation, and operates and maintains 241 locks at 195 sites. Almost 140 locks are more than 50 years old. The Corps also maintains 926 coastal, Great Lakes, and inland harbors.

The Corps manages more than 700 dams nationwide and has constructed more than 10,000 miles of levees through its flood damage reduction mission. Corps flood damage reduction projects prevent, on average, more than \$50 billion in flood damage annually. Every dollar invested in a Corps flood project prevents \$8.00 in damage.

The Corps employs over 33,000 people, including more than 800 military personnel. Corps projects provide annual net economic benefits of more than \$90 billion, and the total replacement value of Corps infrastructure assets equals approximately \$267 billion.

Project Authorization Process Overview

The Corps constructs projects for the purposes of navigation, flood control, shoreline erosion control and protection, hydroelectric power, recreation, water supply, environmental protection, restoration and enhancement, and fish and wildlife mitigation.

The first step in a Corps water resources development project is to study the feasibility of the project. This can be done in two ways. One, if the Corps has previously conducted a study in the area of the proposed project, the new study can be authorized by a resolution, either from the Committee on Transportation and Infrastructure of the House of Representatives or the Committee on Environment and Public Works of the Senate. The Committee on Transportation and Infrastructure has not adopted a new study resolution since 2010 because of process reforms. Two, if the area has not been previously studied by the Corps, then an Act of Congress is necessary to authorize the study. In recent years, most studies have been authorized through a Water Resources Development Act (WRDA).

Once a study is authorized, the Corps prepares a feasibility report, the cost of which is shared 50 percent by the federal government and 50 percent by a non-federal interest. If the feasibility report determines a project is economically justified, environmentally acceptable, and technically achievable, the results and recommendations are submitted to the Congress, usually in the form of a report of the Chief of Engineers, commonly known as a “Chief’s Report.” If the results and recommendations are favorable, the next step is authorization of the project to implement the Chief’s Report. Project authorizations are typically contained in WRDAs, the most recent of which was enacted in 2016. Once authorized, the project is eligible to receive federal appropriations.

Recent WRDAs

Traditionally, WRDAs authorize the Corps to carry out projects used for navigation, flood damage reduction, aquatic ecosystem restoration, and other purposes. Generally, WRDAs are enacted every two years. However, from 2000 to 2013 there were only two WRDAs (2000 and 2007). But in 2014, Congress returned to the two-year cycle, with the passage of WRRDA 2014 and WRDA 2016.

Water Resources Reform and Development Act of 2014

Enacted on June 10, 2014, WRRDA 2014 accelerates the project delivery process by expediting studies, environmental reviews and permits, and encourages non-federal participation in completing projects. WRRDA 2014 also strengthens congressional oversight to increase transparency and accountability in reviewing and prioritizing future water resources development investment.

With the enactment of WRRDA 2014, the Corps is required to develop implementation guidance on more than 200 issues to carry out the law. In the three years since enactment, the Corps has issued more than 90 percent of the implementation guidance. However, the Corps has not issued implementation guidance on other provisions of the bill, including provisions related to acceleration of the project delivery process.

Water Resources Development Act of 2016

The WIIN Act was enacted on December 16, 2016, and Title I contains WRDA 2016, which authorizes Corps water resources projects and activities. It builds off the reforms enacted in WRRDA 2014, including provisions relating to non-federal participation in project completion, credits for non-federal work on projects, and increases direction of harbor maintenance activities. Additionally, WRDA 2016 establishes and reaffirms programs to rehabilitate hazardous dams, carry out projects for the beneficial reuse of dredged material, and coordinate activities with Indian tribes.

With the enactment of WRDA 2016, the Corps is required to issue over 200 pieces of implementation guidance to carry out the law. In six months after enactment, the Corps has issued implementation guidance for all study and project authorizations, and less than 20 percent of required guidance for policy provisions.

Annual Report to Congress

Section 7001 of WRRDA 2014 requires the Secretary of the Army (Secretary) to request proposals from non-federal interests for new project authorizations, studies, and modifications to existing Corps projects. Further, it requires the Secretary to submit and make publicly available, a Report to Congress on Future Water Resources Development (Annual Report) to the House Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works, of those activities that are related to the missions of the Corps and require specific authorization by law.

This section was included in WRRDA 2014 so that Congress could gain greater insight into the water resources challenges facing the Nation and help set priorities for future water resources legislation. Congress intended the Annual Report to be a collective effort of state and other non-federal project sponsor priorities without the concerns of feasibility and cost. The Annual Report is intended to reflect a broad spectrum of activities for Congress, not the Administration, to consider in authorizing future water resources projects. WRDA 2016 authorized eligible studies and projects from the Annual Reports submitted to Congress in January 2015 and January 2016.

The Committee received the third Annual Report in March 2017. The *Federal Register* notice for project submittals to the Corps for the next Annual Report was issued on April 11, 2017. The period for non-federal project sponsors to submit project proposals to the Corps ends on August 9, 2017. The Corps is required to submit the next Annual Report to Congress by February 1, 2018.

Accelerated Project Delivery Process

Important reforms provided by WRRDA 2014 accelerate the project delivery process. WRRDA 2014 limits feasibility studies to three years and \$3 million in federal costs per study, and requires all three levels of the Corps (District, Division, and Headquarters) to concurrently review the feasibility study. WRRDA 2014 also revised the environmental review process for water resources projects to enable the Corps to better coordinate with all of the involved federal, state, and local agencies. Additionally, WRRDA 2014 includes a pilot program for public utility companies and natural gas companies to expend funds to expedite the processing of permits within the regulatory program of the Corps.

WRDA 2016, subsequently, builds off these reforms by including railroad carriers in the pilot program. WRDA 2016 further revises the environmental review process for non-federal interests requiring a certification under Section 14 of the Act of March 3, 1899 (33 U.S.C. 408, commonly known as ‘Section 408’) to alter a Corps project.

Implementation guidance has been issued for many of these accelerated project delivery provisions. However, guidance for other sections relating to the environmental review process have not.

Flexibility for Non-federal Interests

WRRDA 2014 maximizes the ability of non-federal interests to contribute their own funds to move studies and projects forward. Under the law, non-federal interests have the opportunity to contract with the Corps and fund the study, design, and construction of water resources projects. WRRDA 2014 establishes a five-year pilot program for the acceptance and expenditure of funds contributed by non-federal interests to increase the hours of operations for locks located on the Nation’s inland waterways. WRRDA 2014 also authorizes a non-federal sponsor to apply credit for in-kind contributions on one project that are in excess of the non-federal share to other projects being carried out by the same non-federal sponsors.

WRDA 2016 clarifies many of the authorities reformed in WRRDA 2014 to provide flexibility to non-federal interests to contribute their own funds and resources to move studies and projects forward. WRDA 2016 clarifies that the Secretary may provide technical assistance to non-federal interests carrying out their own feasibility studies, and may also authorize credit or reimbursement to non-federal interests for separable elements of Corps projects. Additionally, WRDA 2016 clarifies the Corps’ authority to transfer excess credit for in-kind contributions by non-federal interests.

While implementation guidance has been issued on some of these sections, no guidance has been issued for other important sections, such as those relating to the construction of projects by non-federal interests.

Harbor Maintenance Trust Fund (HMTF)

Because the HMTF does not spend all of its receipts, WRRDA 2014 creates discretionary appropriations targets for expenditures from the HMTF. Under those targets, by fiscal year 2025, 100 percent of the funds collected for harbor maintenance purposes are to be spent each year on operation and maintenance activities. At the same time, WRRDA 2014 addressed the needs of the Nation's authorized harbors in a manner that benefits both the largest commercial harbors, as well as the smaller and emerging harbors. Regarding expenditures from the HMTF, WRDA 2016 made permanent the use of priority funds for emerging harbors and the Great Lakes Navigation System, and clarifies how payments are administered to donor ports and energy transfer ports. In the event that receipts from the HMTF decrease, WRDA 2016 clarifies that target appropriations from the HMTF will still be met.

WRDA 2016 requires the Corps to issue implementation guidance on certain provisions relating to HMTF expenditures, within 90 days of enactment. However, the Corps still has not issued any implementation guidance on this section, nor any HMTF-related sections in WRDA 2016.

Water Infrastructure Public-Private Partnership Pilot Program and Water Infrastructure Finance and Innovation Act (WIFIA)

WRRDA 2014 established a WIFIA to provide federal credit assistance for drinking water and wastewater activities through the Environmental Protection Agency's (EPA's) portfolio, and water resources infrastructure projects through the Corps' portfolio. This program is modeled after the Transportation Infrastructure and Innovation Act program for surface transportation. WIFIA aims to provide credit assistance in the form of loans or guarantees for eligible water projects.

While implementing this new program requires actions by both the Corps and EPA, the Corps has yet to issue implementation guidance on, or to otherwise implement, WIFIA. EPA has actively developed its own WIFIA program and is expected to issue the first round of credit assistance by the end of 2017. While EPA's guidance follows the intent of WRRDA 2014, there is no indication of when the Corps will release guidance or implement their portion of the program.

WRRDA 2014 authorized the Corps to enter into agreements with non-federal interests, including private entities, to finance construction of at least 15 authorized water resources development projects utilizing the model of a public-private partnership (P3). In fiscal year 2016, the Corps selected the Fargo, North Dakota – Moorhead, Minnesota flood damage reduction project as the first to use a P3. While the Corps is attempting to develop project-specific P3 arrangements, it has yet to develop a comprehensive policy by which all project stakeholders and private investors will be evaluated. The Corps has not issued implementation guidance for P3s under WRRDA 2014.

WITNESS LIST

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