



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

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January 12, 2018

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment
FROM: Staff, Subcommittee on Water Resources and Environment
RE: Subcommittee Hearing on “America’s Water Resources Infrastructure:
Approaches to Enhanced Project Delivery”

PURPOSE

The Subcommittee on Water Resources and Environment will meet on Thursday, January 18, 2018 at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony from witnesses representing the Army Corps of Engineers (Corps), a non-governmental organization representing project contractors, a regional governmental flood control agency, a real estate services and management company, and the Congressional Research Service.

BACKGROUND

United States Army Corps of Engineers

The Corps is responsible for overseeing the Nation’s largest water resources program and a regulatory and permitting program that often applies to the development and implementation of infrastructure projects.

The Corps’ Civil Works Program

The Corps’ Civil Works Program responsibilities include navigation, flood control, shoreline protection, hydropower, dam safety, water supply, recreation, environmental restoration and protection, and disaster response and recovery. In addition to oversight of the Corps’ programs and projects, the Committee places a high priority on enactment of a Water Resources Development Act (WRDA) every two years. This legislation typically contains project authorizations, modifications and deauthorizations, program revisions and policy initiatives, and related provisions involving Corps activities. The most recent WRDA was enacted as Title I of the *Water Infrastructure Improvements for the Nation Act* (WIIN Act) (P.L. 114-322) in 2016.

Today, the Corps maintains more than 25,000 miles of channels for commercial navigation and operates 241 locks at 195 sites. The Corps also maintains 926 coastal, Great Lakes, and inland harbors. There are 75 hydropower projects at Corps facilities, producing about 25 percent of the Nation's hydropower and three percent of the Nation's total electric capacity. To address flood risks, the Corps manages more than 700 dams and almost 15,000 miles of levees are covered by Corps programs. Corps flood damage reduction projects prevent, on average, more than \$50 billion in flood damages annually. Every dollar invested in a Corps flood project prevents \$8 in damages.

The Corps, as a water resource agency, must balance competing demands on water resources as it develops and manages navigation, flood damage reduction, aquatic ecosystem restoration, and other project purposes. For example, the Corps has the responsibility to maintain the navigability of the Nation's inland waterways. One way the Corps carries out this mission is to operate dams that control the flow of water on a river. However, the same dam that regulates river flows for navigation may also provide flood protection, provide water supply, generate power, and create recreational opportunities.

The Corps' Regulatory Program

The Corps has regulatory authority relevant to the development and implementation of infrastructure projects pursuant to Section 404 of the *Federal Water Pollution Control Act* (commonly known as the Clean Water Act or CWA) and pursuant to several sections of the *Rivers and Harbors Act of 1899*.

Section 404 of the CWA provides that any person who discharges dredged or fill material into a jurisdictional water of the United States must have a permit from the Secretary of the Army or an approved state authority. Jurisdictional waters of the United States include certain wetlands, such as swamps, marshes, bogs, and similar areas (which may often appear as dry land for part of the year). Characteristics of wetlands are established through regulation and §404 is the primary federal law regulating activities in wetlands. The Environmental Protection Agency (EPA), in conjunction with the Corps, has developed guidelines for the issuance of §404 permits and has authority to review and deny permits where the discharge will have an adverse effect on municipal water supplies, fish and wildlife areas, or recreational areas.

There are two types of permits issued by the Corps: general and individual. A general permit is issued for activities that will result in only minimal adverse effects. There are three types of general permits – Nationwide Permits, Regional General Permits, and Programmatic General Permits. Nationwide Permits are issued by the Corps on a national basis and are designed to accelerate authorization of infrastructure projects such as commercial developments, utility lines, or road improvements that produce minimal impact on the Nation's aquatic environment. The Corps recently reissued 50 existing Nationwide Permits and added two new permits. These took effect on March 19, 2017, and will be in effect for five years. A Regional General Permit is issued for a specific geographic area by an individual Corps District. Each Regional General Permit has

specific terms and conditions, all of which must be met for project-specific actions to be verified. Programmatic General Permits are based on an existing state, local, or other federal program and designed to avoid duplication of that program. An important subset of Programmatic General Permits is the State Programmatic General Permit (SPGP), which is issued by the Corps and designed to eliminate duplication of effort between Corps districts and state regulatory programs that provide similar protection to aquatic resources. In some states, the SPGP replaces some or all of the Corps' nationwide permits, which results in greater efficiency in the overall permitting process. An individual permit is issued when projects may have more than minimal individual or cumulative impacts, and are evaluated using additional environmental criteria and involve a more comprehensive public interest review.

The Corps also issues permits for the alteration of existing Corps projects and alterations to navigable waterways under Section 14 of the *Rivers and Harbors Act of 1899*, as amended, codified in 33 U.S.C. §408 (commonly called "Section 408"). The Corps provides certification authority for proposed alterations to existing Corps projects. The Corps ensures that any proposed alteration will not be injurious to the public interest and will not affect a project's authorized purposes. Further, Section 10 of the *Rivers and Harbors Act of 1899* (33 U.S.C. §403), requires a permit from the Secretary of the Army for any alteration of a navigable waterway, dredging of a navigable waterway, or erection of any structure such as a wharf, pier, or dock in a navigable waterway.

In total under these authorities, the Corps carried out approximately 80,000 final regulatory actions in fiscal year 2017. According to the Corps, the majority of regulatory decisions are pursued under nationwide general permits, regional general permits, or programmatic general permits, with approximately 3,200 permits evaluated under individual permits (or letters of permission).

The Water Resources Infrastructure Challenge

Federally sponsored water resources infrastructure has long been taken for granted despite its aforementioned size and significance. Our inland waterways and seaports system are economic engines serving as gateways to the global marketplace for American businesses, and account for over 25 percent of U.S. Gross Domestic Product.

However, according to the Corps, there is a current backlog of projects valued at \$96 billion (\$75 billion in project construction and \$21 billion for dam safety and operations and maintenance). In comparison, Corps funding between FY2004-FY2018 has only averaged just over \$5 billion (in nominal terms) annually. Further, from 1987-2016, Congress has appropriated approximately \$33.2 billion to the Corps through various supplemental appropriations in response to natural disasters to fund flood-fighting and other emergency response activities, repairs to existing Corps projects, and construction activities.¹ This figure does not include proposed appropriations for Corps

¹ Nicole T. Carter and Charles V. Stern (2018). *Army Corps Supplemental Appropriations: History, Trends, and Policy Issues* (CRS Report No. R42841). Retrieved from Congressional Research Service website: <https://fas.org/sgp/crs/natsec/R42841.pdf>

activities associated with response and recovery efforts from Hurricanes Harvey, Irma, and Maria.

On the inland and coastal waterways, the average age of locks is over 60 years and 59 percent of the locks are over 50 years old. Between 2000 and 2014, the average delay per lockage nearly doubled from 54 minutes to 121 minutes.² Further, an unscheduled closure of certain locks on the inland waterway system would result in over \$1 billion in additional costs to move to the next best available modal alternative.³

The Corps estimates that full channels at the Nation's 59 busiest ports are available less than 35 percent of the time. Despite the significant dredging needs at the majority of U.S. ports, the Harbor Maintenance Trust Fund's (HMTF) balance sits at over \$9 billion. The *Water Resources Reform and Development Act of 2014* (P.L. 113-121) created discretionary appropriations targets for expenditures from the HMTF, increasing each year, so that by FY2025 and beyond, 100 percent of funds collected for harbor maintenance purposes go towards required operation and maintenance activities.

Several factors, including a lack of sufficient funding and institutional process impediments, have led to few water resources projects being completed in recent years. Modernizing our water resources infrastructure to meet the needs of the Nation and a global economy requires examination of current policy and practice, as well as consideration of new, innovative, and alternative approaches to drive efficient, effective project delivery. Our Nation's navigable waterways system is a key element of local, state, and federal economic development and job-creation efforts, and is essential in maintaining economic competitiveness and national security.

² American Society of Civil Engineers, *2017 Infrastructure Report Card: Inland Waterways* (March 2017).

³ Center for Transportation Research, University of Tennessee and Vanderbilt Engineering Center for Transportation and Operational Resiliency, Vanderbilt University, *The Impacts of Unscheduled Lock Outages*, submitted to the National Waterways Foundation and the U.S. Maritime Administration (October 2017).

WITNESS LIST

Major General Donald E. Jackson
Deputy Commanding General for Civil and Emergency Operations
United States Army Corps of Engineers

Mr. James C. Dalton
Director of Civil Works
United States Army Corps of Engineers

Mr. Mike Inamine
Executive Director
Sutter Butte Flood Control Agency

Ms. Leah F. Pilconis
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