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

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March 19, 2021

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment
FROM: Staff, Subcommittee on Water Resources and Environment
RE: Subcommittee Hearing on "The Water Resources Development Act of 2020: Status of Essential Provisions"

PURPOSE

The Subcommittee on Water Resources and Environment will meet in open session on Tuesday, March 23, 2021, at 11:00 a.m. in the Rayburn House Office Building, Room 2167, and via Cisco Webex, to receive testimony related to the implementation of the *Water Resources Development Act (WRDA) of 2020*. The purpose of this hearing is to provide Members with an opportunity to review the implementation of U.S. Army Corps of Engineers (Corps) projects and policies included in *WRDA 2020*, and discuss those that will have the greatest impact on clearing maintenance backlogs, modernizing our water resources infrastructure, and getting critical assistance to communities.

BACKGROUND

The Corps is the federal government's largest water resources development and management agency and is comprised of 38 district offices within eight divisions.[1] The Corps operates more than 700 dams; has constructed 14,500 miles of levees; and maintains more than 1,000 coastal, Great Lakes, and inland harbors, as well as 12,000 miles of inland waterways.[2]

Navigation was the earliest civil works mission, such as when Congress authorized the Corps to improve safety on the Ohio and Mississippi Rivers in 1824. Since then, the Corps' primary missions have evolved and expanded to include flood damage reduction along rivers, lakes, and the coastlines, and projects to restore and protect the environment. Along with these missions, the Corps is the largest generator of hydropower in the nation, provides water storage opportunities to cities and industry, regulates development in navigable waters, assists in national emergencies, and manages a recreation program.[3]

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[1] See https://www.usace.army.mil/locations.aspx.
[2] See https://www.crs.gov/Reports/R45185#fn1.
[3] See generally, https://www.usace.army.mil/Missions/Civil-Works/Hydropower/; https://www.gao.gov/products/GAO-17-500; and https://www.usace.army.mil/missions/civil-works/recreation/.

To achieve its mission in planning, designing, and constructing water resources development projects, the Corps utilizes a planning process that seeks to balance economic development and environmental considerations as it addresses water resources challenges.[4]

The first step in a Corps project is to study the feasibility of the project. This can be done in two ways.[5] 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 of either the House Committee on Transportation and Infrastructure or the Senate Committee on Environment and Public Works (pursuant to 33 U.S.C. 542); however, the Committee on Transportation and Infrastructure has not adopted a new study resolution since 2010. Two, if the area has not been previously studied by the Corps, then an Act of Congress is necessary to authorize the study—usually through a WRDA bill.

During the feasibility study phase, the corresponding Corps' district office prepares a draft study report containing a detailed analysis on the economic costs and benefits of carrying out the project and identifies any associated environmental, social, or cultural impacts.[6] After a full feasibility study is completed, the results and recommendations of the study are submitted to Congress in the form of a report approved by the Chief of Engineers (referred to as a Chief's Report). If the results and recommendations are favorable, then the subsequent step is Congressional authorization for construction of the project through a WRDA bill.

The Corps can also utilize Director's reports to further water resources projects, which are signed by the Director of Civil Works, when such projects are determined to be within the scope of an existing authorization.[7]

STATUS OF *WRDA 2020* IMPLEMENATION

WRDA 2020 was signed into law as Division AA of the *Consolidated Appropriations Act, 2021* (P.L. 116-260) on December 27, 2020.[8] Traditionally enacted biennially, water resources development bills are the principal legislative vehicles to authorize studies, projects, and policies carried out by the Corps.

WRDA 2020 authorized 46 Chief's Reports, eight Director's Reports, 27 new feasibility studies, and six comprehensive river basin studies. The bill also included several modifications to existing Corps policy provisions, program updates, and expanded authority for operations.

As part of implementing *WRDA 2020*, the Corps must consider whether new agency guidance is necessary to execute specific provisions created or amended within the bill; not all changes to Corps' statutes and policies require additional implementation guidance.

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[4] See Summary of Subject Matter Subject, Hearing of the Subcommittee on Water Resources and Environment, entitled "Proposals for a Water Resources Development Act of 2020", Jan. 9, 2020.
[5] See id.
[6] See id.
[7] See U.S. Army Corps of Engineers, "Planning Community Toolbox", https://planning.erdc.dren.mil/toolbox/library.cfm?Option=Direct&Group=Main&Item=Director%20Report&Sub=None&Sort=Default
[8] A section-by-section of WRDA 2020 can be found at https://transportation.house.gov/download/wrda-section-by-section.

Investing in Our Ports, Harbors, and Inland Waterways

Marine transportation is essential to supporting the U.S. economy through the movement of imported and domestic goods. According to the Congressional Research Service (CRS), oceangoing vessels carry more cargo to and from the United States than all other modes combined (air, trucks, rail, and pipeline).[9] This accounts for 80 percent of the total merchandise trade volume for the country.[10] Simultaneously, our inland waterways annually move about 600 million tons of cargo, valued at approximately $250 billion.[11] Barging via the inland waterways represents the lowest carbon footprint and highest fuel-efficiency among other modes of surface transportation.[12]

WRDA 2020 included several key provisions to improve the operation, maintenance, and construction of Corps' navigation projects, including:

- Section 101 authorizes the full utilization of funds from the Harbor Maintenance Trust Fund (HMTF) by allowing increasing appropriations from both prior collections and the balance of the HMTF outside a discretionary budget cap for the dredging and maintenance needs at ports and harbors across the country.
- Section 102 directs the Corps to expend designated percentages of HMTF resources towards emerging harbors, donor and energy transfer ports; Great Lakes ports; and commercial strategic seaports, as well as modifies the "expanded use" definitions for donor and energy transfer ports and emerging harbors.
- Section 104 modifies the authority created by section 2106 of the *Water Resources Reform and Development Act of 2014* (P.L. 113-121) for additional measures at donor and energy transfer ports.
- Section 109 provides a 10-year modification to the cost share for construction of projects on the inland waterways, increasing the federal resources available for the construction and major rehabilitation of inland waterways projects and ensuring the continued reliability of locks and dams throughout the system.

Building Resilient Communities

Many existing Corps' facilities and infrastructure projects were constructed in the early to mid-1900s. As a result, approximately 95 percent of the dams managed by the Corps are more than 30 years old, and half have reached or exceeded their 50-year project lives.[13] The Corps' ability to manage its aging infrastructure is coupled with the need to balance multiple authorized purposes. In addition, the Corps continues to respond to the challenges of extreme weather events, strengthening storms, and sea level rise—each of which create unique strains on water infrastructure, and require diverse approaches to meet the complex needs of communities relying on it.

WRDA 2020 includes several provisions intended to modernize the Corps' approach to evaluating and executing water resources development projects, as well as to increase the overall resiliency of water resources development projects, including:

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[9] https://www.crs.gov/Reports/R43222?source=search&guid=dc51bbd2aa55499184e5ad610aa4e590&index=0.
[10] See id.
[11] https://www.iwr.usace.army.mil/Portals/70/IWUB%20Annual%20Report%2033rd%20for%202020%20Dec20%20Final.pdf.
[12] See id.
[13] The National Academies Press, Corps of Engineers Water Resources Infrastructure, https://www.nap.edu/read/13508/chapter/3, at 62.

- Section 110 requires the Corps to issue final agency-specifc procedures to implement the water resources principles and requirements which will help ensure comprehensive analysis of the benefits and costs for future water resources development projects.
- Sections 111 and 113 direct the Corps to evaluate the potential impacts of changing climatic conditions, extreme weather events, and sea-level rise in future water resources development projects, and to provide technical assistance to non-federal interests for greater resiliency planning.
- Sections 114, 115, and 116 emphasize the incorporation of nonstructural or natural or nature-based features in water infrastructure, while ensuring their affordability and effectiveness at meeting a community's need.
- Section 125 provides additional direction to the Corps for the beneficial use of suitable dredged material associated with Corps' projects.
- Section 221 directs the Corps to analyze and report to Congress on the benefits and consequences of including water supply and water conservation as a primary mission of the Corps.

Ensuring Access and Affordability Nationwide

Typically, both the feasibility study and construction phases of a Corps' project require the non-federal project sponsor to contribute to the cost of the project. The cost of a study is typically shared 50 percent by the federal government (subject to appropriations) and 50 percent by the non-federal project sponsor.[14] The cost share split for the construction phase varies slightly depending on the project purpose.[15] The Committee has received testimony that meeting cost-share levels can be difficult for communities with affordability concerns.[16] Additionally, rigid reliance on requiring that a Corps project be justified on a "national economic development" basis can preclude smaller, rural, and economically disadvantaged communities from partnering with the Corps to address local water resources development challenges.[17]

WRDA 2020 makes important strides to better enable communities of all affordability levels and economic status to participate in the Corps process and access the expertise or water infrastructure they need. It also helps ensure that the Corps provides wider community engagement and consultation with such communities in the Corps process. Examples of provisions in *WRDA 2020* that address access and affordability concerns, include:

- Section 112 requires the Corps to update its environmental justice policies and ensures that the Corps provide meaningful consultation with minority communities, low-income communities, and tribal communities affected by water resources development projects.
- Sections 117, 118, and 165 provide the Corps with additional flexibility in addressing the water resources needs of rural, small, or economically disadvantages communities.
- Section 119 authorizes the Corps to work with communities facing repetitive flooding in developing and implementing permanent measures to reduce emergency flood fighting needs.

[14] See section 105 of the Water Resources Development Act of 1986 (33 U.S.C. 2215).
[15] See sections 101, 102, and 103 of the Water Resources Development Act of 1986 (33 U.S.C. 2211, 2212, and 2213).
[16] See e.g. Hearing of the Subcommittee on Water Resources and Environment, entitled "Concepts for the Next Water Resources Development Act: Promoting Resiliency of our Nation's Water Resources Infrastructure (November 19, 2019)".
[17] See id. For a more detailed description on the issues related to benefit/cost analyses, see also, The National Academies Press, Analytical Methods and Approaches for Water Resources Project Planning, https://www.nap.edu/read/10973/chapter/5.

CONCLUSION

On March 8, 2021, the Corps published in the *Federal Register* its framework for soliciting public comment and conducting stakeholder listening sessions for implementation of *WRDA 2020*.[18] The Corps has stated that the public comment period for implementation of *WRDA 2020* provisions will end on May 7, 2021.[19]

The Committee on Transportation and Infrastructure will continue to oversee the Corps' implementation of all of the provisions enacted in *WRDA 2020*, and ensure these provisions are applied consistent with Congressional intent.

WITNESSES

Matthew J. Strickler
Secretary of Natural Resources
Commonwealth of Virginia

Gene Seroka
Executive Director
Port of Los Angeles

Mary Ann Bucci
Executive Director
Port of Pittsburgh Commission

Michael F. Piehler, Ph.D
Director
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Chad Berginnis
Executive Director
Association of State Floodplain Managers

[18] See 86 Fed. Reg. 13346 (March 8, 2021)
[19] See id.