



**Committee on Transportation and Infrastructure
U.S. House of Representatives**

Bill Shuster
Chairman

Washington, DC 20515

Peter A. DeFazio
Ranking Member

Christopher P. Bertram, Staff Director

Katherine W. Dedrick, Democratic Staff Director

June 5, 2015

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment
FROM: Staff, Subcommittee on Water Resources and Environment
RE: Hearing on “One Year Anniversary After Enactment: Implementation of the Water Resources Reform and Development Act of 2014”

PURPOSE

On Wednesday, June 10, 2015, at 10:00 a.m. in 2167 Rayburn House Office Building, the Subcommittee on Water Resources and Environment will meet to receive testimony from 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).

Army Corps of Engineers – Civil Works

The Corps of Engineers constructs projects for the purposes of navigation, flood control, beach erosion control and shoreline 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 a study of the feasibility of the project. 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 of Representatives Committee on Transportation and Infrastructure or the Senate Committee on Environment and Public Works. If the area has not been previously studied by the Corps, then an Act of Congress is necessary to authorize the study. Historically, most studies have been authorized by Committee resolution.

The Corps prepares a feasibility report, the cost of which is shared 50 percent by the federal government and 50 percent by the non-federal interest, to determine if a project is economically justified, environmentally acceptable, and technically achievable.

After a full study is completed, the results and recommendations of the study are submitted to the Congress, usually in the form of a report of the Chief of Engineers. If the results and recommendations are favorable, the next step is authorization. Project authorizations are contained in Water Resources Development Acts (WRDAs), the most recent of which was enacted in 2014.

Currently the Corps maintains more than 25,000 miles of channels for commercial navigation, and operates and maintains 236 locks at 192 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 is responsible for almost 15,000 miles of levees through its flood damage reduction mission. Corps flood damage reduction projects prevent, on average, more than \$48.5 billion in flood damage annually. Every dollar invested in a Corps flood project prevents \$7.92 in damage.

The Corps of Engineers employs almost 23,000 people, including more than 280 military personnel. Corps projects provide annual net economic benefits of more than \$87 billion, and the total replacement value of Corps infrastructure assets equals approximately \$265 billion.

Water Resources Reform and Development Act of 2014

Traditional WRDAs authorize the Corps to carry out projects used for navigation, flood damage reduction, aquatic ecosystem restoration, and other purposes. WRDAs are meant to be enacted every two years, but recently only two have been enacted into law (2007 and 2014).

WRRDA 2014 was enacted on June 10, 2014. It codified measures to accelerate the project delivery process, promoted fiscal responsibility, and called for increased federal support of transportation networks to promote competitiveness, prosperity, and economic growth. WRRDA 2014 also made reforms to increase transparency, accountability, and congressional oversight in reviewing and prioritizing future water resources development investment.

With the enactment of WRRDA, the Corps is required to issue just over 200 pieces of implementation guidance to carry out the law. In the one year since enactment, the Corps has issued less than 40 percent of the implementation guidance, much of which is to carry out nontechnical sections of the law. By comparison, one year after enactment of WRDA 1986, the Corps had issued approximately 50 percent of the implementation guidance. Many non-federal project sponsors could benefit from the reforms that WRRDA 2014 provides, but instead are having difficulty utilizing the provisions since implementation guidance has not been issued.

Annual Report to Congress

Section 7001 of WRRDA 2014 required the Secretary of the Army to request proposals from non-federal interests for new project authorizations, studies, and modifications to existing Army Corps of Engineers projects. Further, it required the Secretary to submit to the Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public

Works, and make publicly available, an Annual Report of those activities that are related to the missions of the Corps of Engineers and require specific authorization by law.

This section was included in WRRDA so that Congress could gain greater insight into the water resources challenges facing the nation and the Army Corps of Engineers. The Annual Report is intended to guide Congress and help set priorities for future water resources legislation. Congress intended that this report would be a collective effort of state and other non-federal project sponsor priorities without the concerns of feasibility and cost.

Implementation guidance has been issued for this section, and it tracked very closely with congressional intent until the first Annual Report was provided to the Committee on Transportation and Infrastructure in February 2015.

Rather than provide Congress an Annual Report based on the criteria required in WRRDA 2014, the Corps instead provided a list of projects that met Administration prioritization. According to WRRDA 2014, any project request that met the following criteria was to be included in the Annual Report:

1. Are related to the missions and authorities of the Corps of Engineers.
2. Require specific congressional authorization, including by an Act of Congress.
3. Have not been congressionally authorized.
4. Have not been included in any previous Annual Report.
5. If authorized, could be carried out by the Corps of Engineers.

However, in its first Annual Report, the Administration used a different set of criteria for evaluating project authorizations, studies, and modifications than those specifically outlined in section 7001(c)(1)(A) of WRRDA 2014.

For example, in the initial Annual Report, two of the nine pending feasibility reports were listed in the appendix for the stated reason that these reports had yet to clear administration review. Yet, the statutory criteria in section 7001(c)(1)(A) do not mention clearing administration review as a factor for listing a project authorization, study, or modification in the appendix. Similarly, other project authorizations, studies, or modifications are listed in the appendix for the stated reason that these requests are “not a primary mission” of the Corps. Again, the statutory criteria listed in section 7001(c)(1)(A) do not consider whether an authorization, study, or modification is a “primary mission” of the Corps as a factor for including that request in the appendix. The appendix is an added layer of transparency that contains projects that were not included in the Annual Report, but provides Congress with a more complete spectrum of the potential project studies, authorizations, and modifications.

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. The *Federal Register* Notice for project submittals to the Corps for the next Annual Report was issued on May 26, 2015.

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.

To help the Corps comply with the commonly referred to “3x3x3” process, WRRDA 2014 repealed the requirement that a reconnaissance study must be conducted prior to initiating a feasibility study. This creates an accelerated process which allows non-federal project sponsors and the Corps to go directly into the feasibility study phase at a 50 percent federal-50 percent non-federal cost share, shaving approximately one year off the feasibility study schedule. WRRDA 2014 also accelerates Corps studies and reviews by requiring the Corps to better coordinate with all federal, state, and local agencies involved in the environmental review process.

WRRDA 2014 provides the Corps with permanent authority to accept funds from non-federal interests to process permits within the regulatory program of the Corps of Engineers. Also included in this provision is a pilot program for public utility companies and natural gas companies to expedite the processing of permits within the regulatory program of the Corps.

Implementation guidance has been issued on some of these provisions, like the “3x3x3” process and the repeal of the requirement that the Corps carry out initial reconnaissance studies. Implementation guidance has yet to be issued for other project acceleration provisions.

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 to study, design, and construct water resources projects using their own funding.

WRRDA 2014 establishes a five-year pilot program for the acceptance and expenditure of funds contributed by non-federal interests to operate and maintain specific locks located on the nation’s inland waterways. WRRDA 2014 authorizes a non-federal sponsor to apply credit for in-kind contributions that are in excess of the non-federal share to other water resources development projects being carried out by the same non-federal sponsors.

Very few implementation guidance sections have been issued related to non-federal contributions, though the sections that have been issued generally follow congressional intent.

Harbor Maintenance Trust Fund

WRRDA 2014 creates a targeted expenditure from the Harbor Maintenance Trust Fund (HMTF), increasing each year, so that by fiscal year 2025 and beyond, 100 percent of the funds collected for harbor maintenance purposes go towards required operation and maintenance

activities. At the same time, WRRDA 2014 addresses 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. For fiscal years 2015 through 2024, the Secretary is directed to allocate 90 percent of such funds to meet the needs of high-use and moderate-use harbor projects, and to allocate 10 percent of such funds to meet the needs of emerging harbors.

The Corps has not issued any implementation guidance on the sections related to the Harbor Maintenance Trust Fund.

In addition, during the 113th Congress, a provision was included in the fiscal year 2015 Omnibus Appropriations that directs the Corps to forgo the allocation of harbor maintenance funds contained in section 2102 of WRRDA 2014. This Congress, the House of Representatives passed an amendment to the fiscal year 2016 Energy and Water Appropriations bill directing the Corps to follow the allocation of harbor maintenance funding, which was approved by voice vote.

Water Infrastructure Public-Private Partnership Pilot Program and WIFIA

WRRDA 2014 establishes a Water Infrastructure Finance and Innovation Act (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 newly created program is modeled after the highly successful Transportation Infrastructure and Innovation Act (TIFIA) program for surface transportation. WIFIA aims to provide credit assistance in the form of loans or guarantees for eligible water projects.

WRRDA 2014 also strengthens the primary existing source of federal investment for wastewater infrastructure, the Clean Water State Revolving Fund (CWSRF), by expanding the types of projects eligible for CWSRF funding, by increasing the affordability of local financing from the Fund, and by providing communities with greater flexibility in the use of financial assistance to target local water quality needs.

While implementing this new program requires actions by both the Corps and EPA, the Corps has yet to issue implementation guidance on WIFIA. EPA is actively developing its implementation guidance on WIFIA. While EPA's guidance follows the intent of WRRDA 2014, there is no indication of when the Corps will release their guidance.

WRRDA 2014 authorizes 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. While the Corps is attempting to carry out public-private partnership activities, implementation guidance for public-private partnerships under WRRDA 2014 has yet to be issued.

Deauthorizations

WRRDA 2014 also contains a provision to deauthorize \$18 billion of old, inactive projects. While implementation guidance for the deauthorization section has been issued, the Corps has yet to supply Congress with the required interim list of \$18 billion worth of potential projects that are proposed to be deauthorized.

WITNESSES

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army—Civil Works

Lieutenant General Thomas P. Bostick
Chief of Engineers
United States Army Corps of Engineers