



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

Peter A. DeFazio
Chairman

Sam Graves
Ranking Member

Katherine W. Dedrick, Staff Director

Paul J. Sass, Republican Staff Director

January 3, 2020

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment
FROM: Staff, Subcommittee on Water Resources and Environment
RE: Subcommittee Hearing on “Proposals for a Water Resources Development Act of 2020”

PURPOSE

The Subcommittee on Water Resources and Environment will meet on Thursday, January 9, 2020, at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony from the U.S. Army Corps of Engineers (Corps) on the 2019 Report to Congress on Future Water Resources Development [authorized under section 7001 of the Water Resources Reform and Development Act of 2014 (P.L. 113-121)] and several reports of the Chief of Engineers (Chief’s Reports) on individual water resources development projects submitted to Congress for authorization. This hearing is intended to provide Members with an opportunity to review these reports, review the process the Corps undertakes for developing its projects, and identify future needs to inform the development of a new Water Resources Development Act (WRDA), which the Committee expects to develop and approve in 2020.

BACKGROUND

The Corps is the Federal government's largest water resources development and management agency. The Corps began its water resources program in 1824 when Congress, for the first time, appropriated funds for improving river navigation. Since then, the Corps’ primary missions have expanded to address river and coastal navigation, reduction of flood damage risks along rivers, lakes, and the coastlines, and projects to restore and protect the environment.

Along with these missions, the Corps generates hydropower, provides water storage opportunities to cities and industry, regulates development in navigable waters, assists in national emergencies, and manages a recreation program. Today, the Corps is comprised of 38 district offices within eight divisions; 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. To achieve its mission, the Corps plans, designs, and constructs water resources development projects. The Corps planning process seeks to balance economic development and environmental considerations as it addresses water resources challenges.

This process is intended to approach the Nation's water resources needs from a systems perspective and evaluate a full range of alternatives in developing solutions.

The first step in a Corps 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 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.

Typically, the Corps enters into a cost-sharing agreement with the non-Federal project sponsor to initiate the feasibility study process. The cost of a feasibility study is shared 50 percent by the Federal government (subject to appropriations) and 50 percent by the non-Federal project sponsor.

Since February 2012, the Corps' feasibility studies have been guided by the "3x3x3 rule," which states that feasibility reports should, generally, be produced in no more than three years; with a cost not greater than \$3 million; and involve all three levels of Corps review – district, division and headquarters – throughout the study process.¹ The 3x3x3 process was codified in section 1001 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014).

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. The feasibility study typically describes with reasonable certainty the economic, social, and environmental benefits and detriments of each project alternatives being considered, and identifies the engineering features, public acceptability, and the purposes, scope, and scale of each. The feasibility study also includes any associated environmental impact statement and a mitigation plan. It also contains the views of other Federal and non-Federal agencies on project alternatives, a description of non-structural alternatives to the recommended plans, and a description of the anticipated Federal and non-Federal participation in the project.

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. Typically, project authorizations are contained in WRDAs, the most recent of which was enacted in 2018 as Title I of the America's Water Infrastructure Act of 2018 (P.L. 115-270).

The Corps is subject to all relevant Federal statutes, including the National Environmental Policy Act (NEPA), the Clean Water Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, previous WRDAs, Flood Control Acts, and Rivers and Harbors Acts. These laws and associated regulations and guidance provide the legal basis for the Corps planning process.

For instance, when carrying out a feasibility study, NEPA requires the Corps to include: an identification of significant environmental resources likely to be impacted by the proposed project; an

¹https://planning.erdc.dren.mil/toolbox/library/MemosandLetters/USACE_CW_FeasibilityStudyProgramExecutionDelivery.pdf.

assessment of the project impacts; a full disclosure of the likely impacts; and a consideration of the full range of alternatives, including a No Action Alternative. Importantly, NEPA also requires a 30-day public review of any final document produced by the Corps. Additionally, when carrying out a feasibility study, section 401 the Clean Water Act requires an evaluation of the potential impacts of the proposed project or action and requires a letter from a State agency certifying the proposed project or action complies with State water quality standards.

The Corps must also adhere to the “Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies” (P&G) developed in 1983. Congress directed the Corps to update the P&Gs, consistent with the requirements of section 2031 of WRDA 2007 (Pub. L. 110-114). The P&Gs were updated in 2014 with the intention that water resources projects reflect national priorities, encourage economic development, and protect the environment. The P&G is intended to ensure proper and consistent planning by all Federal agencies engaged in the formulation and evaluation of Federal water resources development projects and activities and contains defined Federal objectives for pursuing water resources development projects. To date, no funds have been provided through the appropriations process for the Corps to carry out the updated P&G.

Typically, the plan recommended by the Corps is the plan with the greatest net economic benefit consistent with protecting the environment. For projects that have multiple purposes, the P&G recommends that such projects maximize, to the greatest extent practicable, economic development and ecosystem restoration outputs. Additionally, the Secretary of the Army has the discretion to recommend an alternative, such as a locally-preferred plan, if there are overriding reasons based on other Federal, State, or local concerns.

Pending Chiefs’ Reports:

Since enactment of the most recent WRDA in 2018, Congress has received 17 Chief’s Reports for projects in: Winslow, Arizona; Delta Islands and Levees, California; Pawcatuck River, Rhode Island; Anacostia Watershed, Maryland; Norfolk, Virginia; Souris River, North Dakota; Brandon Road, Illinois (Great Lakes/Mississippi River Interbasin Study (GLMRIS)); Yuba River, California; South Platte River, Colorado; Rio Grande River (Sandia Pueblo and Isleta Pueblo), Colorado, New Mexico, and Texas; East Rockaway Inlet to Rockaway and Jamaica Bay, New York; Jefferson County, Texas; Brazos River Floodgates and Colorado River Locks, Gulf Intracoastal Waterway (GIWW), Texas; Matagorda Ship Channel, Texas; Meramec River (St. Louis Riverfront), Missouri; Hashamomuck Cove, New York; and Willamette River Basin Review Reallocation, Oregon.

Pending Studies of WRDA Projects by Non-Federal Interests (Section 203 of WRDA 1986):

In 2014, Congress amended section 203 of WRDA 1986 (33 U.S.C. 2231) to authorize non-Federal interests to undertake Congressionally-authorized feasibility studies (in lieu of the Corps) and to submit these studies to the Corps for their review. Upon completion of this review, the Corps is required to submit any study completed by the non-Federal interest to the House Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works, along with a report that describes whether the study is suitable for Congressional authorization. Should the 203 study be authorized by Congress (subject to resolution of any conditions or recommendations of the Corps), construction of the project can proceed in the same manner as any feasibility study carried out by the Corps (such as a completed Chief’s Report).

Since enactment of the most recent WRDA in 2018, the Committee has received 4 pending 203 studies from the Corps for projects in: Baptiste-Collette, Louisiana; Houma, Louisiana; Ft. Pierce, Florida; and Chacon Creek, Texas.

DEFINING FUTURE NEEDS AND SECTION 7001 ANNUAL REPORT

WRRDA 2014 established a mechanism for Corps projects and studies to be communicated to Congress for potential authorization. Section 7001 of WRRDA 2014 requires the Secretary of the Army to annually publish a notice in the *Federal Register* requesting proposals from non-Federal interests for new project authorizations, new feasibility studies, and modifications to existing Corps projects. Further, it requires the Secretary to submit to Congress and make publicly available a “Report to Congress on Future Water Resources Development” (Annual Report) of those activities that are related to the missions of the Corps and require specific authorization by law. The Annual Report includes information about each proposal, such as benefits, the non-Federal interests, and cost share information. This information is meant to guide Congress to set priorities regarding which proposed studies, projects, and modifications will receive authorization in future WRDA legislation.

Additionally, Section 7001 requires the Corps to submit to Congress an appendix containing descriptions of those projects requested by non-Federal interests that were not included in the Annual Report. Submission of the Annual Report (and the appendix) allows Congress to review all requests submitted by non-Federal interests to the Corps and provides a more complete spectrum of potential project studies, authorizations, and modifications.

In recent years, the Committee has utilized the Annual Report as a guide from which Congress considers which studies, projects, and modifications will receive authorization. In June 2019, the Corps submitted its 2019 Annual Report² to Congress. The 7001 Annual Report for 2020 is expected in February 2020.

CONCLUSION

As the House Committee on Transportation and Infrastructure moves forward in developing the next WRDA legislation, this hearing is intended to provide Members with an opportunity to review potential project studies, authorizations, and modifications pending before the Committee and begin consideration of potential projects and policy initiatives that benefit the Nation.

WITNESS LIST

The Honorable Rickey Dale “R.D.” James
Assistant Secretary of the Army (Civil Works)
Office of the Assistant Secretary of the Army – Civil Works

Lieutenant General Todd T. Semonite
Chief of Engineers and Commanding General
U.S. Army Corps of Engineers

² <https://usace.contentdm.oclc.org/utills/getfile/collection/p16021coll15/id/35439>.