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

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January 7, 2022

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 2022: Administration Priorities"

PURPOSE

The Subcommittee on Water Resources and Environment will meet on Wednesday, January 12, 2022, at 10:00 a.m. in 2167 Rayburn House Office Building and by video conferencing via Zoom to receive testimony from the U.S. Army Corps of Engineers (Corps) on the administration's priorities for a new water resources development act (or WRDA) for 2022. This hearing is also intended to provide Members with an opportunity to review the *2021 Report to Congress on Future Water Resources Development* and several reports of the Chief of Engineers on individual water resources projects that have been submitted to Congress for authorization.[1] These reports and administration priorities will inform the committee in its development of a new WRDA, which the committee expects to develop and approve in 2022.

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 environmental restoration and protection.[2]

Along with these missions, the Corps provides water supply and storage opportunities to cities, agriculture and industry, aids in the production of hydropower, assists in national emergencies, and manages a recreation program. Today, the Corps is comprised of 38 district offices within eight divisions; operates

[1] The *Report to Congress on Future Water Resources Development* was authorized by section 7001 of the *Water Resources Reform and Development Act of 2014* (P.L. 113-121). This *Report*, as well as the pending Reports of the Chief of Engineers (*hereinafter* Chief's Reports) are publicly available at https://transportation.house.gov/water-resources-development-act-of-2022/reports.
[2] https://www.swl.usace.army.mil/Missions/Planning/

more than 700 dams; has constructed 14,600 miles of levees; and maintains more than 1,000 coastal, Great Lakes, and inland harbors, as well as 12,000 miles of inland waterways.[3] To achieve its civil works mission, the Corps plans, designs, and constructs water resources development projects, typically in partnership with, and using the financial support of, non-federal interests (project sponsors). The Corps planning process seeks to balance economic development and environmental considerations as it addresses national, regional, and local water resources challenges.[4]

Initiating a Water Resources Development Project

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). 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 a non-federal project sponsor to initiate the feasibility study process. The cost of a feasibility study is usually split evenly between the federal government (subject to appropriations) and the non-federal project sponsor.[5]

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 more than $3 million; and involve all three levels of Corps review—district, division, and headquarters—throughout the study process.[6,7]

During the feasibility study phase, the 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 an analysis of any associated environmental effects of the project and a proposed 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. In addition, pursuant to section 116(b) of the *Water Resources Development Act of 2020* (*WRDA 2020*; 33 U.S.C. 2282 note), each feasibility study for a flood risk management or hurricane and storm damage reduction project is required to include a summary of any natural or nature-based feature alternative evaluated for the project that describes the long-term costs and benefits of the alternative and whether such alternative was utilized in the final recommended project.[8]

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[3] Congressional Research Service (CRS), *U.S. Army Corps of Engineers Civil Works: Primer and Resources*. (2021). https://crsreports.congress.gov/product/pdf/IN/IN11810.

[4] Congressional Research Service (CRS), *Army Corps of Engineers: Water Resource Authorization and Project Delivery Processes* (2019). https://crsreports.congress.gov/product/pdf/R/R45185.

[5] Section 118 of *WRDA 2020* authorized a pilot program for the formulation of certain flood risk management and coastal storm risk management project studies in rural and economically disadvantaged communities at Federal expense. Funding to carry out this authority was included in the *Infrastructure Investment and Jobs Act* (Pub. L. 117-58).

[6] https://planning.erdc.dren.mil/toolbox/library/MemosandLetters/USACE_CW_FeasibilityStudyProgramExecutionDelivery.pdf.

[7] The 3x3x3 process was codified in section 1001 of the *Water Resources Reform and Development Act of 2014*.

[8] Division AA of the *Consolidated Appropriations Act of 2021* (P.L. 116-260).

After a full feasibility study is completed, the results and recommendations of the study are submitted to Congress in the form of a *Report of the U. S. Army Corps of Engineers Chief of Engineers* (more commonly referred to as a Chief's Report).[9] If the results and recommendations on the proposed project are favorable, then the subsequent step is congressional authorization for construction of the project, which is typically performed in a WRDA bill.

Utilizing the Section 7001 Annual Report

The *Water Resources Reform and Development Act of 2014* established an additional mechanism for Corps projects and studies to be communicated to Congress for potential authorization.[10] Section 7001 of this legislation requires the Secretary of the Army to annually publish a notice in the *Federal Register* soliciting proposals from non-federal project sponsors 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* (*7001 Report*) of those activities that are related to the missions of the Corps and require specific authorization by law. The *7001 Report* includes information about each proposal, such as benefits, the non-federal project sponsors, and cost share information.

Guiding the Corps

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*, and prior authorization bills for the Corps (e.g., 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 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."[11] Importantly, *NEPA* also requires a 30-to-45 day public review of any final document produced by the Corps.[12] 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.

When formulating and evaluating water resources development project alternatives, the Corps utilizes the *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies*, developed in 1983, more commonly known as the *Principles and Guidelines* (or *P&G)*. However, in response to stakeholder concern about the Corps' over-reliance on national economic benefits as a required decision metric, in *WRDA 2007*, Congress established a new, national policy "that all water resources projects should reflect national priorities, encourage economic development, and protect the environment by—(1) seeking to maximize sustainable economic development; (2) seeking to avoid the unwise use of floodplains and flood-prone areas and minimizing adverse impacts and vulnerabilities in any case in which a

[9] See https://planning.erdc.dren.mil/toolbox/library.cfm.
[10] Water Resources Reform and Development Act of 2014 (P.L. 113-121)
[11] See https://www.ecfr.gov/current/title-40/chapter-V
[12] See id.

floodplain or flood-prone area must be used; and (3) protecting and restoring the functions of natural systems and mitigating any unavoidable damage to natural systems."[13] Section 2031 of *WRDA 2007* directed the Corps to update the *P&G* in accordance with this policy.

In 2013, the Obama administration established a framework to revise the *P&G* in accordance with the requirements of *WRDA 2007*.[14] This revised framework, now called the updated *Principles, Requirements and Guidelines for Water and Land Related Resources Implementation Studies* (or *PR&G*), is intended to ensure proper and consistent planning by all federal agencies engaged in water resources development projects and related activities, and ensure such projects maximize sustainable development, protect and restore the functions of natural systems, and affordably address the needs of economically disadvantaged communities.[15]

The Corps has yet to formally adopt implementation guidance for the *PR&G*, as required by *WRDA 2007*. Accordingly, section 110 of *WRDA 2020* directed the Corps to issue final agency procedures for implementation of the *PR&G* and required the Corps to review and, as necessary, update the *PR&G* every five years.

In addition, the Corps has issued two memorandums (January 5, 2021 and March 6, 2021) that direct the Corps to examine potential benefits beyond the national economic development benefits for future Corps projects, including regional and societal benefits.[16] These policy memorandums direct the Corps to include in the final array of alternatives an option that maximizes all project benefits, an option for flood risk reduction projects that utilizes a non-structural approach, and a locally-preferred plan, if requested by the non-federal project sponsor.[17] However, any additional costs for implementing a locally-preferred plan are traditionally picked up by the non-federal project sponsor.[18]

Outlook for a WRDA 2022

Annual 7001 Reports:

In recent years, the committee has utilized the *7001 Report* as a guide to describe studies, projects, and modifications supported by non-federal project sponsors for inclusion in the development of a new WRDA bill. The *7001 Report* for calendar year 2021 was submitted to Congress in November 2021, and the *7001 Report* for calendar year 2022 is expected in February 2022. A list of all existing *7001 Reports* is available at https://transportation.house.gov/water-resources-development-act-of-2022/reports.

[13] Pub. L. 110-114, Section 2031; see also Policy Directive - Comprehensive Documentation of Benefits in Decision Document, dated January 5, 2021.
[14] https://obamawhitehouse.archives.gov/administration/eop/ceq/initiatives/PandG
[15] https://planning.erdc.dren.mil/toolbox/guidance.cfm?Id=269&Option=Principles%20and%20Guidelines
[16] See Policy Directive - Comprehensive Documentation of Benefits in Decision Document, dated January 5, 2021; and Director of Civil Works Memorandum - Comprehensive Documentation of Benefits in Decision Documents, dated March 6, 2021.
[17] See id.
[18] See e.g., section 1036 of *WRRDA 2014*; 33 U.S.C. 701b-15.

Pending Chief's Reports:

Since enactment of *WRDA 2020*, the committee has received 14 additional Chief's Reports for potential projects in: Fairfield/New Haven, Connecticut (coastal storm risk management); Elim, Alaska (navigation); Prado Basin, San Bernardino, Riverside and Orange Counties, California (ecosystem restoration); Lower Cache Creek, Yolo County, California (flood risk management); Portland, Oregon (flood risk management); Coastal Texas (coastal storm risk management); San Juan, Puerto Rico (coastal storm risk management); Monroe County, Florida (coastal storm risk management); Okaloosa County, Florida (coastal storm risk management); Selma, Alabama (flood risk management); Port of Long Beach, Los Angeles County, California (navigation); Folly Beach, South Carolina (coastal storm risk management); Pinellas County, Florida (coastal storm risk management); and Valley Creek, Bessemer and Birmingham, Alabama (flood risk management).[19]

Pending Director's Reports:

Director's Reports, also known as Post-Authorization Change Reports (PACR), document necessary changes to previously authorized water resources development projects, such as a change in project purpose or a significant change in the total cost of the project. Since enactment of *WRDA 2020*, the committee has received one PACR for the Washington, DC, Flood Risk Management project.[20]

Additional Corps Authorities:

Congress has granted the Corps programmatic authorities—Continuing Authorities Programs (CAPs)—that enable the Corps to undertake small-scale projects with limited scope and cost without requiring project-specific congressional authorization. These projects are usually still cost-shared with a non-federal project sponsor. There are currently 9 CAP categories: streambank erosion and shoreline protection (section 14 of the *Flood Control Act of 1946* (33 U.S.C. 701r)); beach erosion control (section 3 of the *Act of August 13, 1946*; (33 U.S.C. 426g)); navigation improvement (section 107 of the *River and Harbor Act of 1960*; (33 U.S.C. 577)); mitigation of shore damage by federal navigation projects (section 111 of the *River and Harbor Act of 1968*; 33 U.S.C. 426i)); regional sediment management/beneficial use of dredged material (section 204 of *WRDA 1992*; (33 U.S.C. 2326)); flood control (section 205 of the *Flood Control Act of 1948*; (33 U.S.C. 701s)); aquatic ecosystem restoration (section 206 of *WRDA 1996*; (33 U.S.C. 2330)); removal of obstructions and clearing channels for flood control (section 2 of the *Act of August 28, 1937*; (33 U.S.C. 701g)); and project modifications for improvement of the environment (section 1135 of the *WRDA 1986*; (33 U.S.C. 2309a)).

Congress has also provided authority for the Corps to assist with the planning, design, and construction of drinking water and wastewater projects in specified areas, known broadly as Environmental Infrastructure (EI) assistance. EI authorities are typically developed either on a project-by-project basis (see section 219 of *WRDA 1992*) or on a programmatic basis for specified geographic regions. The EI programs support publicly owned and operated facilities, such as distribution and collection works, stormwater collection and recycled water distribution, and surface water protection and development projects.

The Corps is also authorized to engage in technical assistance for certain activities, such as flood risk mitigation and watershed studies. Corps district offices partner with state, tribal, and local governments to

[19] See id.
[20] See id.

provide or coordinate technical assistance or expertise through many of its programs. The primary Corps technical assistance programs include: Flood Plain Management Services (section 206 of the *Flood Control Act of 1960*; also referred to as Silver Jackets) and Planning Assistance to States (Section 22 of *WRDA 1974*). Section 111 of *WRDA 2020* directed the Secretary of the Army to prioritize the provision of technical assistance to support flood risk resiliency planning efforts of economically disadvantaged communities or communities subject to repetitive flooding.

WITNESS LIST

The Honorable Michael L. Connor
Assistant Secretary of the Army for Civil Works
Department of the Army

Lieutenant General Scott A. Spellmon
Chief of Engineers and Commanding General
U.S. Army Corps of Engineers