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Water Resources Development Acts: Primer

Congress often considers on a biennial schedule omnibus legislation that authorizes U.S. Army Corps of Engineers (USACE) civil works activities. Congress regularly refers to this legislation as a Water Resources Development Act (WRDA). WRDAs are distinguished from each other by the year of enactment (e.g., WRDA 1986). WRDA provisions generally add to or amend existing USACE authorizations and provide congressional policy direction to the agency. Drivers for enactment of a new WRDA typically include nonfederal and congressional interest in new studies and projects as well as adjustments to existing projects, programmatic authorities, and policies. Events, such as droughts and floods, along with congressional deliberations on infrastructure investments and other policy initiatives may shape deliberations of USACE authorization legislation in the 117th Congress.

WRDA Consideration and Scope

Congress typically consolidates its USACE authorizations into a WRDA, rather than deliberating on multiple bills of smaller scope. Congress has enacted WRDAs as stand-alone bills and as part of broader bills. Congress enacted the most recent stand-alone WRDAs in 2000, 2007, and 2014. Although most titles of the Water Resources Reform and Development Act of 2014 (WRRDA 2014; P.L. 113-121) were USACE-focused, some titles addressed other agencies. WRDA 2016 (Title I of P.L. 114-322, Water Infrastructure Improvements for the Nation Act [WIIN Act]) and WRDA 2018 (Title I of P.L. 115-270, America's Water Infrastructure Act of 2018 [AWIA 2018]) were enacted as USACE-focused titles in broader water bills with titles and provisions authorizing water programs and activities of multiple agencies and departments. Congress passed WRDA 2020 as Division AA of P.L. 116-260, an omnibus appropriations and authorization act, in December 2020. For more on WRDAs, see CRS Report R45185, *Army Corps of Engineers: Water Resource Authorization and Project Delivery Processes*.

Historically, most WRDA provisions have focused on USACE's water resource activities; however, some provisions have addressed the agency's regulatory responsibilities, such as issuing permits under Section 404 of the Clean Water Act.

Congress and USACE Activities

USACE's civil works activities historically have focused on three primary purposes: improving navigation, reducing flood risk, and restoring aquatic ecosystems. Many USACE projects are multipurpose—for example, they might provide water supply storage, recreation, and hydropower, among other benefits, in addition to one or more of the three primary purposes. USACE is directly engaged in the planning and construction of water resource projects. The

majority of USACE appropriations (e.g., roughly 85% of annual FY2021 appropriations for USACE civil works) is directed toward performing work on USACE studies and projects authorized by Congress.

In WRDAs, Congress generally establishes a framework and guidelines for implementing USACE water resources projects and activities (e.g., setting standard federal and nonfederal cost shares). WRDAs also authorize USACE to perform specific studies and projects. Most USACE water resource projects require two types of congressional authorization: (1) authority to study the feasibility of a project and (2) authority to construct flood risk reduction and ecosystem restoration projects or authority to construct, operate, and maintain navigation projects. Authorizations for most USACE studies and projects are geographically specific (e.g., a flood risk reduction project for a specific community along a river or coast).

In WRDAs since 1992, Congress has authorized USACE to assist with *environmental infrastructure* (e.g., design and construction assistance for municipal drinking water and wastewater infrastructure) in designated communities, counties, and states. For more on this assistance, see CRS In Focus IF11184, *Army Corps of Engineers: Environmental Infrastructure Assistance*.

Once Congress has authorized the study or construction of a project in a WRDA, USACE can proceed when it receives funding for that project phase. Congress provides appropriations for USACE through the annual Energy and Water Development appropriations process and, at times, through supplemental appropriations. For more on USACE funding, see CRS Report R46320, *U.S. Army Corps of Engineers: Annual Appropriations Process and Issues for Congress*.

Most USACE authorizations do not expire. For some provisions, Congress has limited the authorization's duration (e.g., authorizing a pilot program for 10 years). WRDA provisions may extend or remove the time limitation on these authorities. WRDA provisions also may rescind authority for (i.e., deauthorize) unconstructed projects or projects no longer serving their authorized purposes.

WRDA Development and Process to Propose Activities for Authorization

To develop WRDAs, the authorizing committees for USACE—the House Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works—typically hold hearings to receive testimony from stakeholders, review reports transmitted by the Administration, and solicit input from Members.

Scrutiny of congressionally directed spending that benefits a specific entity or locality (known as *earmarking*) has altered the development of USACE authorization legislation. To avoid earmark designation, over the last decade WRDA authorizing committees have been explicit about using Administration reports and processes as the basis for most geographically specific authorizations.

In Section 7001 of WRRDA 2014, Congress established a new process to assist the congressional authorizing committees in identifying USACE studies, projects, and project modifications to authorize. In Section 7001, as amended, Congress required the Administration to transmit an annual report to the authorizing committees on publicly submitted USACE study and project proposals, along with USACE-developed project decision documents that require congressional authorization. WRDAs in 2016, 2018, and 2020 drew upon Section 7001 reports as the basis for authorizing various geographically specific USACE activities. For more on the Section 7001 process, see CRS Insight IN11118, *Army Corps of Engineers: Section 7001 Annual Report on Future Studies and Projects*.

Nonfederal Responsibilities

Although USACE projects authorized in WRDAs are federal projects, they often require nonfederal sponsors to share costs and assume other responsibilities. Nonfederal sponsors generally are required to provide land and other real estate interests needed for a project and to share study and construction costs. Most studies are cost shared 50% federal and 50% nonfederal. Congress has set the cost shares for construction and the nonfederal responsibilities following construction for various USACE project purposes. For instance, Congress set the cost sharing for construction of flood risk reduction projects at a maximum of 65% federal and a minimum of 35% nonfederal; for ecosystem restoration, the cost sharing is fixed at 65% federal and 35% nonfederal. For most USACE flood control and restoration projects, the operation, maintenance, repair, and rehabilitation costs are a 100% nonfederal responsibility.

Investing in USACE Backlogged Projects

Numerous studies and projects authorized for construction in previous WRDAs remain unfunded. USACE has an estimated \$109 billion construction backlog, as well as authorized but unfunded investigations and operation and maintenance activities. Nonfederal sponsors often remain interested in pursuing these unfunded studies and construction activities. A challenge for federal policymakers is whether, and if so how, to advance these projects. One way is to expand opportunities for greater nonfederal roles in development, construction, and financing of backlogged projects. Congress in WRRDA 2014, WRDA 2016, and WRDA 2018 expanded the opportunities for interested nonfederal entities, including private entities, to advance authorized studies and projects. Also in WRRDA 2014, Congress authorized the Water Infrastructure Finance and Innovation Act (WIFIA). WIFIA

includes authority for USACE to provide credit assistance—secured (direct) loans or loan guarantees—thereby leveraging federal funding. The WIFIA authorization allows USACE to assist a broad range of water resource projects, potentially including some projects in the USACE construction backlog. For FY2021, Congress created a WIFIA account for USACE to initiate its WIFIA program—the Civil Works Infrastructure Financing Program (CWIFP)—and provided the first funding to implement the program. Congress limited FY2021 CWIFP financial assistance to safety projects for nonfederally owned dams, which are a project type not in the USACE construction backlog. For more on CWIFP, see CRS Insight IN11577, *U.S. Army Corps of Engineers Civil Works Infrastructure Financing Program (CWIFP): Status and Issues*.

Another approach to address the project backlog is to increase federal funding for infrastructure. Deauthorization of older, unconstructed projects is another means to manage the backlog and focus the agency's actions on active projects.

WRDA Oversight and Next WRDA Preparations

After enactment of a WRDA, Congress may oversee implementation or provide additional implementation direction through the appropriations process. The 117th Congress may review USACE efforts to implement WRDA 2020, as well as authorities in earlier bills such as WIFIA. (For more information on WRDA 2020, see CRS In Focus IF11700, *Water Resources Development Act of 2020*.) Congress may be interested in the status of USACE completing guidance that describes how the agency plans to implement the WRDA 2020 provisions. Congress also may seek information on the status of agency actions on specific WRDA 2020 provisions, such as agency actions on updating its approach for evaluating projects (§110), considering sea level rise (§113), and addressing flooding in economically disadvantaged and rural communities (e.g., §118, §165). Another potential subject of WRDA 2020 oversight may be agency activities related to carrying out small water storage projects, including for water supply and water conservation (§155); USACE-constructed facilities in the United States typically have not had water supply storage as a principal project purpose.

Topics that may shape deliberations on a WRDA in the 117th Congress include broad policy initiatives (e.g., climate change adaptation, economic and environmental justice efforts), infrastructure investment deliberations, status and authorization of specific studies and projects, and effects of WRDA provisions on discretionary spending and mandatory receipts.

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