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Army Corps of Engineers: Continuing Authorities Programs

The U.S. Army Corps of Engineers (USACE) undertakes water resources development projects pursuant to authorizing statutes and the receipt of appropriations. The standard process for a USACE project requires two separate congressional authorizations—one for studying feasibility and a subsequent one for construction—as well as appropriations for both (see CRS Report R45185, *Army Corps of Engineers: Water Resource Authorization and Project Delivery Processes*). Congress has granted USACE general authorities to undertake some projects of limited scope and cost without requiring project-specific congressional authorization. These USACE authorities to undertake such projects are referred to as Continuing Authorities Programs (CAPs). Congress has consistently funded eight USACE CAPs in annual appropriations since FY2013.

Types of Projects

Congress appropriates funding for CAP programs, not individual projects. USACE has the discretion to identify which projects it will perform within the provided appropriations for each CAP. Purposes of CAP projects may include reducing damage to life and property from flooding, reducing stream bank erosion, and protecting and restoring aquatic ecosystems, among others. CAPs typically are referred to by the section number of the law in which the CAP was first authorized (see **Table 1**).

Requesting a CAP Project

To initiate a CAP project, a nonfederal sponsor (e.g., a local government or nonprofit entity with local government consent) sends a letter to the appropriate USACE district describing the water resource problem and requesting assistance with a project. (Template letters are available at USACE district websites.) USACE determines if there is federal interest to proceed with the requested project and if the project fits under a CAP authority.

Project Process: Feasibility and Construction

All USACE projects, including CAP projects, consist of a feasibility phase and a construction phase. The feasibility phase involves planning activities, such as development of alternative plans to achieve the project goals; initial design and cost estimations; environmental impact analyses; and real estate evaluation. The purposes of the feasibility phase include determining whether there is a federal interest in the project (e.g., identifying costs and benefits) and identifying the preferred project alternative. For CAP projects, the construction phase can immediately follow the feasibility phase, subject to the availability of appropriations.

The construction phase includes the final design and specifications, real estate acquisition, and project contracting and physical construction. The nonfederal sponsor and USACE sign a project partnership agreement

prior to construction. Upon construction completion, the sponsor is responsible for operations, maintenance, and most repairs and rehabilitation (except for commercial navigation pursuant Section 107 CAP, which allows for USACE operations and maintenance). According to USACE, once funded, CAP projects generally take three years from feasibility phase initiation to construction completion.

Table 1. Selected Continuing Authorities Programs

CAP	Eligible Activities	Authority
§14	Streambank and shoreline erosion of public works and nonprofit services	33 U.S.C. §701r
§103	Beach erosion/hurricane storm damage reduction	33 U.S.C. §426g
§107	Navigation improvement	33 U.S.C. §577
§111	Prevention/mitigation of shore damage by federal navigation projects	33 U.S.C. §426i
§204	Regional sediment management/beneficial use of dredged material	33 U.S.C. §2326
§205	Flood control (including ice jam prevention)	33 U.S.C. §701s
§206	Aquatic ecosystem restoration	33 U.S.C. §2330
§1135	Project modifications for improvement of the environment	33 U.S.C. §2309a

Source: Congressional Research Service (CRS).

Notes: Not shown are CAPs not funded recently (e.g., §208 CAP [33 U.S.C. §701g] for the removal of obstructions and clearing channels for flood control).

Nonfederal Responsibilities

The CAP authorities, similar to the standard USACE project authorities, require a nonfederal sponsor to share project feasibility and construction costs and other responsibilities, including obtaining real estate interests. Federal funds pay for the first \$100,000 of the feasibility phase, with additional costs generally shared 50% federal and 50% nonfederal. Cost sharing for construction varies according to CAP authorities, as shown in **Table 2**. Local sponsors can fulfill cost-share contributions with cash; work-in-kind credit; and/or lands, easements, rights-of-way, relocations, and disposal areas. In some cases, Congress has provided for certain USACE project costs, including CAP

project costs, to be undertaken at a greater federal expense (e.g., 33 U.S.C. §2310 and 33 U.S.C. §2267b).

Table 2. Selected CAP Project and Program Limits, Enacted Appropriations, and Budget Requests
(in millions of dollars)

CAP	Max. Federal Cost Share	Per Project Federal Limit	Annual Federal Program Limit	FY2019 Enacted and FY2020 Requested
§14	65%	\$5.0	\$25.0	\$8.0 (E); \$0.0 (R)
§103	65%	\$10.0	\$37.5	\$4.0 (E); \$0.0 (R)
§107	Varies ^a	\$10.0	\$62.5	\$8.0 (E); \$0.0 (R)
§111	Varies ^b	\$12.5	NA	\$8.0 (E); \$0.0 (R)
§204	65%	\$10.0	\$62.5	\$10.0 (E); \$1.0 (R)
§205	65%	\$10.0	\$68.8	\$8.0 (E); \$1.0 (R)
§206	65%	\$10.0	\$62.5	\$12.0 (E); \$1.0 (R)
§1135	75%	\$10.0	\$50.0	\$8.0 (E); \$1.0 (R)

Sources: CRS using statutes, USACE Budget Press Book, and USACE Engineer Regulation 1105-2-100.

Notes: NA = Not Applicable. E = Enacted. R = Requested.

- a. Varies based on depth and 50% for recreational navigation.
- b. Same as the project causing the damage.

Appropriations for CAPs

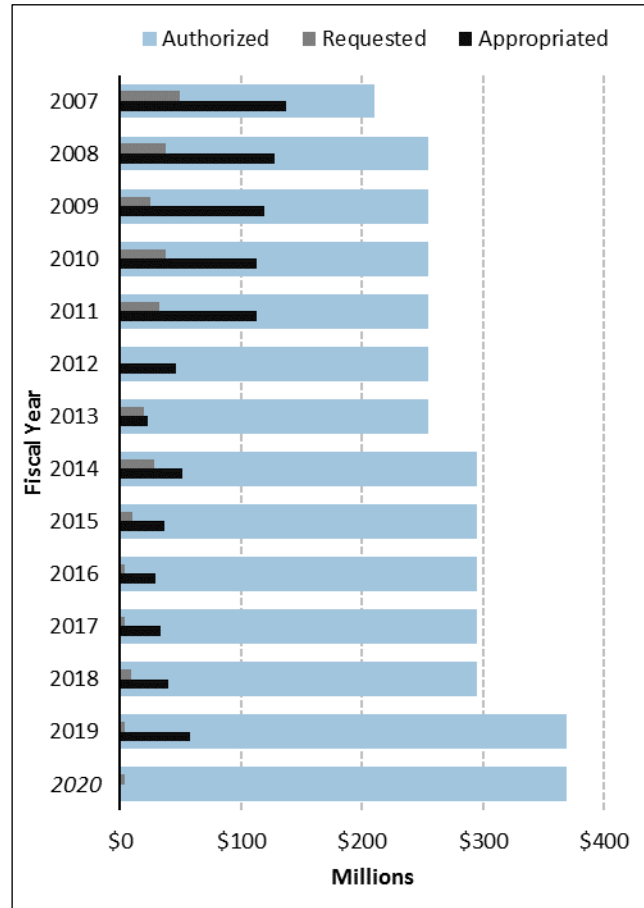
Congress has limited the per project federal funding for CAP authorities, as shown in **Table 2**. Each CAP, except for Section 111, also has an annual program authorization limit, as shown in **Table 2**. In 2018, Congress increased program authorization levels for most CAPs by 25% in America’s Water Infrastructure Act of 2018 (AWIA 2018; P.L. 115-270). AWIA 2018 also increased the project authorization for Section 111 by 25%; the act did not alter the per project federal funding limits for the other CAPs.

Since enactment of the Water Resources Development Act of 2007 (P.L. 110-114), the President’s budget requests and annual appropriations from Congress have included less funding for CAPs than the authorization levels (see **Figure 1**). Since FY2015, the President’s budget request has proposed less than \$10 million in aggregate for CAPs, with no funding requested for Sections 14, 103, 107, and 111 projects. Congress has provided in annual appropriations more CAP funding than requested (e.g., Congress appropriated a total of \$66 million in FY2019 compared to the Administration’s request of \$3.5 million). Report language in both FY2019 and FY2018 encouraged USACE to consider projects that enhance coastal and ocean ecosystem resiliency, among other issues.

The Bipartisan Budget Act of 2018 (BBA 2018; P.L. 115-123) provided up to an additional \$50 million in supplemental appropriations for CAP projects addressing flood and storm damage reduction in qualifying states and territories (see CRS Report R45185, *Army Corps of Engineers: Water Resource Authorization and Project*

Delivery Processes). As of early February 2019, USACE had publicly identified five Section 14 projects in Alabama, Florida, Puerto Rico, and West Virginia and two Section 103 projects in New York to be funded using BBA 2018 funds. These projects totaled \$28 million. In January 2019, the House passed H.R. 268, which would provide supplemental disaster appropriations to USACE and other agencies, including up to \$25 million for USACE to use on CAP projects for flood and storm damage.

Figure 1. CAP Authorizations, Requests, and Annual Appropriations
(aggregated amounts)



Source: CRS.

Notes: Funding shown in real dollars for §§14, 103, 107, 204, 205, 206, and 1135. Supplemental appropriations are not included. Appropriations for FY2020 have not been enacted.

Reporting

Congress has instructed USACE to publish prioritization criteria for funding CAP projects and an annual report on CAPs in the *Federal Register* one year after the enactment of the Water Resources Reform and Development Act of 2014 (Section 1030; P.L. 113-121). The report is to include the name, description, and cost estimate of active CAP projects and the funding available in the fiscal year for CAPs. As of early February 2019, USACE had not published this information in the *Federal Register* or on its website.

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