



April 19, 2019

Army Corps of Engineers: Environmental Infrastructure Assistance

The U.S. Army Corps of Engineers (USACE) undertakes water resources development projects pursuant to authorizing statutes and the receipt of appropriations. Traditional USACE projects for navigation, flood control, and ecosystem restoration are authorized in omnibus authorization bills titled Water Resource and Development Acts (WRDAs). Since 1992, Congress also has authorized and provided for USACE assistance with planning, design, and construction of municipal drinking water and wastewater infrastructure projects in designated communities, counties, and states. This assistance supports nonfederally owned and operated facilities, such as distribution and collection works, stormwater collection and recycled water distribution, and surface water protection and development projects. This USACE assistance is broadly labeled *environmental infrastructure* (EI).

Section 219 of WRDA 1992 (P.L. 102-580), as amended, includes various EI assistance authorizations for specific geographic locations (e.g., city, county, multiple counties) and types of projects (e.g., municipal drinking water, stormwater control). Other WRDAs and some Energy and Water Development Appropriations acts also have enacted EI authorities. No Administration has ever requested authorization or appropriations for USACE to perform EI assistance. Based on a review of enacted legislation likely to include EI assistance authorities, the Congressional Research Service (CRS) identified authorized EI assistance in at least 44 states, the District of Columbia, Puerto Rico, U.S. Virgin Islands, and the Northern Mariana Islands. CRS did not identify through the review authorities for EI assistance in Delaware, Hawaii, Maine, Nebraska, Vermont, Washington, and other U.S. territories.

USACE Assistance

Because EI assistance projects are not traditional USACE water resource projects, they are not subject to the USACE planning process (e.g., a feasibility study is not performed); however, EI assistance is subject to federal laws, such as the National Environmental Policy Act (NEPA). An activity's eligibility for assistance is evaluated by identifying whether there is an EI authorization for the geographic area of the project, and whether the type of activity is eligible under the EI authorization.

The nature of USACE's involvement and nonfederal cost share vary according to the specifics of the authorization. Although most USACE EI assistance requires cost sharing at 75% federal and 25% nonfederal, some of the assistance authorities are for 65% federal and 35% nonfederal. The nonfederal sponsor is the owner of constructed facilities and is responsible for 100% of operations and maintenance.

USACE may perform the authorized design or construction work, and often can use appropriated funds to reimburse nonfederal sponsors for work the sponsors perform, subject to the availability of appropriations.

Authorizing EI Assistance

Since 1992, Congress has authorized USACE to contribute EI assistance to more than 350 projects and programs, with cumulative authorizations of appropriations totaling more than \$5 billion. The authorizations of appropriations for these activities vary widely from \$100,000 for one water monitoring station to \$435 million for a five-state program.

Congress authorized USACE to assist with EI projects beginning with WRDA 1992 (P.L. 102-580): Section 219 authorized design assistance for 18 projects (referred to as Section 219 authorities), and six other sections authorized design and construction assistance for EI assistance projects and programs in select geographic areas (e.g., southern West Virginia). WRDA 1996 (P.L. 104-303) added construction assistance to the Section 219 EI authorities. Subsequent USACE authorization and appropriation bills included authorizations for new EI assistance projects (e.g., WRDA 2007 [P.L. 110-114] added over 200 projects) and raised the authorized funding ceilings for previously authorized EI assistance.

Authority Modifications and Deauthorizations

Recent congressional authorization of EI assistance projects has been limited to a number of factors including policies restricting congressionally directed spending (*earmarking*). Modifications to an existing EI authorization may provide an avenue to expand the location, amend eligible projects types, and adjust the authorization of appropriations. Section 7001 of WRDA 2014 (P.L. 113-121) requires USACE to annually submit a report to Congress identifying study and project authorizations and modifications proposed by nonfederal interests that meet certain criteria. Congress may consider these proposals as part of WRDA deliberations. In WRDA 2016 (P.L. 114-322), Congress expanded Section 7001 of WRDA 2014 to allow nonfederal entities to propose modifications to existing Section 219 authorities for EI assistance. WRDA 2018 (P.L. 115-270) further expanded Section 7001 of WRDA 2014 to allow for all EI assistance authorizations to be eligible for modification proposals. Prior to enactment of WRDA 2014, EI assistance projects were not considered as part of USACE deauthorization processes. WRDAs 2014, 2016, and 2018 enacted new deauthorization processes that may include EI authorities. For more on the deauthorization and Section 7001 processes, see CRS Report R45185, *Army Corps of Engineers: Water Resource Authorization and Project Delivery Processes*.

Funding for EI Assistance

Congress regularly includes USACE EI funding in appropriations bills. EI assistance is funded through the agency’s Construction account in annual Energy and Water Development Act appropriations legislation. Since 1992, Congress has provided USACE roughly \$2 billion in funds for EI assistance cumulatively. Congress provided USACE with \$70 million for EI assistance projects in FY2018 and \$77 million in FY2019 (see **Table 1**). In recent years, Congress funds EI assistance as part of the “additional funding” provided above the President’s request.

Table 1. Annual Funding for EI Assistance Projects
(\$ in millions)

Fiscal Year	2014	2015	2016	2017	2018	2019
Total Funding	\$44	\$50	\$55	\$55	\$70	\$77
Projects Funded	26	25	33	31	36	36
Median Funding per Project	\$1.6	\$1.8	\$1.0	\$1.6	\$1.5	\$1.8
Percent of Construction Account Funding	2.0%	3.1%	3.0%	2.9%	3.4%	3.5%

Source: CRS compiled from USACE Work Plans (FY2014-FY2019).

After enactment of an appropriations bill, the Administration is to follow guidance provided in the bill and accompanying reports to direct its use of these funds to authorized EI assistance projects. The selected EI assistance projects are identified in the agency’s work plan for the fiscal year, which is typically available within two to three months after enactment of appropriations. As shown in **Table 1**, 36 EI projects and programs received a portion of the \$77 million provided in FY2019.

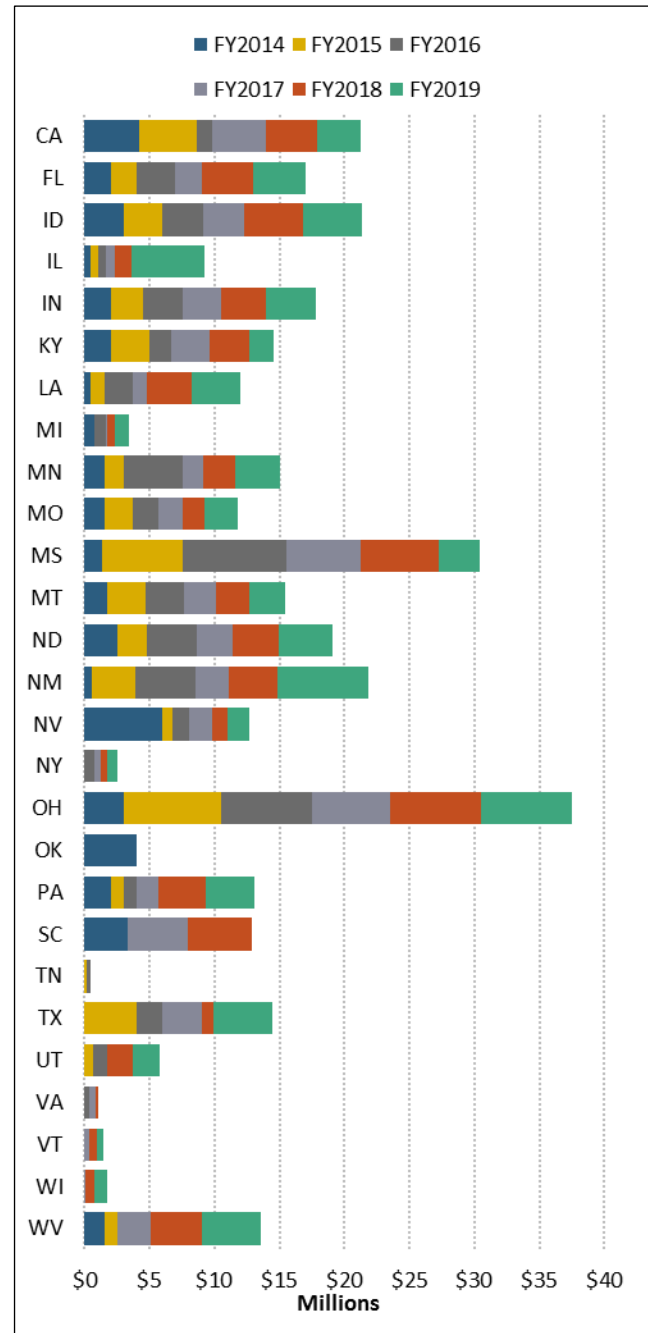
A subset of authorized USACE EI projects have received funding: 27 states with EI assistance authorizations have received funding in the last six fiscal years (see **Figure 1**). Like many USACE projects, congressional support for appropriations of specific EI assistance is complicated by the authorities’ geographic specificity, which is impacted by earmark moratoria policies. In recent years, USACE has funded ongoing EI assistance, and has not funded new starts. Unlike the direction that Congress has provided USACE to initiate a set number of new construction projects in USACE’s traditional missions, Congress has not identified EI assistance projects as eligible to be among the new construction starts.

Other Federal Assistance Authorizations

EI assistance at times has been identified by various Administrations and others as a low priority for USACE, in part because other federal and state agencies have programs for which these nonfederal water projects may be eligible. An amendment to eliminate funding for EI assistance, offered based on the duplicative federal role and other arguments, failed by a vote of 12-84 during Senate floor consideration of FY2017 Energy and Water Development

appropriations legislation. CRS Report RL30478, *Federally Supported Water Supply and Wastewater Treatment Programs*, describes other federal programs that provide assistance to similar water projects on a competitive basis using established criteria (e.g., Environmental Protection Agency’s state revolving funds and U.S. Department of Agriculture’s small watershed loans).

Figure 1. Total Annual EI Funding per State



Source: CRS using USACE Work Plans.

Notes: EI assistance authorizations in 17 states, the District of Columbia, Puerto Rico, U.S. Virgin Islands, and the Northern Mariana Islands have not received funding in the last six fiscal years.

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