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Water Resources Development Act: Primer

The Water Resources Development Act (WRDA) is the typical title that Congress uses for omnibus legislation for authorizing U.S. Army Corps of Engineers (USACE) civil works activities and directing the agency's practices. WRDAs are distinguished from each other by referencing the year of enactment (e.g., WRDA 1986). WRDA provisions generally add to or amend the pool of existing USACE authorizations, with a few provisions reauthorizing time-limited USACE programs and some provisions that are intended to deauthorize inactive unconstructed projects. The majority of USACE authorizations do not expire. Most USACE water resource projects require two types of congressional authorization: one for studying feasibility and a subsequent one for construction. Drivers for enactment of a new WRDA typically include nonfederal and congressional interest in new studies and new construction projects and support for adjustments to existing projects, programmatic authorities, and policies.

WRDA 1986 (P.L. 99-662) marked the end of a decade-long stalemate between Congress and the executive branch on cost sharing, user fees, and environmental requirements for USACE projects. Since WRDA 1986, Congress often has considered WRDA legislation on a biennial cycle; the timing of enactment of WRDAs, however, has varied. The most recent "stand-alone" WRDAs were enacted in 2000, 2007, and 2014. WRDA 2016 (Title I of P.L. 114-322, Water Infrastructure Improvements for the Nation Act, WIIN) and WRDA 2018 (Title I of P.L. 115-270, America's Water Infrastructure Act of 2018, AWIA 2018) were enacted as titles in broader water bills. WIIN and AWIA 2018 authorized water-related programs and activities of not only USACE but also other federal agencies.

Congress and USACE Activities

USACE's civil works activities are focused on three primary purposes: improving navigation, reducing flood risk, and restoring aquatic ecosystems. Many USACE projects are multipurpose—that is, they may provide water supply storage, recreation, and hydropower in addition to one or more of the three primary purposes. Unlike with many other federal infrastructure programs that distribute funds by formula to states or through competitive grant programs, USACE is directly engaged in the planning and construction of water resource projects. That is, the majority of USACE appropriations (e.g., more than 80% of annual FY2019 appropriations for USACE civil works) is for performing work on specific studies and for construction of USACE projects authorized by Congress.

In WRDAs, Congress establishes the broad structure for how USACE is to perform its work on water resource projects (e.g., setting standard federal and nonfederal cost

shares). Congress also provides the authorization for USACE to perform specific studies and projects in WRDAs. After Congress has authorized the study or construction of a project, however, USACE generally is unable to proceed until it receives funding for that project phase. Congress provides appropriations for the agency through the annual Energy and Water Development appropriations process and at times through supplemental appropriations, such as those to address flood response and recovery. For more on USACE civil works appropriations, see CRS In Focus IF11137, *Army Corps of Engineers: FY2020 Appropriations*.

Development of a WRDA and Process to Propose Activities

To develop recent WRDAs, the authorizing committees—the House Transportation and Infrastructure Committee (House T&I) and the Senate Environment and Public Works Committee (Senate EPW)—began by holding hearings that received testimony from stakeholders and reviewed reports transmitted by the Administration. The hearings were followed by the chairperson introducing a bill. Authorizing committees also often solicit input from Members of Congress on their priorities and potential WRDA provisions. During WRDA development, Congress often pursues information on the implementation status of provisions in recently enacted WRDAs and reviews reports requested by Congress.

The 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). Scrutiny of congressionally directed spending (known as *earmarking*) that benefits a specific entity or locality has altered the development of WRDAs subsequent to WRDA 2007 (P.L. 110-114). During the development of recent WRDAs, authorizing committees have been explicit regarding their use of Administration processes and reports as the basis for including geographically specific USACE authorizations. For example, Congress has identified in WRDA bills favorable reports by the Chief of Engineers (a *Chief's report*) and other USACE decision documents as the basis for new project construction authorizations or modifications to existing construction authorizations.

The Water Resources Reform and Development Act of 2014 (WRRDA 2014, P.L. 113-121) was the first WRDA enacted since WRDA 2007. In WRRDA 2014, Congress established a new process to assist the congressional authorizing committees in identifying USACE studies and projects to authorize. In Section 7001 of WRRDA 2014, Congress required the Administration to transmit each February to the authorizing committees an annual report of publicly submitted USACE study and project proposals, as

well as information on USACE-developed project decision documents that require congressional authorization. WRDA 2016 and WRDA 2018 drew upon the Section 7001 reports as the basis for authorizing new geographically specific USACE activities.

Since WRDA 2018's enactment, the Trump Administration delivered a Section 7001 annual report to Congress in 2019, completed the public submission process in August 2019 for the next Section 7001 report (which is expected to be delivered in early 2020), and transmitted to the authorizing committees various completed Chief's reports. In WRDA 2016 and WRDA 2018, Congress expanded the Section 7001 process to include modifications to USACE *environmental infrastructure* assistance authorities, which consist of authorities that allow USACE to assist with municipal drinking water and wastewater infrastructure projects in designated communities, counties, and states. For more on the Section 7001 process, see CRS Insight IN11118, *Army Corps of Engineers: Section 7001 Annual Report on Future Studies and Projects*.

WRDA Bills and WRDA Titles

Historically, most WRDA provisions have focused on USACE's water resource activities, not the agency's regulatory responsibilities. An exception is WRDA 1992 (P.L. 102-580), which included a title on contaminated sediment and ocean dumping. The title established a national contaminated sediments task force led by the U.S. Environmental Protection Agency (EPA) and USACE, and it modified and clarified EPA's, USACE's, and states' roles in regulating the disposal of dredged and other material into the ocean. Since WRDA 1992, Congress generally has not used WRDAs to alter the scope of USACE's regulatory authorities. WRDA provisions related to USACE's regulatory program have been more about the processing of permit applications (e.g., authorizing USACE to accept funds from certain entities to expedite permit processing).

Although most titles of WRRDA 2014 were USACE-focused, some titles addressed other agencies. For example, Title V had EPA water-related provisions, as well as provisions providing EPA and USACE authority to make direct loans and loan guarantees for water projects (known as the Water Infrastructure Finance and Innovation Act [WIFIA]). Title III included authorities related to dam and levee safety for both the Federal Emergency Management Agency and USACE. WRDA 2016 and WRDA 2018 were enacted as USACE-focused titles within broader water-related authorization bills that included many titles related to water programs and activities of multiple agencies and departments, such as EPA, the Department of the Interior, and the Federal Energy Regulatory Commission. For more on WRDA bills and WRDA titles in broader bills, see Appendix B in CRS Report R45185, *Army Corps of Engineers: Water Resource Authorization and Project Delivery Processes*.

Nonfederal Responsibilities

Current law requires nonfederal sponsors to share costs and assume other responsibilities for most USACE projects.

Nonfederal sponsors generally are required to provide the 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 nonfederal responsibilities following construction for the various USACE project purposes. For instance, Congress has set the cost sharing for construction for flood risk reduction projects and ecosystem restoration at 65% federal and 35% nonfederal; for most flood control projects, operations, maintenance, repair, and rehabilitation are 100% a nonfederal responsibility.

116th Congress and WRDA

The extent to which future USACE authorization legislation will be considered independently or as part of broader legislation remains to be seen. Although WRDAs often have received significant support in both chambers, in the past some issues have complicated deliberations and enactment. For example, Congress overcame a presidential veto to enact WRDA 2007.

Various topics may shape future WRDA deliberations, including the status and authorization of specific projects, postflood repair authorities and recovery work, operational changes in basins with contentious water management, and effects of bill provisions on discretionary spending and/or mandatory receipts and spending. Potential topics related to project development include environmental protections and considerations during planning and construction and economic analysis procedures. The use of two trust funds that support some of USACE's navigation activities also is a potential topic.

Numerous projects authorized for construction in previous WRDAs remain unfunded. Similarly, Congress has authorized more USACE studies over recent decades than have received federal funding. Nonfederal sponsors often remain interested in pursuing these unfunded studies and construction activities. A challenge for policymakers is whether, and if so how, to advance these water resource studies and construction activities.

WRRDA 2014, WRDA 2016, and WRDA 2018 all expanded the opportunities for interested nonfederal entities, including private entities, to have greater roles in project development, construction, and financing. While some of these authorities may expedite progress on these projects, they also have the potential to further constrain federal discretion and prioritization of USACE activities. The status of efforts under these and other authorities (e.g., WIFIA) are among the topics that may shape deliberations of future WRDAs. Additionally, Administration proposals and actions and court decisions may affect bill deliberations.

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