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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 often titled Water Resource 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 specified communities, counties, and states. This assistance supports publicly 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).

EI authorities generally are referred to as either in one of two categories: Section 219 projects or EI projects and programs (individually referenced by their authorizing section). Section 219 of WRDA 1992 (P.L. 102-580), as amended, includes various EI assistance authorizations for projects (e.g., municipal drinking water, stormwater control) at specific geographic locations (e.g., city, county, multiple counties). Other WRDAs and some Energy and Water Development Appropriations acts also have included EI authorities—many of these are for EI programs with broader purposes and geographic scope.

No Administration has ever requested authorization or appropriations for USACE to perform EI assistance. The Congressional Research Service (CRS) reviewed enacted legislation likely to include EI assistance authorities and 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 authorities for EI assistance in Delaware, Hawaii, Iowa, Maine, Nebraska, Washington, and other U.S. territories.

USACE Assistance

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

Beginning with WRDA 1992 (P.L. 102-580), 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 a water monitoring station to \$585 million for a six-state EI program (Western Rural Water).

Section 219 of WRDA 1992 authorized design assistance for 18 projects, 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 acts 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

Numerous factors, including adherence to policies restricting congressionally directed spending (*earmarking*), have limited recent authorizations of new EI assistance. However, in WRDA 2016 (Title I of P.L. 114-322) and WRDA 2018 (Title I of P.L. 115-270), Congress provided a mechanism to modify existing EI authorizations (e.g., expand the location, amend eligible projects types, and adjust the authorization of appropriations) through the "Section 7001" proposal process. Section 7001 of Water Resources Reform and Development Act of 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. For example, in WRDA 2020 (Division AA of P.L. 116-260), Congress amended 14 environmental infrastructure authorities to increase the authorizations of appropriations, for a total increase of

\$828.5 million. For four of these authorities, Congress expanded the geographic scope or authorized activities. For more information on the Section 7001 proposal process, see CRS Insight IN11118, *Army Corps of Engineers: Section 7001 Annual Report on Future Studies and Projects*.

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. Since 1992, Congress cumulatively has appropriated roughly \$2 billion in funds for USACE EI assistance. In recent years, Congress has funded EI assistance as part of the “additional funding” provided above the President’s budget request. For example, Congress provided \$100 million of additional funding for USACE to allocate among EI assistance authorities for FY2020 and FY2021 (see **Table 1**).

Table 1. Funding for USACE EI Assistance Projects (\$ in millions, not adjusted for inflation)

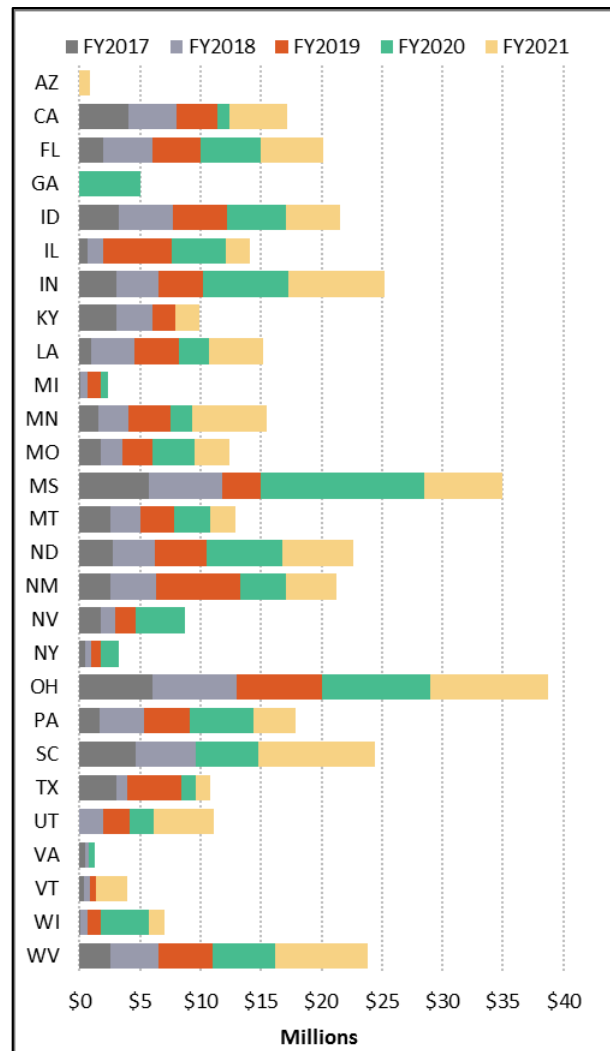
	Fiscal Year				
	2017	2018	2019	2020	2021
Total Funding	\$55	\$70	\$77	\$100	\$100
Projects Funded	31	36	36	32	27
Median Funding per Project	\$1.6	\$1.5	\$1.8	\$3.0	\$2.9
Percentage of Construction Account Funding	2.9%	3.4%	3.5%	3.7%	3.7%

Source: CRS, compiled from USACE Work Plans (FY2017-FY2021).

Reports accompanying appropriations acts specify how the Administration is to direct its use of these funds to authorized EI assistance projects. The agency identifies selected EI assistance projects in its work plan for the fiscal year, which is typically available within two to three months after enactment of appropriations. As shown in **Table 1**, USACE distributed the \$100 million provided for FY2021 among 27 EI projects and programs.

A subset of authorized USACE EI projects and programs have received funding: 27 states with EI assistance authorizations have received funding in the last five fiscal years (see **Figure 1**). As with 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. For FY2021 appropriations, Congress stated in the accompanying explanatory statement that USACE may allocate funds to one or two EI authorities that were not previously funded. USACE chose not to fund new authorities in the FY2021 work plan, although USACE did provide EI funding to the state of Arizona for the first time under the Western Rural Water authority expanded by WRDA 2020. WRDA 2020 also directed USACE to develop criteria for funding EI authorities.

Figure 1. Annual EI Funding per State



Source: CRS, using USACE Work Plans.

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

Other Federal Assistance Authorities

At times, various Administrations and others have identified EI assistance 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. A related amendment to eliminate funding for EI assistance failed by a vote of 12-84 during Senate floor consideration of FY2017 Energy and Water Development appropriations. CRS Report RL30478, *Federally Supported Water Supply and Wastewater Treatment Programs*, describes other federal programs that provide assistance to similar water projects using established criteria.

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