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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 designated 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, storm-water 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, Maine, Nebraska, Vermont, 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 EI 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 \$435 million for a five-state program.

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

A number of factors, including policies restricting congressionally directed spending (*earmarking*), has limited recent congressional authorization 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 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 legislation. Since 1992, Congress cumulatively has appropriated roughly \$2 billion in funds for USACE EI assistance. Congress provided USACE with \$77 million for EI assistance projects in FY2019 and \$100 million in FY2020 (see **Table 1**). In recent years, Congress has funded EI assistance as part of the “additional funding” provided above the President’s request.

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

	Fiscal Year				
	2016	2017	2018	2019	2020
Total Funding	\$55	\$55	\$70	\$77	\$100
Projects Funded	33	31	36	36	32
Median Funding per Project	\$1.0	\$1.6	\$1.5	\$1.8	\$3.0
Percent of Construction Account Funding	3.0%	2.9%	3.4%	3.5%	3.7%

Source: CRS, compiled from USACE Work Plans (FY2016-FY2020).

Reports accompanying appropriations bills specify how the Administration is 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**, 32 EI projects and programs received a portion of the \$100 million provided in FY2020.

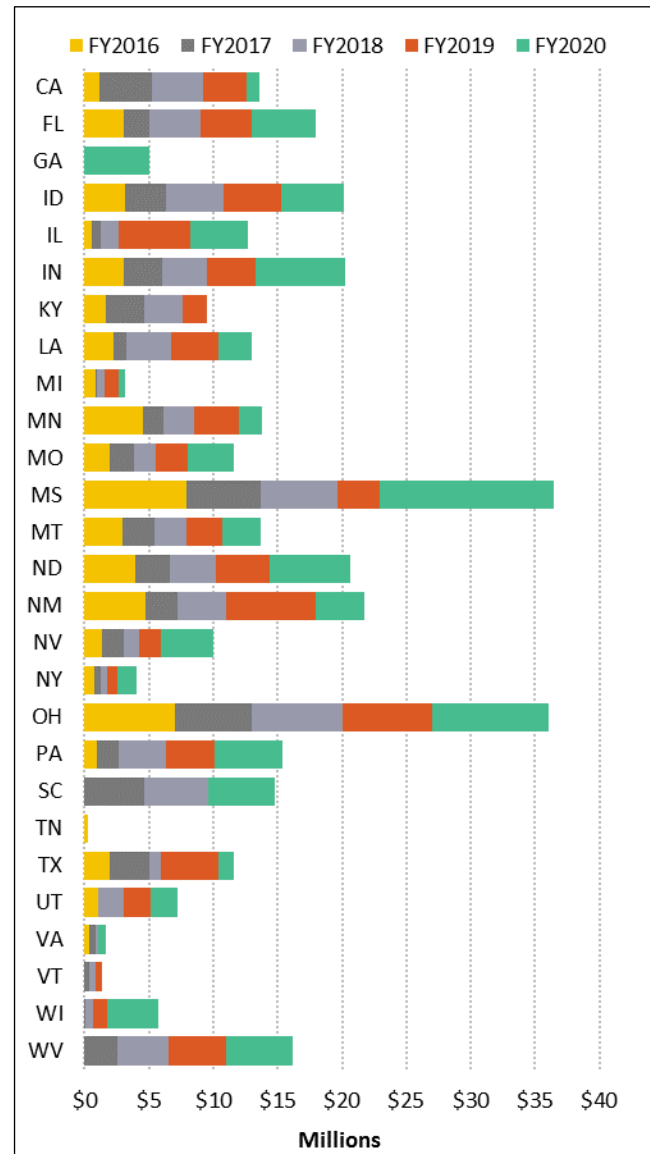
A subset of authorized USACE EI projects and programs have received funding: 27 states with EI assistance authorizations have received funding in the last five fiscal years (see **Figure 1**). As with many USACE projects, congressional support for appropriations of specific EI assistance is complicated by the authorities’ geographic specificity, which is impacted by earmark moratoria policies. In recent years, USACE has funded ongoing EI assistance. For FY2020 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 include new starts in the FY2020 work plan, though USACE resumed funding for two authorized projects for the first time since FY2010 and FY2014.

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 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. Annual EI Funding per State



Source: CRS, using USACE Work Plans.

Notes: EI assistance authorizations in 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.

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