



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

James L. Oberstar
Chairman

John L. Mica
Ranking Republican Member

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

November 16, 2009

James W. Coon II, Republican Chief of Staff

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Water Resources and Environment
FROM: Subcommittee on Water Resources and Environment Staff
SUBJECT: Hearing on “Proposals for a Water Resources Development Act of 2010”

PURPOSE OF HEARING

The Subcommittee on Water Resources will meet on Wednesday, November 18, 2009, at 2:00 p.m., in room 2167 of the Rayburn House Office Building to receive testimony from Members of Congress on issues and proposals for consideration of a Water Resources Development Act of 2010.

BACKGROUND

The Subcommittee on Water Resources and Environment has jurisdiction over the U.S. Army Corps of Engineers’ (Corps) Civil Works program – the nation’s largest water resources program. The Corps constructs projects for the purposes of navigation, environmental protection and restoration, flood damage reduction, hurricane and storm damage reduction, shoreline protection, hydroelectric power, water supply, recreation, and aquatic plant control.

I. General Procedures

The first step in a Corps water resources development project is a study of the feasibility of the project. If the Corps has conducted a study in the area before, a new study can be authorized by a resolution of either the Committee on Transportation and Infrastructure of the House of Representatives or the Committee on Environment and Public Works of the Senate. If the area has not been previously studied by the Corps, then an Act of Congress is necessary to authorize the study. The majority of studies are authorized by Committee resolution.

Once authorized, the Corps first performs a reconnaissance study at Federal expense, at an approximate cost of \$100,000, and which typically takes one year to complete. Reconnaissance

studies determine whether there is a Federal interest in pursuing a given water resource problem or opportunity. In addition, it identifies the non-Federal interest that will participate in cost-sharing of the project. If a reconnaissance study indicates that there may be a viable Federal project and that a more detailed study should be undertaken, the Corps prepares a feasibility report, the cost of which is shared 50 percent by the Federal Government and 50 percent by the non-Federal interest.

After a feasibility study is completed, the results and recommendations of the study are submitted to Congress, usually in the form of a report of the Chief of Engineers. If such results and recommendations are favorable, the next step is authorization. Project authorizations are contained in water resources development acts, which are traditionally enacted on a biennial schedule.

After a project is authorized, it would still require an appropriation of Federal funds to proceed to construction.

II. Continuing Authority Programs for Small Projects

The Corps also has certain authorities to construct small projects without specific authorization by the Congress. These authorities, collectively known as the “continuing authorities program”, include: (1) beach erosion control projects with a Federal cost of not more than \$3 million; (2) navigation projects with a Federal cost of not more than \$7 million; (3) flood control projects with a Federal cost of not more than \$7 million; (4) streambank and shoreline protection for public facilities projects with a Federal cost of not more than \$1.5 million; (5) projects to mitigate shoreline damages from Federal navigation projects with a Federal cost of not more than \$5 million; (6) projects of snagging and clearing for flood control with a Federal cost of not more than \$500,000; (7) projects modifying the structure and operation of existing projects for improvement to the environment with a Federal cost of not more than \$5 million; and (8) projects for the restoration and protection of aquatic ecosystems and estuaries (including dam removal) with a Federal cost of not more than \$5 million. Each of these continuing authorities programs has an annual program cost limit.

Since the continuing authorities program entails an abbreviated approval process, it offers an attractive alternative to specifically authorized work when project costs are relatively small. As a result, many Corps continuing authorities have been oversubscribed relative to annual appropriations.

III. Cost Sharing

The Water Resources Development Act of 1986 (P.L. 99-662) as amended, contains the cost sharing provisions, which are generally applicable to Corps water resources projects.

Harbor navigation projects:

For harbor navigation projects, non-Federal interests are required to pay 10 percent of project construction costs to depths 20 feet or less; 25 percent of project construction costs for depths greater than 20 feet, but not more than 45 feet; and 50 percent of project construction costs for depths greater than 45 feet. Since 1996, project construction costs include costs associated with dredged material disposal facilities. In addition, the non-Federal interest must pay 10 percent of the

cost of general navigation features over a period not to exceed 30 years with interest as well as provide all lands, easements, rights of way, and relocations necessary for project construction and maintenance. The cost of the lands, easements, rights of way, and relocations are credited against the additional 10 percent repaid following construction.

Operation and maintenance costs are 100 percent Federal for work associated with depths not greater than 45 feet and 50 percent Federal for additional costs of maintaining depths greater than 45 feet. The Federal share of operation and maintenance is appropriated from the Harbor Maintenance Trust Fund. That fund was created in 1986 and consists of receipts from a 0.125 percent tax imposed on the value of cargo loaded or unloaded at U.S. ports. On March 31, 1998, the Supreme Court ruled that the tax on cargo that supports the Harbor Maintenance Trust Fund is unconstitutional insofar as it applies to exports. The tax on imports and domestic cargo continues to be collected. The balance in the Harbor Maintenance Trust Fund has been growing in recent years and totaled \$4.55 billion at the end of fiscal year 2008.

Inland waterways transportation projects:

The construction and major rehabilitation of inland waterways transportation projects is funded 50 percent from the Inland Waterways Trust Fund, with the balance from general revenues. This trust fund consists of revenues generated from a tax on inland waterways fuel. The tax rate for the trust fund has been 20 cents per gallon since January 1, 1995. Operation and maintenance of the inland waterways system are 100 percent Federal from general revenues.

The Inland Waterways Trust fund has become depleted over recent years and the Administration has proposed phasing out the existing tax on waterways fuel and establishing a lock user fee.

Flood damage reduction projects:

For flood damage reduction projects (previously called flood control projects), structural alternatives require a minimum non-Federal share of 35 percent (25 percent for projects authorized before October 12, 1996) and a maximum of 50 percent. Non-structural projects require a fixed 35 percent non-Federal share. The non-Federal interest must pay at least five percent in cash of the costs of each project assigned to flood damage reduction during construction and provide lands, easements, rights of way, relocations, and disposal areas necessary for flood damage reduction. Additional cash is required to be paid during construction if the local non-cash contribution of lands, easements, rights of way, relocations and disposal areas, and the mandatory five percent cash contribution do not equal 35 percent (or 25 percent, depending on the date of project authorization), but the non-Federal contribution is always limited to 50 percent of project costs assigned to flood damage reduction.

Generally, operation and maintenance of flood damage reduction projects are non-Federal responsibilities.

Hurricane and storm damage reduction and shoreline protection projects:

The cost of initial construction for hurricane and storm damage reduction and shoreline protection projects that protect public lands or privately owned lands with appropriate public access

is cost-shared at 35 percent from non-Federal interests. The cost of construction on non-Federal public lands used for parks and recreation is cost-shared at 50 percent, and on Federal lands, the cost is 100 percent Federal.

The costs of periodic nourishment of projects on privately owned lands ranges from 35 percent non-Federal costs for projects authorized on or before December 31, 1999 to 50 percent non-Federal costs for projects authorized after this date where the periodic nourishment is carried out after January 1, 2003.

Environmental restoration and protection projects:

For projects whose purpose is environmental (ecosystem) restoration and protection, the non-Federal share of construction is 35 percent of total project costs. Operation and maintenance of such projects are non-Federal responsibilities.

Water supply, recreation, and aquatic plant control:

For municipal and industrial water supply (drinking water), the non-Federal share of project costs is 100 percent, repaid over the life of the project, but not to exceed 30 years. For agricultural water supply (irrigation), the non-Federal share is 35 percent, repaid over time. For recreation features, the non-Federal share of the cost of construction is 50 percent of the separable costs allocable to recreation, and for recreational navigation, 50 percent of joint and separable costs. Operation and maintenance of water supply and recreation projects are non-Federal responsibilities.

The Corps may also participate with other Federal and non-Federal agencies for aquatic plant control of major economic significance. The costs of site-specific aquatic plant control efforts are shared with non-Federal interests responsible for 30 percent.

Environmental infrastructure:

Since 1992, the Corps has been involved in the planning, design, and construction of environmental infrastructure projects for drinking water and wastewater. Environmental infrastructure projects constructed by the Corps are cost-shared with the non-Federal interest responsible for 25 percent of the total costs.

IV. Credit

During the development of prior Water Resources bills, the Committee received numerous requests for project-specific credit for individual projects. While requests for credit typically received favorable consideration, the Committee concluded that a general provision allowing credit under specified conditions would minimize the need for future project-specific provisions and, at the same time, assure consistency in considering future proposals for credit.

Section 2003 of the Water Resources Development Act of 2007 (P.L. 110-114) amended section 221 of the Flood Control Act of 1970 to statutorily authorize the Secretary of the Army to provide credit towards the non-Federal share of the cost of a project, including a project implemented without specific authorization in law (i.e., continuing authorities program), for the value of in-kind contributions made by the non-Federal interests that the Secretary determines are

integral to the project. Examples of in-kind credit include the costs of planning, design, management, mitigation, construction and construction services, and the value of materials and services provided before or after the execution of partnership agreement with the non-Federal interest.

Section 2003 also required that eligible credit be limited to those materials or services outlined, in writing, within the partnership agreement with the non-Federal interest.

WATER RESOURCES DEVELOPMENT ACT OF 2010

On November 6, 2009, Chairman James L. Oberstar, and Ranking Member John Mica, sent a “Dear Colleague” requesting proposed Corps project and study submissions for the formulation of a Water Resources Development Act of 2010. The deadline for project submissions is December 3, 2009.

The Committee places a high priority on developing and enactment of a Water Resources Development Act of 2010.