



**Committee on Transportation and Infrastructure
U.S. House of Representatives**

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April 25, 2014

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SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment
FROM: Staff, Subcommittee on Water Resources and Environment
RE: Water Resources and Environment Subcommittee Hearing on “A Review of Recent United States Army Corps of Engineers Chief’s Reports and Post Authorization Change Reports.”

PURPOSE

The Subcommittee on Water Resources and Environment will meet on Tuesday, April 29, 2014, at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony from the United States Army Corps of Engineers (Corps) on pending Chief’s Reports and Post Authorization Change Reports (PACRs).

This hearing is intended to provide Members with an opportunity to review the 11 Chief’s Reports and eight Post Authorization Change Reports submitted to Congress since the last Water Resources Subcommittee hearing on Chief’s Reports on June 5, 2013, and the process the Corps of Engineers undertakes when developing its projects and activities that benefit the Nation.

BACKGROUND

General: The United States Army Corps of Engineers is the federal government’s largest water resources development and management agency. The Corps began its water resources program in 1824 when Congress, for the first time, appropriated funds for improving river navigation. Since then, the Corps has been involved in improving river navigation and reducing flood damage along rivers, lakes, and the coast. Along with these missions, the Corps generates hydropower, supplies water to cities and industry, regulates development in navigable waters, restores aquatic ecosystems, assists in national emergencies, and manages a recreation program. Today, the Corps is responsible for and manages nearly 1,500 water resources projects.

The Corps of Engineers plans and constructs projects for the primary purposes of navigation, flood control, beach erosion control and shoreline protection, hydroelectric power,

recreation, water supply, and environmental protection, restoration and enhancement, and for fish and wildlife mitigation of project impacts. The Corps of Engineers planning process seeks to balance economic development and environmental considerations as it addresses water resources problems. It approaches the Nation's water resources needs from a systems perspective and evaluates a full range of alternatives in developing solutions.

Studies: The first step in a Corps of Engineers water resources development process is an overview study of the project. If the Corps has done an evaluation in the area before, the new study can be authorized by a resolution of either the House Committee on Transportation and Infrastructure or the Senate Committee on Environment and Public Works. If the area has not been previously studied by the Corps, then an Act of Congress is necessary to authorize the study. Generally, studies are authorized by Committee resolution. The Committee authority to carry out these resolutions is vested in Section 4 of the Rivers and Harbors Act of 1913.

The Corps has historically performed a reconnaissance study at federal expense, subject to appropriations for each potential project. Reconnaissance studies typically take about one year to complete and cost between \$100,000.00 and \$300,000.00. This is a preliminary analysis of the costs, benefits, and environmental impacts of the project, and contains an estimate of the costs of preparing a feasibility study. According to the Congressional Research Service, approximately one-third of reconnaissance studies eventually lead to feasibility studies, with only 16 of every 100 reconnaissance studies leading to a constructed project.

If the reconnaissance study concludes that there may be a viable federal project and that a more detailed study should be undertaken, the Corps enters into a cost-sharing agreement with the non-federal project sponsor that was identified during the reconnaissance study process. The cost of the feasibility study is shared 50 percent by the federal government, subject to appropriations, and 50 percent by the non-federal project sponsor.

During the feasibility study phase, the Corps of Engineers District Office (the Corps is comprised of 38 District offices within 8 Divisions) prepares a detailed analysis on the economic costs and benefits of carrying out the project and identifies any associated environmental, social, and cultural impacts. In some cases, dozens of project alternatives are identified and reviewed. The feasibility study typically describes with reasonable certainty the economic, social, and environmental benefits and detriments of each of the alternatives, and the engineering features, public acceptability, and the purposes, scope, and scale of each of the alternatives. The feasibility study includes any associated environmental impact statement and a mitigation plan.

The feasibility study contains the views of other federal agencies and non-federal agencies on the project alternatives, a description of non-structural alternatives to the recommended plans, and a description of the anticipated federal and non-federal participation in the project.

Following completion of the feasibility study phase, the document is transmitted to the appropriate Corps of Engineers Division for review, and, if approved, is then transmitted to the headquarters of the Corps of Engineers for final policy and technical review. After a full feasibility study is completed, the results and recommendations of the study are submitted to the

Congress, usually in the form of a report approved by the Chief of Engineers. If such results and recommendations are favorable, the final step would be Congressional authorization. Project authorizations are contained in Water Resources Development Acts (WRDA's), the last of which was enacted in 2007.

Requirements: The United States Army Corps of Engineers is subject to all federal statutes, including the National Environmental Policy Act (NEPA), the Clean Air Act, the Clean Water Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, and previous Water Resources Development Acts, Flood Control Acts, and Rivers and Harbors Acts. These laws and associated regulations and guidance provide the legal basis for the Corps of Engineers planning process.

For instance, when carrying out a feasibility study, NEPA requires the Corps of Engineers to include: identification of significant environmental resources likely to be impacted by the proposed project; an assessment of the project impacts; a full disclosure of likely impacts; and a consideration of a full range of alternatives, including a No Action Alternative. Importantly, NEPA also requires a 30-day public review of any draft document and a 30-day public review of any final document produced by the Corps of Engineers.

Additionally, when carrying out a feasibility study, the Clean Water Act requires an evaluation of the potential impacts of a proposed project or action and requires a letter from a state agency ensuring the proposed project or action complies with state water quality standards.

The Corps of Engineers also has to adhere to the "Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies" (P&G) developed in 1983 by the United States Water Resources Council. The Principles and Guidelines have been developed by the Council on Environmental Quality (CEQ). The P&G is intended to ensure proper and consistent planning by all federal agencies engaged in the formulation and evaluation of federal water resources development projects and activities. The P&G has defined federal objectives in pursuing water resources development projects, including defining contributions to national economic development consistent with protecting the environment.

The P&G requires the formulation of alternative plans to ensure all reasonable alternatives are evaluated, including plans that maximize net national economic development benefits, and incorporate federal, state, and local concerns. Mitigation of adverse project impacts is to be included in each of the alternatives plans reviewed in the study. The Corps of Engineers is responsible for identifying areas of risk and uncertainty in the study, with the goal that decisions can be made with a degree of reliability on the estimated costs and benefits of each alternative plan.

Typically, the plan recommended by the Corps of Engineers is the plan with the greatest net economic benefit consistent with protecting the Nation's environment. The Assistant Secretary of the Army has the discretion to recommend an alternative if there are overriding reasons based on other federal, state, or local concerns.

Agency Actions: The Nation's aging infrastructure, increased demands on the Corps of Engineers, and limited funding require the agency to focus resources on the highest performing programs and projects within the main missions of the Corps of Engineers. In January 2011, the Corps of Engineers undertook an initiative to modernize its planning activities to better align its project development process with national priorities.

Commonly referred to as the "3X3X3" approach, this planning modernization limits studies to 3 years, \$3 million, and a commitment that all 3 levels of District, Division, and Headquarters personnel are vertically integrated throughout the process and reviews. To make 3x3x3 work, planning efforts are conducted concurrently, rather than in a step-by-step method. The target length of the main report for feasibility studies should be 100 pages or less and not larger than one three-inch binder.

This planning modernization initiative is focused on risk-based scoping to more quickly define water resources needs and opportunities with a target goal of completing typical feasibility studies within 18-36 months. While not every study will meet this goal, due to complexity or local controversy, the new process should shorten the amount of time and decrease the typical cost of carrying out project studies. All Corps of Engineers studies were intended to be "3X3X3" compliant by fiscal year 2014.

When the "3X3X3" approach was initiated in January 2011, the Corps had more than 650 active studies. Since beginning the implementation of this planning modernization initiative, the Corps has reduced this group of active studies to fewer than 200. This has been accomplished by either completing ongoing studies or terminating those studies that have gotten little funding or provide questionable benefits to the Nation.

Fiscal Year 2015 Funding: The President's budget requests \$80 million for the Investigations account for fiscal year 2015. This is \$45 million less than the fiscal year 2014 appropriations of \$125 million. These funds are identified for the study of potential projects related to river and harbor navigation, flood damage reduction, shore protection, environmental restoration, and related purposes. These funds also cover the restudy of authorized projects, miscellaneous investigations, and plans and specifications of projects prior to construction.

Since June 5, 2013, 11 Chief's Reports have been submitted to Congress. To view all 11 Chief's Reports, please click the link below:

http://transportation.house.gov/UploadedFiles/Chiefs_Master.pdf

Post Authorization Change Reports: Post Authorization Change Reports (PACRs) are received from the Assistant Secretary of the Army with a recommendation of a modification to the total cost of a previously authorized project. PACRs are more commonly known as 902 fixes (derived from Section 902 of Water Resources Development Act (WRDA) of 1986). In WRDA 1986, Section 902 allows the Secretary to increase the maximum amount of a project for modifications that does not materially alter the scope or functions of an authorized project by not more than 20 percent of the total authorized project cost before notifying Congress. Any cost increase that exceeds the 20 percent threshold must come back to Congress for reauthorization.

Since the last Water Resources and Development Act was enacted in 2007, eight Post Authorization Change Reports have been delivered to Congress. To view all the PACRs please click the link below.

http://transportation.house.gov/UploadedFiles/Civil_Works_Letters.pdf

WITNESS

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