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Army Corps of Engineers: Continuing Authorities Programs

The U.S. Army Corps of Engineers (USACE) undertakes water resource development projects pursuant to authorizing statutes and the receipt of appropriations. The standard process for a USACE project requires two separate congressional authorizations—one for studying feasibility and a subsequent one for construction—as well as appropriations for both (see CRS Report R45185, *Army Corps of Engineers: Water Resource Authorization and Project Delivery Processes*). Additionally, Congress has granted USACE programmatic authorities to undertake cost-shared projects of limited scope and cost without requiring project-specific congressional authorization. These programmatic USACE authorities are referred to as Continuing Authorities Programs (CAPs). Congress has consistently funded USACE CAPs above the President's request since FY2013.

Types of CAP Projects

Since FY2012, Congress has appropriated funding for CAP programs, not individual CAP projects. USACE identifies which CAP projects it will perform using the CAP program's appropriations. Purposes of CAP projects may include reducing damage to life and property from flooding, reducing erosion in certain circumstances, and protecting and restoring aquatic ecosystems, among others (see **Table 1**). CAPs typically are referred to by the section number of the law in which the CAP was first authorized.

Requesting a CAP Project

To initiate a CAP project, a nonfederal sponsor (e.g., a local government or nonprofit entity with local government consent) sends a letter to the appropriate USACE district describing the water resource problem and requesting assistance with a project. (Templates for letters are generally available at USACE district websites.) USACE determines if there is federal interest to proceed with the requested project and if the project fits under a CAP authority.

Project Process: Feasibility and Construction

CAP projects consist of a feasibility phase and a design and implementation phase. The purposes of the feasibility phase include determining whether there is a federal interest in the project (e.g., identifying costs and benefits) and identifying the preferred project alternative. The feasibility phase involves planning activities, such as development of alternative plans to achieve project goals, initial design and cost estimations, environmental impact analyses, and real estate evaluation. For CAP projects, the design and implementation phase can immediately follow the feasibility phase (i.e., without project-specific congressional authorization), subject to the availability of appropriations.

The design and implementation phase includes the final design and specifications, real estate acquisition, and project contracting and physical construction. The nonfederal sponsor and USACE sign a project partnership agreement prior to construction. Upon construction completion, USACE transfers the project to the sponsor, which is responsible for operations, maintenance, and most repairs and rehabilitation (except for commercial navigation pursuant to Section 107 CAP, which allows for USACE operations and maintenance). According to USACE, pending funding, CAP projects generally take three years from feasibility phase initiation to construction completion.

Table 1. Selected Continuing Authorities Programs

CAP	Eligible Activities	Authority
§14	Streambank erosion and shoreline protection of public works and nonprofit services	33 U.S.C. §701r
§103	Hurricane storm damage reduction	33 U.S.C. §426g
§107	Navigation improvement	33 U.S.C. §577
§111	Prevention/mitigation of shore damage by federal navigation projects	33 U.S.C. §426i
§204	Regional sediment management/beneficial use of dredged material	33 U.S.C. §2326
§205	Flood control (including ice jam prevention)	33 U.S.C. §701s
§206	Aquatic ecosystem restoration	33 U.S.C. §2330
§208	Removal of obstructions and clearing channels for flood control	33 U.S.C. §701g
§1135	Project modifications for improvement of the environment	33 U.S.C. §2309a

Source: Congressional Research Service (CRS).

Nonfederal Responsibilities

The CAP authorities, similar to the standard USACE project authorities, require a nonfederal sponsor to share project feasibility and construction costs and other responsibilities, including obtaining real estate interests. Federal funds pay for the first $100,000 of the feasibility phase, with additional feasibility costs generally shared 50% federal and 50% nonfederal. Cost sharing for

construction varies according to CAP authorities, as shown in **Table 2**. Nonfederal sponsors may fulfill cost-share contributions with cash; work-in-kind credit; and/or lands, easements, rights-of-way, relocations, and disposal areas. In some cases, Congress has provided for certain USACE project costs, including CAP project costs, to be undertaken at a greater federal expense (e.g., 33 U.S.C. §2310 and 33 U.S.C. §2267b). The Water Resources Development Act of 2020 (WRDA 2020; Division AA of P.L. 116-260) authorized a pilot program for USACE to conduct 10 CAP projects at full federal expense for small or economically disadvantaged communities.

Table 2. Selected CAP Project and Program Limits, Enacted Appropriations, and Budget Requests
(in millions of dollars)

CAP	Max. Federal Cost Share	Per Project Federal Limit	Annual Federal Program Limit	FY2021 Requested and Enacted
§14	65%	$5.0	$25.5	$0.0 (R); $8.0 (E)
§103	65%	$10.0	$38.0	$0.0 (R); $4.0 (E)
§107	Varies[a]	$10.0	$63.0	$0.0 (R); $5.0 (E)
§111	Varies[b]	$12.5	NA	$0.0 (R); $5.0 (E)
§204	65%	$10.0	$63.0	$1.0 (R); $10.0 (E)
§205	65%	$10.0	$69.3	$1.0 (R); $15.0 (E)
§206	65%	$10.0	$63.0	$1.0 (R); $11.0 (E)
§208	65%	$0.50	$8.0	$0.0 (R); $1.5 (E)
§1135	75%	$10.0	$50.5	$1.0 (R); $10.0 (E)

Sources: CRS using statutes, USACE Budget Press Book, reports accompanying enacted USACE appropriations, and Engineer Pamphlet 1105-2-58.

Notes: NA = Not Applicable. R = Requested. E = Enacted. In the Water Resources Development Act of 2020 (Division AA of P.L. 116-260), Congress increased annual CAP funding authorization levels for FY2021 through FY2024 by $500,000 compared with FY2020 levels; FY2021 levels are shown here.

a. Varies based on depth and 50% for recreational navigation.

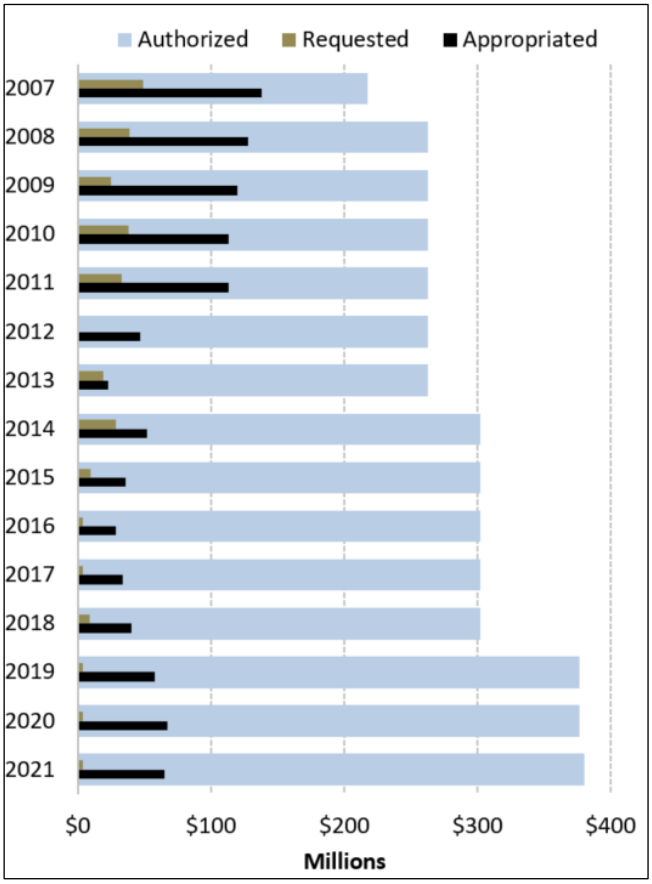
b. Same as the project causing the damage.

Appropriations for CAPs

Congress has limited the per project federal funding for CAP authorities (**Table 2**). Each CAP, except for Section 111, has an annual program funding authorization limit (**Table 2**). As shown in **Figure 1**, the Administration budget requests and annual appropriations from Congress have included less funding for CAPs than the authorized funding levels. Since FY2015, the Administration has requested less than $10 million in aggregate for CAPs, with no funding requested for Section 14, 103, 107, 111, and 208 projects. In annual appropriations, Congress has provided more CAP funding than requested. For example, Congress appropriated a total of $69.5 million for FY2021 compared with the Administration's request of $4 million.

Two supplemental appropriations acts—P.L. 115-123 and P.L. 116-20—provided up to an additional $75 million in emergency supplemental appropriations for CAP projects addressing flood and storm damage reduction in qualifying states and territories. As of January 2020, USACE had publicly identified $37 million of this funding for CAP projects.

Figure 1. CAP Funding Authorizations, Requests, and Annual Appropriations
(aggregated amounts)



Source: CRS using statutes, USACE Budget Press Book, and reports accompanying enacted USACE appropriations.

Notes: Funding shown in real dollars. Funding does not include §114. Supplemental appropriations are not included.

Prioritization and Reporting

Congress has instructed USACE to publish prioritization criteria for funding CAP projects and an annual report on CAPs in the *Federal Register* one year after the enactment of the Water Resources Reform and Development Act of 2014 (Section 1030; P.L. 113-121). The report is to include the name, description, and cost estimate of active CAP projects and the funding available in the fiscal year for CAPs. As of the end of December 2020, USACE has not published this information in the *Federal Register* or on its website. The explanatory statement accompanying FY2021 USACE appropriations directed USACE to brief the Committees on Appropriations on how the agency prioritizes CAP projects for funding and on program execution.

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