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Army Corps of Engineers: Environmental Infrastructure (EI) Assistance

Congress typically authorizes U.S. Army Corps of Engineers (USACE) activities in omnibus authorization laws, often titled Water Resources Development Acts (WRDAs). Since WRDA 1992 (P.L. 102-580), Congress has authorized and funded USACE assistance with design and construction of infrastructure in specified municipalities, counties, and states. This assistance supports publicly owned and operated facilities, such as water distribution works, stormwater collection, surface water protection projects, and environmental restoration, among others. This USACE assistance is broadly labeled *environmental infrastructure* (EI).

EI Assistance Authorities

EI assistance authorities generally fall into one of three categories:

- **Section 219 EI.** Projects and activities (e.g., design) at specific geographic locations (e.g., city, county, multiple counties) authorized through Section 219 of WRDA 1992, as amended;
- **Non-Section 219 EI Projects.** Projects authorized in provisions other than Section 219; and
- **EI Programs.** EI programs authorized for broader geographic areas (e.g., multiple counties or states), with eligible types of assistance authorized in various provisions.

USACE is authorized to perform design or construction work with USACE funds, and for certain programmatic authorities, may use appropriated funds to reimburse nonfederal sponsors for work the sponsors perform.

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 territories.

Unlike traditional USACE water resource projects, EI assistance is not subject to the USACE planning process (e.g., no USACE feasibility study is needed); however, EI assistance is subject to federal laws, such as the National Environmental Policy Act. USACE evaluates an activity's eligibility for assistance by identifying whether there is an EI assistance authorization for the geographic area of the project, and whether the proposed work is an eligible type of assistance provided for in the authorization.

The specifics of the authorization determine the nature of USACE's involvement and applicable nonfederal costs

share. 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.

Evolution of EI Assistance Authorities

Originally, Section 219 of WRDA 1992 authorized design assistance for 18 projects, and other sections authorized design and construction assistance for EI assistance projects and programs in select geographic areas (e.g., Section 340, Southern West Virginia). WRDA 1996 (P.L. 104-303) added construction assistance for certain Section 219 EI authorities. In subsequent WRDAs through WRDA 2007 (P.L. 110-114) and in select appropriations laws, Congress authorized new and amended existing USACE EI authorities (e.g., WRDA 2007 added over 200 projects).

Overall, Congress has authorized USACE to contribute EI assistance to more than 350 projects and programs, with cumulative authorizations of appropriations totaling more than \$6.7 billion. The authorizations of appropriations for these activities vary widely, from \$100,000 for a water monitoring station to \$585 million for a seven-state EI program (Section 595 of WRDA 1999 [P.L. 106-53], as amended, Western Rural Water).

Authority Modifications from 2014 to 2020

Congress has not authorized new EI assistance authorizations since WRDA 2007, but has modified certain authorities in WRDAs from 2014 through 2020. Among other reasons, Congress did not enact new authorities due to policies restricting earmarks/congressionally directed spending items in the 112th-116th Congresses. Congress provided a process for nonfederal sponsors to propose modifications to EI assistance authorities when WRDA 2016 (P.L. 114-322, Title I) expanded Section 7001 of the Water Resources Reform and Development Act of 2014 (P.L. 113-121) to include consideration of modifications to EI assistance authorities. Through the "Section 7001" proposal process, nonfederal sponsors may propose modifications to existing EI assistance authorizations (e.g., expand the location, amend eligible projects types, and adjust the authorization of appropriations). This process requires USACE to annually submit a report to Congress identifying proposals by nonfederal interests that meet certain criteria. Congress may consider these proposals as part of WRDA deliberations. For example, in WRDA 2020 (P.L. 116-260, Division AA), Congress amended 14 EI assistance authorities to increase their authorizations of appropriations for a total increase of \$828.5 million. For four of the EI authorities, Congress expanded the

authorized geographic scope or eligible 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

Administrations have not requested funding for EI assistance, though Congress appropriated funds for this purpose in appropriations laws. Congress typically funds EI assistance through the agency's Construction account in annual Energy and Water Development and Related Agencies appropriations acts. For example, Congress provided \$100 million for USACE to allocate among EI assistance authorities for FY2021 (**Table 1**). Reports accompanying appropriations acts provide guidance on how the Administration is to use the EI assistance funds. The Administration identifies funding for selected EI assistance authorities in the work plan for the fiscal year, which is typically available within two to three months after enactment of appropriations. For example, in the FY2021 work plan, USACE identified 21 EI authorities that would receive a portion of the \$100 million provided for EI. In addition to Energy and Water Development appropriations laws, Congress also has funded EI activities in other legislation, as was the case in the Infrastructure Investment and Jobs Act (P.L. 117-58), which provided emergency appropriations for FY2022.

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

	Annual Appropriations				IIJA
	2018	2019	2020	2021	2022
Total EI Funding	\$70	\$77	\$100	\$100	\$200
Number of Funded EI Authorities	29	29	27	21	29
Median Funding per EI Authority	\$1.8	\$1.9	\$3.0	\$2.9	\$4.3
EI as Percentage of Construction Account Funding	3.4%	3.5%	3.7%	3.7%	1.7%

Source: CRS, compiled from USACE Work Plans (FY2018-FY2021), P.L. 117-58, and IIJA FY2022 spend plan released January 19, 2022.

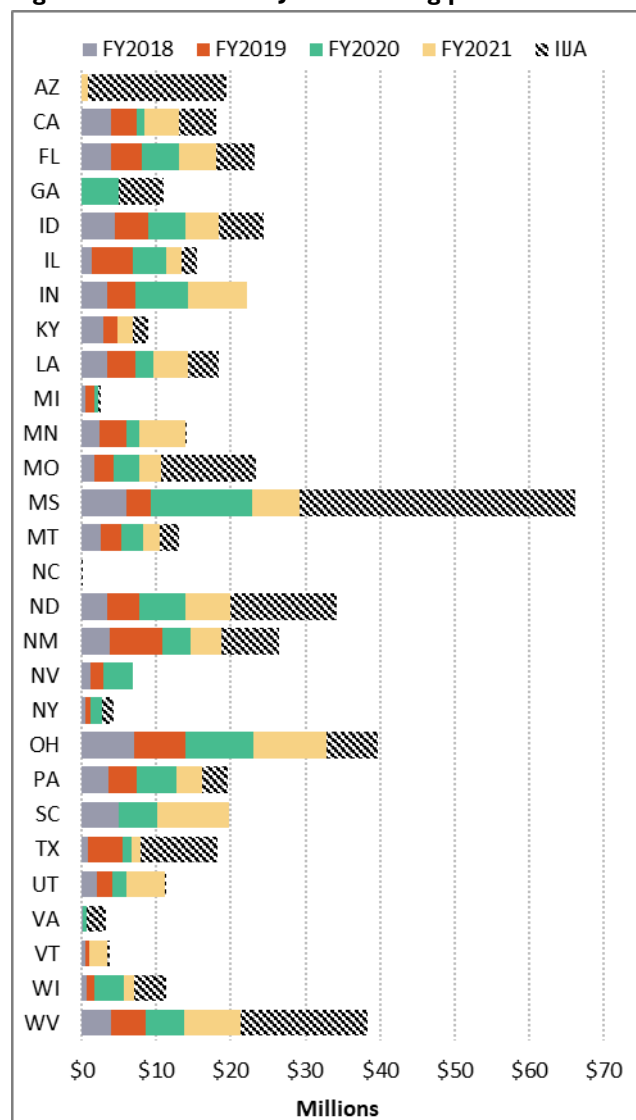
Notes: IIJA = Infrastructure Investment and Jobs Act (P.L. 117-58). Dates represent fiscal years. IIJA FY2022 spend plan allocated \$170 million of the \$200 million for EI assistance in IIJA appropriations.

Analysis of Funding Data from FY2018-FY2022

In FY2018-FY2022, 28 states with EI assistance authorizations have received funding from annual appropriations and supplemental appropriations (**Figure 1**). From FY2018 through FY2021, USACE limited EI funds to only those authorities that had received funds in previous years. For enacted FY2021 appropriations (Division D of P.L. 116-260), 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. However, USACE allocated IIJA funding to seven authorities not funded from FY2018 to FY2021.

WRDA 2020 also directed USACE to develop criteria for funding EI authorities. As of February 7, 2022, USACE has not released criteria.

Figure 1. Annual and IIJA EI Funding per State



Source: CRS, using USACE Work Plans (FY2018-FY2021) and the IIJA FY2022 spend plan released January 19, 2022.

Notes: IIJA = Infrastructure Investment and Jobs Act (P.L. 117-58). Although they have EI assistance authorization, 16 states, 3 territories, and the District of Columbia have not received funding during the period covered by this figure.

EI in Context of Other Federal Assistance Authorities

While Congress regularly funds USACE EI assistance, some Administrations have identified EI assistance as a relatively low priority for USACE and have pointed to other federal programs for which these nonfederal water projects may be eligible. CRS Report RL30478, *Federally Supported Water Supply and Wastewater Treatment Programs* describes other federal programs of this type.

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