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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 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 provided USACE with programmatic authorities to undertake cost-shared projects of limited scope and cost without obtaining 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

CAP projects may be used for purposes such as reducing the risk of damage to life and property from flooding, improving navigation, and protecting and restoring aquatic ecosystems, among others (see **Table 1**). CAPs typically are referred to by the section number of the law that first authorized the CAP.

Requesting a CAP Project

Generally, Congress appropriates funding for CAPs and USACE identifies which CAP projects it will undertake using the program's appropriations. At times, Congress has specified individual CAP projects that the appropriations should support (e.g., Community Project Funding/Congressionally Directed Spending [CPF/CDS] in FY2022 and FY2023 annual appropriations). For a nonfederal sponsor (e.g., a local government or a nonprofit entity with local government consent) to initiate a CAP project, the nonfederal sponsor sends a letter to the appropriate USACE district describing the water resource problem and requesting assistance with a project to address it. (Many USACE district websites include CAP letter templates.) USACE determines whether there is federal interest in proceeding with the requested project, the project fits under a CAP authority, and funding is available.

Project Process: Feasibility and Construction

CAP projects move through a feasibility phase, a design phase, and a construction phase. During the feasibility phase, USACE develops alternative plans that would achieve project goals, initial design and cost estimations, environmental impact analyses, and a real estate evaluation. The feasibility phase concludes with USACE identifying the preferred project alternative. For CAP projects, the design and construction phases can immediately follow the feasibility phase (i.e., without project-specific congressional authorization), subject to the availability of appropriations. The design and construction phases include the final project design and specifications, real estate acquisition, project contracting, and physical construction. According to USACE, funded 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	Beach erosion control	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).
Note: CAPs typically are referred to by the section number of the law that first authorized the CAP.

Nonfederal Responsibilities

The CAP authorities, as with the standard USACE project authorities, require the 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.

Before construction begins, the nonfederal sponsor and USACE sign a project partnership agreement. Cost sharing for construction varies by CAP authority, 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.

Upon construction completion, USACE transfers the project to the sponsor, who is responsible for operations, maintenance, and most repairs and rehabilitation (except for commercial navigation pursuant to Section 107 CAP).

In some cases, Congress has provided for certain USACE project costs, including CAP project costs, to be undertaken at a higher federal cost share (e.g., 33 U.S.C. §2310). Section 165(a) of the Water Resources Development Act of 2020, as amended (WRDA 2020; Division AA of P.L. 116-260), authorized a pilot program for USACE to conduct 20 CAP projects at full federal expense for small or economically disadvantaged communities.

Table 2. CAP Project and Program Limits, FY2023 Enacted Annual Appropriations, FY2024 Request
(in millions of dollars)

CAP	Max. Federal Cost Share	Federal Limit Per Project	Annual Federal Program Limit[a]	FY2023 Annual Appropriations (A) and FY2024 Request (R)
§14	65%	$10.0	$25.5	$11.0 (A); $0.0 (R)
§103	65%	$10.0	$38.0	$1.5 (A); $0.0 (R)
§107	Varies[b]	$10.0	$63.0	$6.0 (A); $0.0 (R)
§111	Varies[c]	$12.5	NA	$1.0 (A); $0.0 (R)
§204	65%	$10.0	$63.0	$10.0 (A); $1.0 (R)
§205	65%	$10.0	$69.3	$18.3 (A); $1.0 (R)
§206	65%	$10.0	$63.0	$13.0 (A); $1.0 (R)
§208	65%	$0.50	$8.0	$1.0 (A); $0.0 (R)
§1135	75%	$10.0	$50.5	$10.5 (A); $1.5 (R)

Sources: CRS based on statutes, Engineer Pamphlet 1105-2-58, explanatory statement accompanying enacted FY2023 appropriations, and FY2024 Budget Request.

Notes: NA = not applicable.

a. Division AA of P.L. 116-260 increased annual CAP funding authorization levels for FY2021 through FY2024 by $500,000 compared with FY2020 levels; FY2024 levels are shown here.

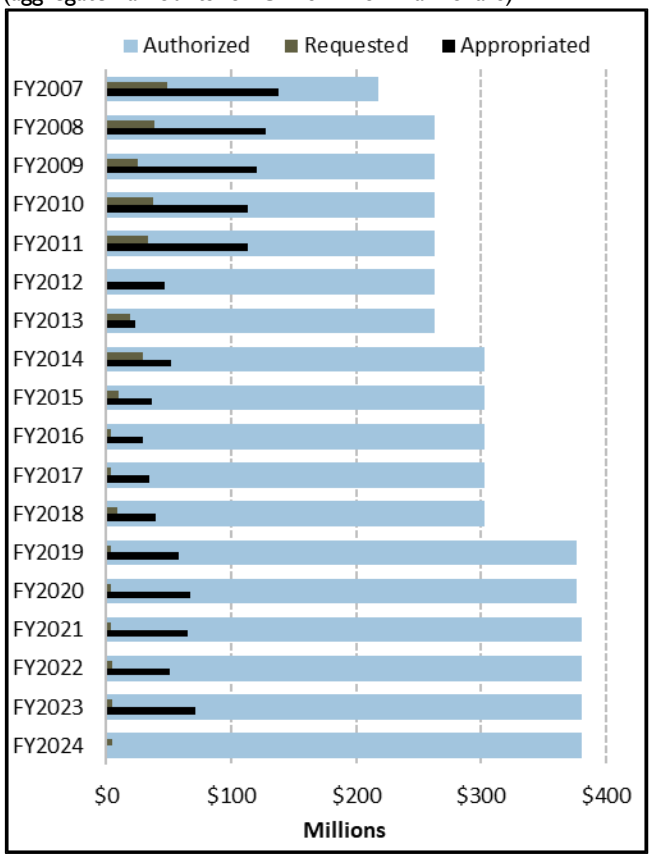
b. Varies based on depth and 50% for recreational navigation.

c. Same as the project causing the damage.

Annual 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**, Administration budget requests and annual appropriations from Congress have included less funding for CAPs than authorized funding levels. Dating to the FY2015 budget request, no budget has requested more than $10 million annually for CAPs. The Biden Administration did not request FY2024 funding for Section 14, 103, 107, 111, or 208 CAPs. In annual appropriations, Congress has consistently provided more CAP funding than requested. For example, Congress appropriated a total of $72.3 million for FY2023 annual appropriations for CAPs, compared with the Administration's request of $4.5 million. Of the amount appropriated, $2.1 million was for 12 CPF/CDS projects.

Figure 1. CAP Funding Authorizations, Budget Requests, and Annual Appropriations
(aggregated amounts for CAPs in nominal dollars)



Source: CRS based on statutes, USACE Budget Press Book, and reports accompanying enacted USACE appropriations laws.

Note: Funding does not include §111 (due to no authorized annual program limit) or supplemental appropriations.

Supplemental Appropriations for CAPs

In some supplemental appropriations provided for USACE, Congress has directed appropriations for CAPs or specified that up to a certain amount of construction appropriations be used for CAPs. For example, Congress provided $465 million in the Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58) for seven CAPs and a WRDA 2020 Section 165(a) CAP pilot program. Of the $465 million, IIJA specified $115 million is for Section 206 CAP projects to remove in-stream barriers for fish and wildlife passage and to provide technical assistance to nonfederal entities for these activities, at full federal expense and no project cost limit. USACE's IIJA spend plan for FY2022 allocated some IIJA appropriations for CAPs: $215 million to CAP projects (of which $8 million is for new CAP projects and the rest is for ongoing CAP projects) and $500,000 for technical assistance. For the Disaster Relief Supplemental Appropriations Act, 2022 (Division B of P.L. 117-43), Congress stipulated that USACE could allocate up to $65 million, of the $3 billion provided for construction appropriations, to CAP projects for flood and storm risk reduction. As of March 2023, USACE had not allocated funding for CAP projects in its P.L. 117-43 spend plan.

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