

Chapter 4

The Corps and Congress Project Politics and Funding

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The U.S. Congress approves and funds Corps studies, projects, and programs, and establishes key Corps policies. As a result, working effectively with Members of Congress is critical for improving the way the Corps manages the nation's rivers and wetlands. This chapter describes the processes used by Congress to authorize and fund Corps activities and identifies opportunities for influencing those processes.

Activist Tip

Congress controls the construction of new Corps projects, establishes the laws and policies that guide the Corps, and funds the Corps' activities. To influence these processes, activists should strive to build strong working relationships with their Members of Congress and Congressional staff.

I. Authorizing Corps Activities

The main legislative vehicle for authorizing and modifying Corps studies, projects, and programs is the Water Resources Development Act (WRDA, pronounced “were-da”).¹ WRDA is also the legislative vehicle used to create or modify policies for the Corps' civil works program, such as planning procedures, cost-sharing, and mitigation requirements for Corps projects. Congress typically attempts to pass a WRDA every two years — during even numbered years to coincide with elections — but it is not required to do so.

Understanding the authorizing process is very important, because in most instances the Corps may not study or build a project unless it receives explicit Congressional authorization to do so. Typically, each project will require two separate authorizations. Congress will first authorize the Corps to study a problem and recommend a project to address the problem. Congress then must authorize construction of the project recommended by the Corps' study. Only projects or studies that fall under one of the Corps' “continuing authority” programs can proceed without specific Congressional authorization, although Congress often will authorize specific projects under those programs to ensure construction. *See Chapter 2 for additional information on obtaining study and project authorizations.*

A. Overview of the Water Resources Development Act

Either the administration or Congress can initiate a WRDA.

The administration can initiate a WRDA by sending a proposal to Congress. The administration's proposal will be developed by the Corps, the Office of the Assistant Secretary of the Army for Civil Works (the civilian head of the Corps), and the Office of Management and Budget. Once sent to Congress, the administration's proposal will be considered by the Senate and House Committees with jurisdiction over WRDA and the Corps' civil works program.

The Committees with jurisdiction over WRDA and the Corps' civil works program are the Senate Environment and Public Works (EPW) Committee and its Transportation and Infrastructure Subcommittee, and the House Transportation and Infrastructure (T&I) Committee and its Water Resources and Environment Subcommittee. These Congressional Committees can — and often do — develop WRDAs on their own. *See Section III below for more on the Committee system.*

The House T&I Committee and/or its Subcommittee typically hold one or two hearings in March or April of even numbered years to evaluate projects and policies that various Members of Congress and constituencies would like included in WRDA. The Senate EPW Committee usually follows with a similar process four to six weeks later. In both chambers, the Subcommittee staff will solicit project requests from Members of Congress and develop a WRDA bill. Committee staff typically pay particular attention to project requests from Members of Congress in leadership positions who can help steer a WRDA bill through their respective chambers.

The Subcommittee and Committee chairs and their staff typically attempt to develop WRDA in a cooperative and bipartisan fashion to ensure rapid Committee and floor action. Committee and floor consideration of a WRDA usually take place in July and September, respectively, so that final passage will occur just before elections. The public generally has little time to review the bills in advance of Committee action — actual bills or bill proposals often surface only a few days before a Committee meets to “mark up” the bill. In addition, many of the most controversial proposals are added in rewrites of the bills, called “manager’s amendments,” that are finalized by Committee staff just before WRDA reaches the House or Senate floor. As a result, the public and media are often left in the dark about important proposed changes or additions.

As with all bills, any differences between a House and Senate passed WRDA must be resolved before a bill can be sent to the President for signature. This is done through a conference Committee consisting of Members of both the House and Senate. It is extremely difficult to influence the conference process, and the public typically has very limited input into this process.

Tracking Policies and Projects in Water Resources Development Acts

The project and policy provisions included in a particular Water Resources Development Act may be amended, superseded, or replaced by provisions in later bills.

Most Corps-wide policies established by the various WRDAs have been codified in Title 33 of the U.S. Code, where they are updated as any changes are made. As a result, you should refer to the Code for the Corps’ current policy requirements. The U.S. Code can be accessed at <http://www.gpoaccess.gov/uscode/index.html> or <http://www.findlaw.com/cascode/uscodes/>.

Project authorizations and modifications are not compiled in this way, and there is no publicly accessible compilation of projects and subsequent modifications. As a result, to be sure you have all provisions pertaining to a specific project you will need to look through all WRDAs enacted since the project was first authorized. Fortunately electronic versions of the WRDAs and the “find” function make this task fairly easy. For projects authorized prior to 1974, you also may need to look in the Flood Control Acts for flood damage reduction projects, and in the Rivers and Harbor Acts for navigation projects.

Activist Tip

Never assume that your Members of Congress are aware of problems with a particular Corps project. All too often, they will have heard only the most glowing description of the project from project proponents. Activists should inform their Members of Congress about problems with a project as early as possible in the project planning process.

B. Influencing a Water Resources Development Act

Understanding the various pressure points and the general dynamics at play in any given Congress is essential to developing and implementing an effective strategy to authorize, stop, or modify specific Corps projects and policies through the legislative process.

A host of factors can influence whether a WRDA bill will move in any given year. For example, other legislative priorities — particularly those being handled by the Committees with jurisdiction over the Corps, like the federal Highway bill — may move WRDA to the back burner. Concerns with a large federal deficit also can make WRDA less attractive to a fiscally conservative Congressional leadership. Issues related to the applicability of Davis-Bacon (the “prevailing-wage” labor law that requires payment of the prevailing union wages for all workers on a public works project) to Corps projects, have also prevented WRDA from moving.

On the other hand, a desire to authorize a specific project can help drive efforts to pass a WRDA in any given year. For example, the Upper Mississippi and Illinois lock expansion project was the driving force in the Senate’s unsuccessful effort to pass a WRDA in 2004. The desire to authorize the Everglades Restoration project was the driver for passing WRDA 2000. Where a WRDA has not moved for a number of years, the pent-up desire for new projects (and for Members to be able to point to their ability to bring money into their states) can move a WRDA through.

Influencing Project Authorizations: The most effective way to obtain, prevent, or modify a project authorization is to work with the Members of Congress in the state where the project will be constructed. Other Members of Congress typically defer to the views of the Congressional delegation from the project state. However, it is possible to generate out-of-state Member opposition to a particularly costly and destructive project, and to generate out-of-state Member support for a project with significant restoration benefits.

It is critical to let Members of Congress know about concerns with, or support for, Corps projects located in their state. To effectively fight or support a project in or affecting multiple states, it is vital to work with activists in each of the affected states so that all appropriate Members of Congress are hearing directly from their constituents. Activists should also work to generate opposition or support for a project from scientists, economists, other conservation organizations, and non-traditional allies where possible. As many of these constituencies as possible should contact the appropriate Members of Congress (or their staff) directly. Activists should also inform the appropriate Committee staff about their concerns or support. Activists should also work to generate media coverage about the project, and make sure that any articles and editorials supporting their position are provided to key Members of Congress.

Activist Tip

There are many ways to inform Members of Congress of your positions on Corps projects and policies. Activists should use as many of these tools as possible:

- Send letters to your Representative and Senators, to the chair and ranking member of the appropriate Committees, and in some cases to all Members of the House or Senate. Always send letters by email or fax if you cannot deliver them by hand.
- Meet with Members of Congress or their staff in Washington, D.C., and meet with your Members of Congress when they are in your state during Congressional recesses.
- Urge friendly Members of Congress to send a letter that supports your position to the chair and ranking member of the appropriate Committee, and to circulate a “Dear Colleague” letter that asks other Members of Congress to sign on to the letter that supports your position.
- Work with a friendly Member of Congress to host a Congressional staff briefing to provide information about a project or proposed policy reform. For example, in October 2004, activists from Florida worked with Senator Graham’s staff to conduct a briefing on the need to deauthorize navigation dredging on the Apalachicola River.

Influencing Policy Changes: A broad-based and concerted strategy typically is required to institute legislative policy changes for the Corps. This strategy must be designed to overcome the aversion that many Members of Congress have to altering rules that foster construction of projects that bring money into their states and that are supported by powerful constituencies. Generating media coverage of key flaws — and, if they exist, scandals — with the Corps’ project planning and operations processes is essential to effectively carrying out such a strategy. For example, recent reform efforts obtained a significant boost when a Corps economist announced that the Corps had deliberately manipulated data in an attempt to justify expansion of locks on the Mississippi and Illinois Rivers — these allegations later were confirmed by the Department of the Army Inspector General and the National Academy of Sciences.

Congress’ willingness to implement policy reforms can also be tied directly to the level of interest in authorizing new Corps projects. The stronger the push for new project authorizations (which can be driven by pent up demand), the more willing Members of Congress may be to address needed policy reforms. For example, significant Corps reforms were implemented in 1986 after reform proponents forced an almost decade-long WRDA hiatus. Despite several attempts, no WRDA was enacted from 1977 to 1985. Reforms were enacted in WRDA 2007 after the environmental and taxpayer communities caused a six year pause in the passage of WRDA (from January 2001 to November 2007).

Efforts to prevent passage of a WRDA can be aided by highlighting the overall cost of the bill or a particularly costly or controversial project included in the bill. Both of these were used in 2004 to help stop attempts to pass the WRDA reported out of the Senate EPW Committee. The Congressional Budget Office determined that the EPW-reported WRDA 2004 would cost an incredible \$17.7 billion through 2019. The Senate bill also included a \$1.5 billion authorization for new and expanded locks on the Upper Mississippi and Illinois Rivers — a project that had been wrapped in controversy for years — despite the fact that the Corps had not finalized its feasibility study or issued a Chief’s Report for the project.² Reform proponents used the cost of the bill and the controversy surrounding the lock expansion project to argue that the Senate bill would add significantly to the ballooning federal deficit and that the bill would not pass easily. See Chapter 5 for more on Congressional Budget Office cost estimates. Interestingly, the WRDA ultimately passed by Congress in 2007 authorized more than \$23 billion worth of new activities.

Activist Tip

The President's Budget provides two key opportunities for influencing the amount of money that Congress ultimately will give to the Corps.

First, influencing the President's Budget can help set the tone for the Congressional appropriations debate that will follow. Though not easy, it is possible to influence the President's Budget by working with the Office of Management and Budget (OMB). OMB works with the Corps to develop its budget and has a small staff dedicated to reviewing Corps projects. You can contact OMB to discuss your concerns with, or support for, a project and recommend an appropriate funding level (e.g., zero or full funding). You also can urge OMB to include specific policy recommendations in the budget. If you want to increase funding for a Corps project, you may be able to increase the budget request by working directly with sympathetic Corps staff.

Second, you can use the President's budget to launch a media campaign to influence the Congressional appropriations process. Release of the President's budget is an excellent opportunity to issue a press release and/or work directly with reporters to obtain media coverage of projects of concern funded by the President's budget.

II. Funding Corps Activities

The Corps, like all federal agencies, is funded for only one year at a time. The Corps' funding is established each year through a two-step process. In the first step, the White House and then Congress develop a government-wide budget for all federal activities. Using the budget as a guide, Congress then develops and passes detailed legislation that appropriates money for specific activities.

Each of these processes — budget and appropriations — covers the federal fiscal year (FY). The federal government's fiscal year begins on October 1 and ends on the following September 30 in the named fiscal year. So, for example, FY 2004 runs from October 1, 2003 through September 30, 2004.

A. The Budget Process

The federal budget describes how the federal government will allocate funds to implement federal laws and run federal agencies for a given fiscal year. Budget planning starts 18 months before the fiscal year covered by a budget, and involves two separate but related steps: formulation of the President's budget and formulation of Congress' budget.

The President's Budget: The President is required by law to submit a comprehensive federal budget for the upcoming fiscal year to Congress each year, no later than the first Monday in February. The portion of the President's budget devoted to the Corps sets forth specific funding amounts for individual civil works projects and programs.

In addition to recommending funding amounts for specific projects, the President's budget also sets forth policies underlying the budget and may recommend specific legislative changes that have budget implications. *See the Box right for examples of policy provisions contained in recent Presidential budgets.*

The President's budget typically is developed over an 18-month period. The Corps starts the process by developing a proposed budget. That proposed budget is submitted to the Office of Management and Budget (OMB) almost 12 months before the beginning of the fiscal year covered by the proposed budget (typically in September or October). OMB reviews the financial needs of the agency and its programs and negotiates with the Corps over the amount of money to be included in the Corps' budget. OMB sends the budget back to the Corps in late November or December — a process known as the "passback." The Corps then revises its budget request and prepares supporting material for inclusion in the President's budget submission to Congress. The Corps' final budget is then included in the budget submitted to Congress in February.

Corps Reform Policies Articulated in Recent Presidential Budgets

In FY 2002, the President's budget recommended focusing Corps resources on its high priority mission areas of flood damage reduction, navigation, and ecosystem protection and restoration and on completing high priority projects. The budget limited new construction to just two projects, redirected construction funding "away from ongoing projects that are not economically justified, are environmentally damaging, or violate other established policies," and redirected operation and maintenance funding away from low-use inland waterway segments.

In FY 2003, the President's budget again stressed the need to reduce the backlog of ongoing construction projects by completing high priority projects as soon as possible and not starting new projects. The budget also announced that the administration would soon release a proposal for independent review of significant projects.

In FY 2004, the President's budget recommended principles for improving the Corps' program that mirrored some key reforms long sought by environmental and taxpayer advocates: (1) external review of Corps projects to ensure use of sound and modern science, economics, and analytical techniques; (2) pursuit of only those authorized projects that "meet current economic and environmental standards and that address contemporary needs;" (3) pursuit of only those projects that provide "a very high net economic or environmental return to society relative to their cost;" (4) prioritization of projects within a watershed based on the comparative net economic or environmental return; (5) deauthorization of projects outside the Corps' main mission areas, of navigation projects with extremely low commercial use, and of inactive projects; and (6) requiring local entities to pay their fair share for Corps projects.

In FY 2005, the President's budget reiterated its FY 2002 to FY 2004 recommendations and focused funding to support these principles. The budget zeroed out funding — and proposed canceling previously appropriated but unused funding — for the highly destructive Yazoo Pumps project. The budget also zeroed out funding for other wasteful and destructive projects, including the Upper Mississippi Navigation Expansion Study; the Grand Prairie Irrigation Demonstration Project in Arkansas; the Dallas Floodway Extension Project in Texas; the Delaware River Deepening Project in Delaware, New Jersey, and Pennsylvania; and the Columbia River Deepening Project in Washington and Oregon.

In FY 2006, the President's budget proposed a new initiative to apply objective, performance-based guidelines to prioritize funding to Corps projects that maximize overall net economic and environmental returns. The Budget redirected Corps funding to nationally important environmental restoration projects, including Everglades Restoration, the Upper Mississippi River Environmental Management Program, and Missouri River Fish and Wildlife Recovery. The Budget also zeroed out funding for a number of harmful projects, including outdated and environmentally destructive projects within the Mississippi River & Tributaries Program, the Grand Prairie Irrigation Demonstration Project in Arkansas, the Dallas Floodway Extension Project in Texas, and the New Madrid Levee and pumping plant in Missouri.

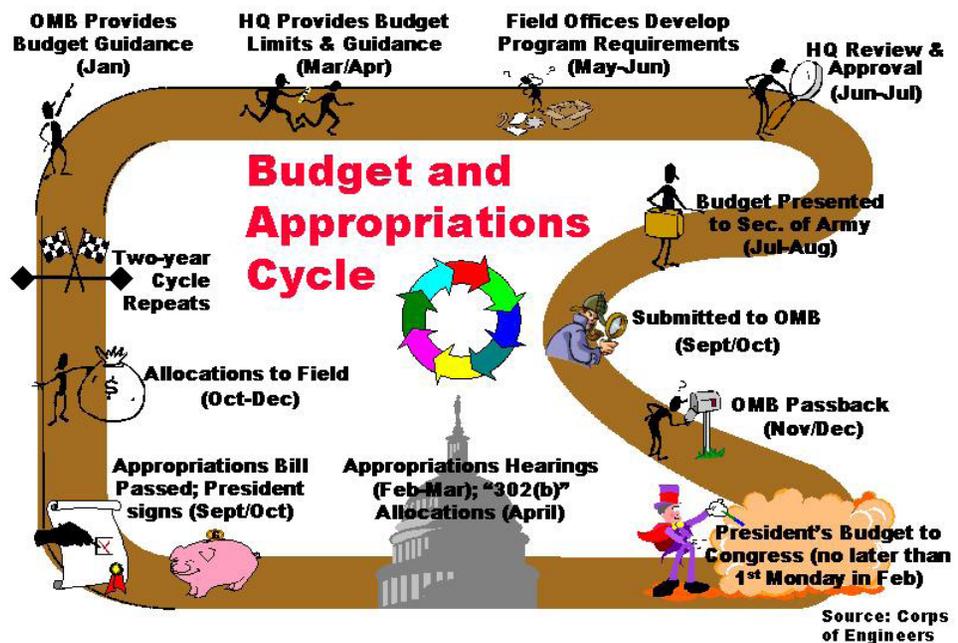
In FY 2010 (the first budget prepared by the Obama Administration), the President's budget focused funding on the Corps' primary mission areas of navigation, flood damage reduction, and ecosystem restoration. Money was also directed towards maintenance of existing critical infrastructure. The budget identified as a high priority, funding for restoration of Louisiana coastal wetlands, including effectively closing the Mississippi River Gulf Outlet. The budget also announced that the Corps would focus "on developing new strategies, along with other Federal agencies and non-Federal project partners, to better manage, protect, and restore the Nation's water and related land resources, including floodplain and flood-prone coastal areas" and would strengthen accountability and transparency in the spending of federal tax dollars. The budget also proposed phasing out the excise tax on diesel fuel that is used to fund the inland waterways trust fund, and replace it with a lock usage fee.

Congress' Budget: After receiving the President's proposed budget, Congress reviews the spending proposals and begins its own budget process. Congress is not bound by the President's budget and often deviates substantially from the President's proposal.

In preparing its budget, Congress first establishes total spending and revenue levels to be met for the upcoming fiscal year (and the following four fiscal years) to guide budget development. Both the House and Senate attempt to pass a "budget resolution" establishing these levels by April 15. Both chambers attempt to — but do not always — agree to a single budget resolution. Congress is supposed to keep spending within the limits established by the budget resolution, but ultimately can choose to exceed those limits.

The "discretionary spending" amounts contained in the budget resolution are allocated to the House and Senate Appropriations Committees, in a process known as the "302(a)" allocation. Discretionary spending is spending that requires specific, annual appropriations by Congress, and it accounts for about one-third of all federal spending.³ The House and Senate Appropriations Committees then subdivide the 302(a) allocation among the separate Appropriations Subcommittees, in a process known as the "302(b)" allocations.

All of these steps are supposed to be completed before the House and Senate consider any appropriations bills. However, the Appropriations Committees may move forward with appropriations legislation without a Congressional budget if a budget is not completed by May 15. *For more on the budget process, see the Office of Management and Budget's "A Citizen's Guide to the Federal Budget" at <http://www.gpoaccess.gov/usbudget/fy02/pdf/guide.pdf>.*



Activist Tip

Activists should not lose heart if Congress authorizes a destructive Corps project. Corps projects cannot move forward until funds are appropriated, and Congress often will not appropriate the necessary construction monies. As of 2004, more than 500 authorized Corps projects had received no construction funding.

Activists can work with Members of Congress to zero out, or cut, funding for projects of concern (and to increase funding for environmentally sound projects). Though appropriations battles can be frustrating because they often need to be repeated over many years, they can effectively stop a destructive project or at least buy more time to expose significant flaws in the Corps' original planning process.

B. The Appropriations Process

The House and Senate Appropriations Committees each have twelve Subcommittees that develop appropriations bills to fund the federal government's discretionary spending. These Subcommittees draft their appropriations bills guided by the budget resolution.

In both the House and Senate, the Appropriations Subcommittee with jurisdiction over the Corps' civil works program is the Energy and Water Development Subcommittee. The appropriations bill that establishes the Corps' funding is the Energy and Water Development Appropriations bill (E&W appropriations bill). In addition to funding the Corps, the E&W appropriations bill funds parts of both the Department of Energy and the Department of the Interior's Bureau of Reclamation.

The Corps' section or "title" of the E&W appropriations bill includes the total dollar amounts for each function of the Corps — General Investigation, Construction, Mississippi River and Tributaries, and Operation and Maintenance. The E&W bill also typically includes a limited number of specific project earmarks (i.e., the bill directs a certain amount of appropriated money to specific Corps projects). More detailed funding directions are included in the E&W Conference Report (or another committee report referred to in the Conference Report), which will typically break out each of the Corps' functional accounts by state and assign a specific dollar amount to individual projects in each state. This is in striking contrast to the lump sums for multiple projects or programs included in the appropriations bills for most other agencies.

The Energy and Water Development Subcommittees in both the House and Senate hold hearings on the Corps' budget request and invite Corps officials (generally the Chief of Engineers and Assistant Secretary of the Army for Civil Works) to describe their funding needs and answer questions. These hearings typically are held in February or March. The Corps also provides Congress with "budget justifications" for each project in the President's budget that explain how the Corps will spend the requested money.⁴ These justifications may provide important information for a project you are fighting, and they are publicly available on the Corps' website though typically are extremely difficult to find. The Subcommittees also will solicit appropriations requests from other Members of Congress. The public is also invited to submit written testimony on projects and programs that should be funded (or not funded) in the Corps' budget.

The Subcommittee will consider the bill and any amendments during what is known as a "mark-up," and ultimately will vote to "report" the bill to the full Appropriations Committee for its consideration and approval. A second mark-up can also take place at the full Appropriations Committee. During mark-ups, Members of Congress frequently add money for their favorite projects and occasionally cut funding for controversial projects.

Once the full Appropriations Committee reports out the bill,⁵ it is ready to be sent to the House or Senate floor. The House normally completes action on appropriations bills first. The Senate will then take into account the House-passed version when developing its own bill. The House normally passes its E&W appropriations bill sometime during May to July, with Senate passage a month or two later.

Like all legislation, after both chambers pass an E&W appropriations bill, any differences between the two versions must be resolved so that identical language is passed in both the House and the Senate before being sent to the President for signature. The conference Committee, which normally consists of Members of the House and Senate Appropriations Subcommittees, will finalize the bill through a Conference Report. In the appropriations process the Conference Report is actually the final version of the appropriations bill that is sent to the President to be signed into law. Any provisions enacted in the bill signed into law are legally binding.⁶

The entire appropriations process must run its course annually to keep the federal government operating. If an appropriations bill is not completed by October 1, the beginning of the fiscal year, Congress must adopt a “continuing resolution” (CR) to provide stopgap funding until the bill is passed.⁷ Congress may pass several CRs (often extending funding for only a few weeks at a time) that continue to fund the government at current levels until the new Fiscal Year’s spending is approved. Each CR will only cover those agencies for which a final appropriations bill has not yet been enacted. Sometimes, if the October 1 deadline is nearing or has already been missed, Congress will package numerous appropriations bills into one massive “omnibus” bill, instead of passing bills individually. This has happened repeatedly in recent years.

Locating an Appropriation for a Particular Corps Project or Program

To find the amount of money appropriated to a particular Corps project you will need to look under one of the three main appropriations accounts — general investigations, construction general, and operations and maintenance — and under the appropriate account state listing in the final E&W appropriations bill and Conference Report. The wetlands regulatory program, Formerly Utilized Sites Remedial Action Program (FUSRAP), and general expenses are listed separately.

The three main appropriations accounts correspond to the study, construction, and operations and maintenance phases of Corps projects. Each of these main accounts also contain separate sections for “Flood Control, Mississippi River and Tributaries, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee” and “miscellaneous,” which includes the Corps’ programs such as the Great Lakes Remedial Action program, Planning Assistance to the States, and the various Continuing Authority Programs. The conference report typically will further subdivide the accounts by state. Thus, to find the amounts appropriated to a particular project in Mississippi, you would need to look under both the Mississippi listings for the appropriate account and under the Mississippi listings for the Flood Control Mississippi River and Tributaries account.

Directing Substantive Actions Through Appropriations Bills: While House and Senate rules generally prohibit the authorizing and appropriations Committees from encroaching on each other's functions, the Committees do not always follow these rules. As a result, appropriations bills sometimes include provisions that impose substantive requirements. These requirements can be imposed via numerous vehicles that often are offered during mark-up or on the House or Senate floor.

A “rider” is a provision attached to an appropriations bill that imposes a substantive requirement that should properly be included only in an authorizing bill. Since Congress must pass appropriations bills each year, riders are used to pass substantive provisions that may face controversy or delay in the normal authorization process. A “limitation” restricts the expenditure of funds provided in an appropriations bill by either prohibiting their use for a specified purpose or setting a spending ceiling on a particular project or program. Provisions also can be added to specify how the Corps is to spend appropriated funds on a particular project or program. An “earmark” directs a portion of an appropriation to a specific project or activity. However, since by practice almost all Corps projects are funded in this way (on a project-by-project basis), technical earmarks are less of an issue for the Corps' appropriations.

Riders, limitations, and other directive language in an appropriations bill typically apply only to the fiscal year in which the appropriations bill is in effect, though by their terms they may extend longer. In the appropriations process, the Conference Report is actually the final version of the appropriations bill that is sent to the President to be signed into law. As a result, any such directives in the enacted E&W Conference Report carry the force of law.

Additional explanations regarding how appropriated funds are to be spent can also be included in the managers' “joint explanatory statement” that typically accompanies the E&W Conference Report, and in Senate and House Appropriation Committee reports. Spending directives contained in these documents do not carry the force of law (unless otherwise provided in the enacted Conference Report), but agencies rarely deviate from the instructions contained in a joint explanatory statement or Committee report adopted by the conferees as these instructions represent the intent of Congress.

III. Understanding the Legislative Process

To effectively influence Corps projects or policies through the legislative process, it is important to be familiar with the workings of the Congressional Committees and with the procedures used by the House and Senate for considering and passing legislation. This section provides an overview of these processes.

A. The Congressional Committee System

Congress relies heavily on the Committee system to handle the many complex issues it addresses. The Senate and House divide their work among approximately 250 Committees and Subcommittees. Each Committee is assigned issues over which they have jurisdiction, and they wield enormous power over the issues under their control. As a result, working effectively with Committee and Subcommittee staff is important for influencing legislation.

Different Committees handle Congress' policy and funding responsibilities.⁸ House and Senate legislative Committees are responsible for legislation that deals with the substantive duties and programs of the federal agencies (*e.g.*, WRDA). The appropriations Committees have jurisdiction over funding federal agencies and their programs (*e.g.*, funding provided through the E&W appropriations bill).

Congressional Committees With Jurisdiction Over the Corps

U.S. House of Representatives

- Legislative — Transportation and Infrastructure (T&I) Committee and its Water Resources and Environment Subcommittee
- Appropriations — Appropriations Committee and its Energy and Water Development Subcommittee

U.S. Senate

- Legislative — Environment and Public Works (EPW) Committee and its Transportation and Infrastructure Subcommittee
- Appropriations — Appropriations Committee and its Energy and Water Development Subcommittee

The primary functions of a Committee and its Subcommittee are to conduct hearings and investigations; take legislative action (by drafting bills and reporting legislation to the full House or Senate for possible consideration); and carry out oversight of the federal agencies under their jurisdiction. Senate Committees also fulfill the Senate's constitutional roles to consider treaties and Presidential nominees.

Committee and Subcommittee chairs and a majority of the Committee's members are from the majority party in the House or Senate. Committee and Subcommittee "ranking members" are lead members from the minority party in the House or Senate. For example, in the 108th Congress (2003-2004), the Republicans were the majority party in the House and Senate (*i.e.*, they held a majority of the 435 House seats and a majority of the 100 Senate seats). Thus, Committee chairs were Republicans and the ranking members were Democrats. In the 111th Congress (2009 -2010), the Democrats are the majority party in the House and Senate and, as a result, Committee chairs are Democrats and ranking members are Republicans. Committee and Subcommittee chairs wield an enormous amount of power. For example, they can determine whether the Committee will consider a specific issue or piece of legislation. In most cases, if a Committee refuses to address a measure it will receive no further action.

Holding Hearings and Soliciting Comments: When a Committee or Subcommittee chooses to consider a measure it will usually ask the appropriate federal agencies to submit written comments on the measure. Committees and Subcommittees also may hold hearings to gather information and views from non-Committee experts, including other members of Congress, federal agency staff, or outside experts such as those in the environmental community.⁹ Hearings can be held in Washington, D.C. or elsewhere, and can be held at any time, even if the House or Senate is adjourned or in recess. Hearings are generally open to the public, and most hearings can now be viewed via the Internet.¹⁰

A hearing agenda and witnesses are usually set by the Committee chair, but minority members of a Committee often work with the majority in selecting witnesses to represent their views since they are entitled to call witnesses of their choice on at least one day of a hearing. Witnesses must file an advance copy of their written testimony with the Committee, and their oral testimony before the Committee is generally limited to five minutes. *See the Box on the next page for a list of recent hearings addressing Corps Reform issues.*

Recent Committee Hearings Addressing Corps Reform Issues

Copies of written testimony can be accessed at the “hearings” sections of the Committee websites.

March 15, 2007 – Hearing on water resources needs and the President’s budget proposal for the Army Corps of Engineers for Fiscal Year 2008, before the Senate Transportation and Infrastructure Subcommittee of the Environment and Public Works Committee. *Pro-reform written testimony submitted by American Rivers and endorsed by Earthjustice, Environmental Defense, and National Wildlife Federation.*

March 15, 2006 – Hearing on strengthening the Nation’s water infrastructure and U.S. Army Corps of Engineers planning priorities, before the House Energy and Resources Subcommittee of the Government Reform Committee. *Pro-reform testimony given by American Rivers and Taxpayers for Common Sense.*

March 31, 2004 – Hearing on the Corps’ role in the nation’s water resource needs in the 21st century, before the Senate Transportation and Infrastructure Subcommittee of the Environment and Public Works Committee. *Pro-reform testimony given by Environmental Defense.*

March 5, 2003 – Hearing on independent peer review in agency decision making, before the House of Representatives Water Resources and Environment Subcommittee of the Transportation and Infrastructure Committee. *Pro-reform testimony given by American Rivers.*

June 18, 2002 – Hearing on the Water Resources Development Act of 2002, before the Senate Environment and Public Works Committee. *Pro-reform testimony given by Senator Russ Feingold (D-WI); National Wildlife Federation; Taxpayers for Common Sense; G. Edward Dickey, Ph.D., economist and former Deputy Assistant Secretary in the Office of the Assistant Secretary of the Army for Civil Works and former Chief of the Corps’ Planning Division; and Association of State Floodplain Managers. Additional pro-reform written testimony submitted by American Rivers, Audubon of Florida, National Audubon Society, and National Taxpayers Union.*

April 10, 2002 – Hearing on the Water Resources Development Act of 2002, before the House of Representatives Water Resources and Environment Subcommittee of the Transportation and Infrastructure Committee. *Pro-reform testimony given by American Rivers and National Wildlife Federation.*

March 7, 2002 – Hearing on the impacts of a reduced Army Corps of Engineers budget, before the House of Representatives Water Resources and Environment Subcommittee of the Transportation and Infrastructure Committee. *Pro-reform testimony given by Taxpayers for Common Sense.*

March 15, 2001 – Hearing on the media allegations that the Corps is a “rogue” agency, before the Senate Transportation and Infrastructure Subcommittee of the Environment and Public Works Committee. *Testimony given by Robert Flowers, Corps’ Chief of Engineers; no environmental or taxpayer testimony given.*

May 16, 2000 – Hearing on the Water Resources Development Act of 2000, before the Senate Transportation and Infrastructure Subcommittee of the Senate Environment and Public Works Committee. *Pro-reform testimony given by American Rivers.*

Activist Tip

Activists should seek assistance from seasoned lobbyists to develop a legislative strategy.

To effectively carry out a legislative strategy, it is important to develop strong working relationships with Committee Members and Committee staff to help ensure that your issues are properly addressed at the Committee level. It is much more difficult to pursue your legislative objectives without Committee support.

If you are successful in Committee you may need to develop a floor strategy to retain your Committee “win.” If you are unsuccessful in Committee, you will need to decide whether to continue your legislative efforts. It is at this point that understanding House and Senate floor procedures becomes important. For example, if you have been unable to prevent a project from being authorized in a WRDA reported by the House Transportation and Infrastructure Committee, you might pursue a floor amendment to strike the authorization from the bill. However, if the House decides to consider the WRDA under “suspension of the rules” no amendments can be offered and you would need to develop another strategy.

Considering Legislation: By practice, legislation is referred to a Subcommittee before the full Committee considers it — although WRDA sometimes bypasses the Subcommittee process. A Committee or Subcommittee can consider legislation already introduced, or can draft its own legislation. A Subcommittee often drafts WRDAs using Member project requests, reform proposals, and introduced reform legislation as a guide.

A Committee or Subcommittee will consider a specific bill through a process known as a “mark-up.”¹¹ During its mark-up, the Subcommittee will vote on whether to amend and/or “report” the bill to the full Committee for its consideration.¹² During a full Committee mark-up, the full Committee will vote on whether to amend and/or report the bill to the full House or Senate. Timing of consideration of a bill on the House or Senate floor is heavily influenced by the leadership in the respective chamber.

A Committee’s influence over a bill continues through the floor vote. In both the House and Senate, the chair and ranking member of the Committee that reported the bill typically manage the proceedings during the full chamber’s deliberation. Committee chairs also often offer a “manager’s amendment,” which is considered before other amendments may be offered. A manager’s amendment can range from technical corrections to major substantive changes to the bill reported out of Committee (major changes usually are negotiated with Committee staff in advance). Committee members also generally will be appointed to any conference Committee created to reconcile the differences between House and Senate versions of a bill.

B. House and Senate Floor Proceedings

The procedures used to debate and consider a bill vary considerably between the House and Senate. These differences are driven by the distinct approaches to moving legislation in the two chambers. In general, the House seeks to ensure that a majority of Members (from either one or both parties) can make decisions without unwarranted delays caused by a minority of Members. In contrast, the Senate employs a more deliberate decision-making process that provides significant protection to the concerns of individual Senators. *See the Box on the following page for some key differences between the House and Senate floor procedures.*

Key Differences Between House and Senate Deliberations

	House	Senate
Approach	Majority should rule without unwarranted delays by the minority.	Views of individual Senators must be considered even where it slows down the deliberation process.
Debate	<p>Debate time is limited. Members typically are given only five minutes to speak, and can speak for more than one hour only by unanimous consent. A simple majority vote can end debate, but special rules can be passed to control debate on a particular bill.</p> <p>Designed to prevent “filibusters” or other delaying actions on measures with majority support.</p>	<p>Debate time and time to offer amendments is unlimited, and “non-germane” amendments can be offered (amendments that are not relevant to the measure under consideration), unless there is a unanimous agreement to proceed in a different manner.</p> <p>Allows use of “filibusters” to delay or prevent votes. A filibuster ends only when the speaker chooses to stop (or is too fatigued to continue), unanimous consent is reached on the measure at issue, or a 3/5 majority votes for “cloture” which cuts off debate after 30 additional debate hours.</p>
Floor Procedures	<p>Consideration of a bill can proceed under one of a number of procedures that typically will be chosen based on the amount of controversy surrounding the bill:</p> <ol style="list-style-type: none"> (1) Unanimous consent — used when bills have almost no opposition; allows little or no floor time for debate and no significant amendments. (2) Suspension of the rules — used when bills have overwhelming but not unanimous support; debate generally is limited to 40 minutes; floor amendments are prohibited; requires a 2/3 vote to pass. (3) Corrections Calendar — allows one hour of debate and one opportunity for floor amendments; requires a 3/5 vote to pass. (4) In the House — usually allows only one hour of debate after which a majority typically votes to cut off further debate and amendments; requires a simple majority to pass. (5) Committee of the Whole — used when bills are controversial; debate typically lasts for more than one hour with time divided equally between the floor managers; floor managers make opening statements and yield portions of their time to allow other members to speak. After general debate, Members may consider and debate amendments with debate limited to five minutes per Member per amendment. After the last amendment is offered, the Committee of the Whole reports the bill to the House. The House votes on the amendments before voting to pass or reconsider the measure. 	<p>Consideration of a bill follows standard Senate rules, unless there is unanimous consent to proceed in a different fashion (<i>i.e.</i>, not one Senator objects).</p> <p>Absent a special agreement, consideration of a bill begins with opening statements by the floor managers. The presiding officer of the Senate then must recognize, in order, any Senator who wishes to speak. If unanimous consent is obtained to limit time for debate and/or time to offer amendments, floor managers will control the debate time.</p> <p>Amendments recommended by the reporting Committee are disposed of first, and then amendments can be offered to any part of a measure in any order. Non-germane amendments also may be offered unless there is unanimous consent to consider only germane amendments. The Senate can dispose of each amendment by either voting on it directly, or voting to “table” it. A motion to table cannot be debated, and if the motion is successful, the amendment is defeated. If the motion to table fails, debate on the amendment resumes.</p> <p>There are many complexities in the Senate amendment process. For example, while amendments to the original measure (called “first-degree”), are pending, a Senator may offer “second-degree” amendments to change the first-degree amendments. Votes occur on second-degree amendments first, then on first-degree. When the Senate orders the bill to be “engrossed,” there can be no further amendments. The Senate then votes on final passage.</p>

	House	Senate
Special Rules	The House Rules Committee (controlled by the majority party) decides which “rules” will apply to consideration of a particular bill. “Open” rules allow Members to offer any germane amendments. “Closed” rules allow no amendments. “Restrictive” rules limit the number of amendments that can be proposed, and the majority often writes such rules to control debate on important legislation. Special rules can allow non-germane amendments, but such rules must be adopted by a majority of Members.	The Senate’s standing rules, precedents, and customary practices govern floor proceedings. It is customary practice to enter into unanimous consent agreements to waive standing rules to expedite business. This means that if even one Senator objects, standing rules will govern. The Senate does not have a Rules Committee.
Scheduling	Majority leadership and the Rules Committee handle scheduling. The Speaker of the House or the Majority Leader decides which bills will be considered and whether any will be considered under suspension of the rules. The Rules Committee decides when the measure will be considered and which floor procedures will be used (unless leadership has already decided to proceed under suspension of the rules).	The Senate majority leader is primarily responsible for scheduling, and will determine which bills will be considered. To be considered on the Senate floor, a bill must be (1) placed on the floor’s legislative calendar when the Committee reports it; (2) placed directly on the floor’s legislative calendar when it is introduced or received from the House (this allows Senators to bypass referral to an unsympathetic Committee); or (3) offered as an amendment to any other bill under consideration (this allows Senators to bypass the Committee and the majority leader’s scheduling preferences).
Quorum	The Constitution requires the presence of a quorum, or a majority, of Members to be present on the floor to vote and conduct other business. A quorum is presumed to be present unless demonstrated otherwise. If a Member suggests the absence of a quorum, and a majority does not respond, the House (or Senate) must adjourn, recess, or attempt to secure a quorum. Thus, a “quorum call” is usually used strategically to temporarily suspend floor activity in order to accommodate individuals, discuss procedural or policy problems, or force Members to the floor.	Same as in the House.
Voting	Votes can be counted three ways, by (1) voice vote, where Members call out “aye” or “no;” (2) recorded vote, where each Member’s vote is recorded electronically and published in the Congressional Record; or (3) division in the chamber where Members stand to be counted.	Same as in the House.

Endnotes

1. The first WRDA was passed in 1974. Before 1974, Congress authorized flood damage reduction projects through the Flood Control Acts, and navigation projects through the Rivers and Harbors Acts. Corps projects also are occasionally authorized in the Energy and Water Development Appropriations bill, which was the case in the FY 2004 bill, or in other legislation. Additionally, where a particular water resources problem in a specific area already has been investigated, a Congressional Committee can adopt a “study resolution” to provide the necessary study authority. However, any project resulting from that study would still require separate authorization in WRDA or some other bill.
2. Projects that are authorized in a WRDA bill before issuance of a final Chief’s Report are called “contingent authorizations.” Contingent authorizations can be very controversial, particularly for costly projects, because Congress is authorizing the project before the Corps has finalized its recommendations.
3. The remaining federal spending consists of “direct spending” like Medicare and Social Security entitlements that do not require annual appropriations by Congress.
4. The Corps will not provide budget justifications for funding appropriated to projects that are not included in the President’s budget.
5. It is at this stage in the appropriations process that the bill is “scored” by the Congressional Budget Office. This “score” determines the cost of the bill to help ensure that Committees adhere to the spending limits set forth in the budget resolution. *See Chapter 5 for more on scoring.*
6. Once the E&W appropriations bill becomes law, the Corps will execute the act. However, the funds provided in the final law are not automatically available to the Corps. Instead, the Office of Management and Budget (OMB) is responsible for reviewing the agency’s apportionment requests by fiscal quarter or activity, as appropriate, and for making the funds available to the Corps. A continuing controversy surrounds the administration’s ability to allocate and reallocate funds appropriated by Congress, which often is done. For example, in 2004 OMB redirected a significant amount of Corps funding to cover the costs of the war in Iraq.
7. In FY 2003, only two of the 13 appropriations bills were completed on time. Numerous continuing resolutions were then passed until an FY 2003 omnibus appropriations bill was finally passed in February of 2003.
8. House and Senate rules generally prohibit the authorizing and appropriations committees from encroaching on each other’s functions, but the Committees do not always follow these rules.
9. Hearings also are held for oversight and investigative activities, and in the case of the Senate, to review the qualifications of presidential nominees.
10. Most hearings can now be viewed via the Internet by accessing the Committee’s webpage from www.house.gov or www.senate.gov, or by visiting www.capitolhearings.org/.
11. A committee chair determines the “markup vehicle” or text the chair presents to the committee for consideration. The text can be a measure introduced as a stand alone bill in the same chamber as the Committee; one passed by the other chamber and referred to the Committee; a draft measure that has not been introduced, such as a Subcommittee-reported bill or a “chairman’s mark;” or an “amendment in the nature of a substitute” to the original bill or text called up by the Committee.
12. A bill is considered “reported” once a Subcommittee or full Committee agrees on specific legislative language and a majority votes in support of recommending a bill to the next step (either to the full Committee or to the full House or Senate). When a Committee orders a bill reported, the chairman is required by House or Senate rules to report the measure “promptly” to the floor for full consideration by the respective chamber.