

Remarks to the National Waterways Alliance
Roger K. Cockrell, Professional Staff
Senate Energy and Water Appropriations Subcommittee
March 9, 2006

- The Army Corps of Engineers Civil Works Program is truly an integrated nationwide water infrastructure program – not just a collection of disparate projects. As such, flexibility is required in the management of the program. Congress has traditionally given the Chief of Engineers great latitude in management of this program in order to expend annual appropriations as efficiently and effectively as possible.
- Water resources projects, because of the nature of the work involved are funded on an incremental annual basis. As far back as 1922, Congress recognized the need for flexibility in management and execution and provided the Corps with legislation that allowed the use of continuing contracts for specifically authorized projects.
- In a 1977 decision, the Comptroller General confirmed that the authority found in the 1922 law constituted an exception to the Anti-Deficiency Act. Accordingly, the Corps has had the discretion to use continuing contracts to execute any of its specifically authorized water resources projects since at least 1977.
- In the late 1990s, the Administration proposed that all Corps construction projects be fully funded, rather than be incrementally funded as had been the norm. Congress rejected this proposal in the appropriations process.

- Further, the Water Resources Development Act of 1999 contained a provision (Section 206) relating to continuing contracts. Among other things, this legislation **required** the Corps to award a continuing contract for virtually all water resources projects.
- This position was confirmed by the Corps of Engineers Chief Legal Counsel in an opinion last year.
- An often misunderstood and closely related issue to continuing contracts is reprogramming of project funds. Reprogramming is generally defined as reallocation of funding from one program, project, or activity to another within an appropriation, to promote efficient, effective use of available funding, for optimum progress under changing conditions.
- The history of reprogramming goes back to at least the 1950s when the Comptroller General ruled that the Department of the Army has almost unlimited legal authority to transfer appropriated funds between projects. In the ensuing 50 years after the Comptroller General's decision, policy concerning reprogramming was incrementally developed.
- The Congress allowed reprogrammings for many reasons. Congress has traditionally viewed water resource projects as investments in our national economy. As such, once a project is started by the Congress, the Congress intended for the project to be completed.
- Congress recognized that the Corps, being much closer to the actual work of project implementation, was better

situated to determine the proper funding levels for projects in a given work year, and that this may involve moving funds around in order to maintain the most efficient use of funding.

- A corollary to this efficient use of funds was that the Corps was to ensure that funds which had been reprogrammed away from a project were made available when they were needed by that project. It was not considered appropriate to request donated funds as part of a budget request or as a capability statement as these funds had already been appropriated once. Movement of these funds was supposed to be transparent and seamless in order to execute a program as efficiently as possible.
- This system worked for many years. However, in the late 1990s through the early 2000s, a combination of events occurred that stretched the system to its breaking point.
- Congress noticed in the mid to late 1990s that project execution by the Corps had slipped dramatically. It was not uncommon to see execution rates of 60-65% for construction projects during that period. The Appropriation Committees expressed concern about lagging execution to the Corps and the large carryover balances in the Civil Works Program.
- The Corps, as we all know, is not an organization of subtleties. They tend to lean forward in the trenches. Upon hearing Congress' concerns about project execution, they set about to determine how to fix this problem. And fix it they did!!!!

- Meanwhile, other events were happening. The Congressional authorizers reacting to Administration proposals for fully funding projects enacted legislation modifying the Corps' traditional selective use of continuing contracts by ensuring that virtually all contracts had to be continuing contracts.
- The mantra within the Corps became one of full execution of annual appropriations. The required use of continuing contracts for virtually all work made this significantly easier. The Corps geared up to fully execute their annual program and spend down their carryover balances. They succeeded beyond all expectations!!!
- Other events were also taking place during this same period that did not attract the notice of the Corps or the Congress as much as perhaps it should have. Annual budgets were becoming tighter. The desire for new projects intensified due to back-to-back WRDAs. To accommodate these twin issues, savings and slippage rates were increased.
- As an aside, savings and slippage is a fudge factor. It is money that does not exist. It is a way of telling the Corps that Congress expects them to undertake \$22 of work, but only gives them \$18 to do the work with.
- When viewed in the historical context of annual Corps spending rates, reasonable percentages of S&S made sense as a way to accommodate all projects needs, even if funding was insufficient, especially when combined with large carryovers of funds from year to year. Annually, projects stall for a number of reasons,

and the funds from these stalled projects could be used to accelerate projects that were progressing faster than expected.

- Around 2001-2002, little did anyone realize that a perfect storm was brewing. Corps program execution had substantially improved such that they were executing nearly 100% of their annual program and had spent down their carryover balances. However, annual budgets were still constrained, the pressure to add projects continued and S&S rates continued to climb. The result was that a line item might indicate that a project was supposed to get \$100,000, but when S&S was deducted, it might only get allocated \$78,000.
- The cumulative effect of the high S&S rates resulted in considerably more active projects on the books than the annual appropriation could fund at optimal levels. This contributed to the inability to fulfill reprogramming commitments as the Corps spent down carryover.
- Around 2003, the effects of these events combined to force the Corps to adopt a “just-in-time” reprogramming policy. The problem was funding had gotten so tight, that the Corps began to have what I have termed as “cashflow problems”. Just in time started meaning, hopefully, within the same year funds were needed.
- As you can imagine, Members whose projects had donated funding were unhappy. Now that their projects needed funding, there was none available. This situation continued through 2004.

- By 2005, Congress recognized that we were guilty of some of the problem and tried to lower S&S rates and limit new projects. Congress undertook a comprehensive review and revision on reprogramming.
- However, the Corps did not put any reins on their efforts to execute 100% of their annual program. Funding shortages continued and unhappy project sponsors and Members started making their concerns known to the Congress.
- This resulted in the reforms enacted in the FY06 Energy and Water Act.
- This Act significantly altered the focus and management of the Corps Civil Works program.
- Major changes to both continuing contract authority and reprogramming guidance were enacted. Notice that I said enacted. Virtually all reprogramming guidance up until then had been in the report that accompanied the Bill, rather than in the Bill text, giving the Corps flexibility when it was needed.
- As Bill text, there is no flexibility in reprogramming and few reprogrammings are occurring, even when they make financial sense. The reprogramming guidance can be found in Section 101 of the P.L. 109-103.
- Two other pieces of legislation, Sections 106 and 108 of P.L. 109-103, severely restricted the Corps' ability to award continuing contracts. The evidence as this year progresses is that the Corps will issue very few new continuing contracts for FY06 and existing contracts

may be terminated in order to avoid Anti-Deficiency Act violations.

- This continuing contract legislation forces the Corps to construct projects within arbitrary funding limits. This creates inefficiencies that waste resources.
- Corps' contracts will have to be broken up into uneconomical pieces. Multiple contracts will be required instead of one increasing costs.
- Contractors costs will increase as multiple mobilizations and demobilizations occur where one may have sufficed in the past. This will show up in higher bids.
- Probably the most devastating impact to the Corps is that starting and stopping funding streams make the Corps an unreliable partner. If the Corps is seen as unreliable, contractor costs will increase based on risk and uncertainty increasing project costs.
- Another major change is that the Office of the Assistant Secretary of the Army was given a much greater role in daily execution of the program than had been the case in prior years.
- Execution decisions that were traditionally exercised by the Chief of Engineers in previous years now must be coordinated through another bureaucracy.
- The Chief has to seek permission to utilize continuing contracts or for reprogramming actions that require Congressional notification.

- All of these decisions are filtered through OMB for “Administration policy compliance” reviews. This is both time consuming and costly.
- What do these changes mean to the Corps, Congress, and most importantly, the local project sponsors?
- My view is that this will have the least impact to the Corps. As an executing agency, the Corps can execute the program under whatever guidance they are provided. However, I expect frustration levels to dramatically increase within the Corps as seasoned employees can’t meet sponsor expectations. I would not be shocked to see an increase in retirements either.
- For Congress, there are at least four possible outcomes.
- In order for the Corps to accomplish similar amounts of work on a wide variety of projects as in the past, the Corps budget will have to increase dramatically. This is an unlikely outcome.
- A second outcome could be that funding remains relatively static and that Congress would fund fewer projects that are fully funded. Under this scenario, I would be shocked if the Corps were able to continue to maintain 41 separate field operating agencies. I believe, Congress would have to seriously examine some consolidation of District offices, as there is only so much work sharing that can be done.
- A third outcome could be that Congress decides that this is not the way the Corps’ program should be

managed, and will take positive steps to undo some of the reforms that have been enacted. Unfortunately, I don't believe this is likely in FY07. I hope I am wrong.

- The final outcome, that I think is the most likely for FY07, is that the program will continue to limp along much as it will in FY06. I don't anticipate a large increase in allocation this year, which means that we will end up partially funding a multitude of projects that will have to carry that funding over until sufficient funds are available to award a fully funded contract.
- The inevitable end result of this outcome will be considerably less work accomplished, considerably more funding carried over from year to year, increased project costs, delayed benefits, and the Corps losing relevance with the Congress.
- For local sponsors, the impact of the reforms will be manifested in many ways.
- Local Sponsors will find the Corps exercising the "subject to availability of funds" clause contained in Project Cooperation, Feasibility Cost Sharing and Design Agreements, pushing completion of these projects further into the future, and, increasing the costs to the sponsors and the Federal Government.
- Ultimately, I believe that local sponsors would decide to either undertake these projects themselves if they have the financial resources, or they will be forced to drop the project.

- As I see it, the root of the problems in these reforms is a fundamentally flawed view of the Civil Works program. Rather than taking the long view and ensuring that the program is being managed as a long term national infrastructure program, it seems to be viewed as short term management of a yearly collection of projects.
- You may be asking yourself, what can I do to shape a better outcome?
- I believe education is one key.
- You need to educate yourselves as to what these reforms mean to various projects that you are interested in.
- You have got to educate Congressional Members and staff as to what the reforms mean to individual projects they are interested in and how those impacts affect the program as a whole.
- You must educate Members and staff that program execution authority needs to be restored to the Corps' field offices to allow them to execute their District programs efficiently and responsibly within whatever guidelines are given by Congress. These are smart, well paid people. Let them do their jobs!
- You also must recognize that Congress has a constitutional duty to oversee how funds appropriated are expended.

- However, you should insist that this oversight role be conducted through review of data and information supplied to Congress by the Corps, rather than by elevating the decision making process to the highest bureaucratic levels for every contracting or reprogramming decision.
- It will take a concerted effort by you to educate Members and Staff to changes that you think are necessary.
- I also want to take a few minutes to talk about the FY07 Administration request, lest you think I am in favor of it.
- The President's budget for Fiscal Year 2007 includes \$4.73 billion. While this is an increase over the Administration Request for FY 2006 it is \$596 million below the FY06 enacted amount, after rescissions, and not including supplemental appropriations.
- This budget was again prepared using performance based budgeting. This way of developing the budget has a nice ring to it. It makes one sound fiscally responsible, businesslike, spending scarce funds only on projects that provide the highest returns. However, it ignores so many things that have larger impact to the nation as well as the Corps itself.
- This method of budgeting seems to slant the budget process to those that can most afford a project and away from those that may have serious needs, but less financial capability. Congress has traditionally tried to smooth out these inequities in the program. With

performance based budgeting, it is harder to strike this balance.

- Another big issue that I have with performance based budgeting is that it takes the budget decisions out of the hands of the people that are closest to not only the sponsors, but also to the real world issues that are faced in project development. Namely, the District personnel.
- Corps budgets used to be developed from the bottom up, District to Division to Headquarters to ASA to OMB. District commanders were responsible for developing and managing a program within their geographic area. Division Commanders were responsible for integrating the District office programs into a single Division-wide program. The Headquarters office integrated the Division Programs into a single national program. The OASA assured that the program complied with Administration policy and budgetary guidance and OMB developed the budgetary guidance and provided funding levels.
- I suspect the budget process still starts out this way; but then the process appears to go seriously off the tracks.
- It appears that OMB decides the funding amounts and priorities, based on their performance based criteria for individual projects, and then tells the ASA and Corps HQ, your job is to make everything else fit around these priorities with whatever remaining dollars that the “priority projects” did not consume.

- This makes workforce planning within the Corps nearly impossible. When you choose to put 40-50% of the budget in 10-12 projects, there is no way the workload can be balanced across the remainder of the nation with what is left. Further, when you are dealing with such large differences in workload from the FY06 enacted to what was proposed in FY07, it is clear that the Administration gave no thought to how this budget would impact the Corps' organizational structure.
- Performance based budgeting is also furthering the divide between what is required for authorization, and what is required to be budgeted. These criteria use to be one and the same. Decisions on budgeting were made at the local District level due to funding limitations in the various accounts set by OMB, not due to artificial budgeting criteria.
- You should urge the Administration to take a longer view in future budget preparations. It is time to get the "bean counters" out of the budget business and develop budgets that truly make sense. Let the local people who know the program do the jobs they are paid for.
- The good news in this year's budget is that there are no funding gimmicks such as assumed fees from Power Marketing Authorities or recreation user fees.
- Now for the bad news...
- First and foremost, **532** projects and studies included in the FY06 Energy and Water Bill are not addressed in the President's budget request. The Budget proposed a \$41 million termination fund to fund the 10 projects

that the Administration is suspending. Interestingly, the 532 projects and studies not budgeted for FY07 are treated as if termination costs are free or as if they never existed. How seriously should we take a budget that starts from this premise?

- The GI account is eviscerated. Two studies, Louisiana Coastal Area and the National Flood Project Inventory, consume 48% of the Administration's GI request.
- While the O&M account looks like it has been significantly increased, the increase is due to an Administration proposal to shift \$342 million in what had been CG projects to O&M. This includes funding for major rehabilitations, endangered species compliance activities, and beach erosion activities caused by navigation projects. This shift was allegedly done in the name of budget transparency – trying to show the true costs of project operations. I'm not convinced, since the Bureau of Reclamation did not get similar guidance in their budget preparation.
- When the CG projects are removed from the O&M account, the request is actually \$53 million **less** than the FY06 enacted, after rescission.
- The Administration budget proposed to limit coastal storm damage reduction projects that require periodic sand renourishments to those where the erosion is due to navigation projects. Further, Federal participation is limited to initial beach nourishment. These are the same proposals made in FY06 that we rejected. The new twist is that these projects are budgeted in the

O&M account in order to show the “true cost” of the navigation project.

- Consequently, the Construction, General Account appears to have taken a big hit. However, when the projects shifted to O&M are restored to CG, the hit is not quite as big. However, the request is still \$451 million less than the FY06 enacted after rescission.
- Working for Chairman Cochran, on the full Committee, I would be remiss if I did not mention that the Mississippi River & Tributaries account is down \$122 million from the FY06 enacted. As I am sure you can imagine funding will have to be increased for this account.
- The Regulatory Program Account is also up again this year. The Administration has proposed \$173 million versus the \$158 million enacted in FY06 after rescission. The increase in funding is designed to help reduce the seemingly ever increasing regulatory backlog.
- The remaining Corps accounts are consistent with prior year funding.
- I am very concerned about the Administration’s proposals for GI and O&M.
- The planning program in the Corps’ GI account is the entry point for Federal involvement in solutions to water resource problems and needs.
- Some say we should concentrate scarce resources on completing construction of projects underway as rapidly as possible. I believe this argument is remarkably shortsighted.

- It assumes that the country will stop growing and that new investment opportunities will not be present.
- In truth, as the country grows, new investment opportunities will be presented and some previously authorized projects may no longer make sense or may be less competitive.
- The Corps should keep presenting the administration and Congress with new investment opportunities.
- The only conclusion I can draw from the Administration's GI proposal is that they are determined to redirect the Corps towards construction, operation and maintenance by strangling their ability to evaluate water resource problems and needs.
- Only \$16.7 million nationwide is requested for continuing studies, versus \$102 million provided in FY06. This again demonstrates to me that no consideration whatsoever was given in budget preparation to personnel and staffing within the Corps. While the Corps would probably not have to lay anyone off at these funding levels, people would likely be moved around.
- Planning is a very specialized discipline within the Corps. It is not something that everyone in the Corps either wants to do or is capable of doing. The Corps has been hemorrhaging talent in this area for years and has been unable to hire replacements due to budget constraints. Once this planning capability is lost, the Corps will be unable to rebuild it rapidly, if ever. This will greatly impact their relevance to water resource development.

- Moving the major rehabilitation projects from CG to O&M concerns me for a number of reasons. Major rehab projects generally consist of work on aging locks, where the result may be a project that is operationally improved from its pre-rehab state. Major rehabs do not include constructing additional lock chambers or other major work.
- History has obviously been ignored in this decision. Not that many years ago, major rehabilitations were funded in O&M. Work, at that time, included no operational improvements, just rehabbing the navigation structure as it existed. It was funded with 100% O&M funding.
- Due to funding shortages, major rehabs were becoming backlogged. In an effort to resolve this situation, Congress and the Administration agreed that major rehabs could be undertaken to not only modernize locks, but to provide operational improvements as well.
- To fund these rehabs, it was agreed that major rehabs would be funded in the Construction General account, and that half the costs would come from the Inland Waterway Trust Fund.
- The caveat in this agreement was that these would be considered new investment decisions for the country, and would therefore be considered new construction starts, having to compete with other new starts. This is not an unreasonable position, considering the rehabbed project would be operationally better than what was originally constructed.

- Now we have come full circle again, with a backlog of major rehabs and the proposal to move these projects back to O&M so that they don't have to compete as new starts. I am not sure why OMB feels that these projects will compete better in O&M than in CG particularly with the continued decline in O&M budgets.
- The Administration proposal that the Corps be allowed to use funds from the Inland Waterway Trust Fund in the O&M account is also of concern to me and should be to you. The IWTF was established to pay half the cost of construction projects in the construction account. As you may recall, a couple of years ago, the Administration budget proposed that the IWTF be utilized to fund a portion of inland waterway maintenance. If access to the IWTF is allowed in O&M for major rehab projects, it is a short very slippery slope to using IWTF funds for inland waterway maintenance.
- Maintenance of our aging water infrastructure inventory gets more expensive every year, however, it is consistently underfunded.
- If this trend continues, the Corps will not be able to maintain expected levels of service at all of its projects.
- The regionalization of the O&M budget this year effectively disguises the underfunding of O&M projects. As near as I can tell this, and the ability to freely move funds around, are the only reasons for displaying O&M in this manner.

- The only way to determine specific funding levels for the various projects listed is to look at the breakdown of the projects by region and the dollars associated with them. Oh, but by the way, the Administration has gone out of their way to indicate that this breakdown is not part of the budget documents.
- In other words, we are being asked to trust that these funds will be used as displayed, but, the Administration will have full reprogramming authority within these regions to fund what they deem as necessary.
- The best thing I can say about this Administration proposal is that it demonstrates our need to seriously reexamine our reprogramming guidance as we prepare the FY07 Bill.
- After all, the Administration invented a whole new way to aggregate and appropriate O&M just so they could get around the Congress' FY06 reprogramming guidance.
- I believe our national water infrastructure is critical to our economic security and the outputs from these projects translate directly to our homeland security.
- The Corps is one of the few federal agencies that can project returns on investment to the national economy from the projects and programs that they undertake.
- However, the policies that the Corps uses for determining investment decisions were developed more than 20 years ago.

- I think we can all agree that the world economy has changed dramatically in the intervening years.
- The Administration's economic theory of estimating 'national economic development benefits' and not counting the effects of regional benefits assumes that if we don't make an investment in a particular state or region, the industry will simply move to another, more efficient location and or mode of transportation, elsewhere in the US.
- Current polices do not take into account the amount of private investment that follows these Federal investments. Water compelled rates for alternate modes of transportation are ignored in BCR calculations.
- Current theory holds that the country will eventually get the benefits, just somewhere else.
- The preponderance of evidence over the last 5-7 years leads me to believe that this economic theory has changed.
- When we become inefficient now, the investment, the industry and the jobs move overseas—away from the United States.
- Further, we are ignoring infrastructure maintenance requirements that are costing this country business, investment, jobs, income, and tax receipts.
- The current method of performance based budgeting utilized in this budget preparation leads our nation to

turn away infrastructure investments that return two and even three times their cost. I would gladly invest in something that gave me a return of that magnitude, wouldn't you?

- Unfortunately the opportunities for these investments are being ignored by the Administration and, to some extent, by the Congress.
- I believe you should demand that water resources investments that provide positive returns to the economy should be given the same consideration as funding for any other homeland or national security investment within the national budget.
- We should learn from the tragic experiences of this past years hurricanes that increased spending on infrastructure before an emergency develops, is much cheaper than waiting until the emergency occurs.
- Pennywise and pound foolish is no way to run a national infrastructure program.
- Our water resource infrastructure has been the foundation for economic growth and quality of life for the past century. If we do not recapitalize and reinvest in it, our ability to remain competitive in a global marketplace will be impaired which will impact our national security.
- Thank you.
- Questions?