

A Sink-or-Swim Issue

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Congress

Brian Friel ([Email this author](#))

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Lt. Gen. Carl Strock, outgoing commander of the Army Corps of Engineers, recently accepted some of the responsibility for the inundation of New Orleans after Hurricane Katrina last year. "We do have accountability for our own design shortcomings, and we should have done more to inspect and reassess the condition of the levees and communicate with the people of New Orleans," Strock told reporters on August 24.

Strock also laid out 12 actions that the Corps would take to address systemic flaws revealed during its soul-searching after Katrina. Among those steps, Strock said that the Corps would consider risk to life and property more directly in its project-planning processes, and would have outside engineers review more of its plans and work.

But Congress typically steers the Corps of Engineers, telling it what levees to build, harbors to dredge, dams to construct, and beaches and ecosystems to restore. And this month, House-Senate negotiators plan to consider some controversial Corps reforms as part of their effort to craft a compromise on legislation reauthorizing the Water Resources Development Act, which is stuffed with billions of dollars worth of water projects important to lawmakers seeking re-election.

"The Corps so much is, and has been, a creature of Congress that without congressional approval, the Corps has an extremely difficult time making changes," said David Conrad, senior water resources specialist at the National Wildlife Federation. "The Corps looks to Congress for direction."

Although Congress typically approves a Water Resources Development Act every two years, it has been six years since the last one passed. Water-project advocates cite several reasons for the long delay. The Bush administration -- primarily the Office of Management and Budget -- views many water projects as wasteful and has raised objections to the costs of WRDA bills. Meanwhile, the House Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee, which oversee WRDA, were consumed for several years with reauthorization of a major highway bill.

Corps reform, though, is the most frequently cited reason for the legislation's troubles. Some environmental and spending watchdog groups have been pitted against a coalition of water transportation proponents, construction groups, and regional interests over how best to direct the agency. Lawmakers, too, are divided over the questions of how to construct a system of peer review for Corps projects and how to set its priorities. Nonetheless, the bill is popular among lawmakers because of the projects it contains, and both chambers passed their versions with overwhelming support. The House approved its bill 406-14 in July 2005 -- a month before Katrina hit -- while the Senate approved its version by voice vote this July.

"I am cautiously optimistic they will get this done," said Steven Hall, vice president for government affairs at the American Council of Engineering Companies. "This is the closest we've been in a long time."

House Transportation and Infrastructure Committee Chairman **Don Young**, R-Alaska, and Senate Environment and Public Works Committee Chairman **James Inhofe**, R-Okla., will lead the conference committee and hope to complete the legislation by October 1. Each bill has several billion dollars worth of water projects, including a major lock-and-dam project and accompanying environmental restoration efforts on the upper Mississippi and Illinois rivers. The National Corn Growers Association, the United Brotherhood of Carpenters and Joiners union, and other groups supporting the upper Mississippi River project helped push the Senate to pass its bill, along with the National Waterways Alliance, which promotes projects nationwide.

The two most-contentious Corps reform issues came up on the Senate floor. The first was the question of how to structure independent peer review for Corps projects. Most lawmakers, agency advocates, and the Corps itself generally support peer review, recognizing a need for outside engineers to check the Corps's work to make sure projects are technically and scientifically sound. An outside peer-review team, for example, worked alongside Corps engineers during the past year as they rebuilt New Orleans's hurricane-protection system.

The House bill, despite being passed before Katrina hit, would require independent peer review for the technical and scientific aspects of projects worth more than \$50 million, and for projects that are deemed controversial -- although the Corps chief could waive the requirement. Sens. **John McCain**, R-Ariz., and **Russell Feingold**, D-Wis., won Senate approval of an amendment that lowered the threshold to \$40 million, created a peer-review office outside the Corps, and gave the peer reviewers a broader set of issues to examine than just technical and scientific aspects.

McCain, Feingold, and proponents of their amendment -- chiefly environmental and taxpayer watchdog groups -- argued that their plan would provide much stronger oversight of the Corps. "This New Orleans situation is Exhibit A in the kinds of problems that can occur if you don't have appropriate review of these Army Corps of Engineers projects," Feingold said.

Inhofe and Sen. Christopher (Kit) Bond, R-Mo., the Transportation and Infrastructure Subcommittee chairman, argued that the McCain-Feingold plan was too bureaucratic and would delay projects unnecessarily. They offered their own amendment, closer to the House version of peer review, that they and water-project advocates, such as the National Waterways Alliance, said would provide better oversight without too much bureaucracy. Under the McCain-Feingold plan, there is "the possibility of ad infinitum reviews," National Waterways Conference President Worth Hager said.

The Senate approved the McCain-Feingold amendment 54-46 and rejected the Inhofe-Bond amendment 49-51. "The Senate was clearly divided on the issue of peer review," Inhofe said in a statement.

The other highly contentious issue centers on control of Corps priorities. Under current guidelines, the Corps focuses on the economic benefits of a potential project when determining whether to recommend it. Congress then considers the Corps's analysis before deciding which projects to fund. The Senate bill establishes a Water Resources Planning Coordinating Committee, made up of 10 Cabinet secretaries, to propose a new set of planning procedures for the Corps. The House bill doesn't include a provision on prioritization.

McCain and Feingold pushed a Senate amendment that would have given the executive branch committee

the responsibility of actually prioritizing Corps projects, but the measure failed overwhelmingly -- 19-80. "Too often, it is a member's seniority and party position that dictates which projects are funded," McCain said on the Senate floor in July, echoing a complaint common among taxpayer watchdog groups that Congress does not base its funding decisions on objective criteria.

David Williams, vice president of policy at Citizens Against Government Waste, said that lawmakers fund pork projects at the expense of more-important projects like the hurricane-protection system in New Orleans. WRDA legislation is "a fun place to pork out," Williams said.

But Sen. **Barbara Boxer**, D-Calif., who would chair the Environment and Public Works Committee if Democrats take over the Senate, argued on the floor that members of Congress are better able than executive branch bureaucrats to determine which projects are most worthy of funding. "It is our bill," she said.

After the McCain-Feingold prioritization plan failed, Inhofe and Bond offered a milder amendment that would have instructed the Corps to submit an annual report to Congress rating projects on four "national priorities": the reduction of the risk of loss of life and public safety; economic benefits; environmental protection; and national security. The Inhofe-Bond amendment also failed, 43-56. In conference, water-project advocates are encouraging lawmakers to further reject the coordinating committee that is still part of the Senate bill.

Melissa Samet, senior director of water resources at American Rivers, a Washington-based environmental group, said environmentalists would support a final version that maintains the Senate bill's Corps reforms. "The environmental community is saying real reform has to be included in any bill that moves," Samet said. "The House version has all kinds of off-ramps."

But water-project advocates contend that the House bill adequately addresses Corps reform. "The House bill was a compromise -- a really big compromise," Hager said. "We have gone out of our way to placate these guys."

The American Society of Civil Engineers is hoping to play the role of peacemaker on the peer review question, offering a plan that Casey Dinges, managing director for external affairs, said could balance the desires of environmentalists for strong oversight with the desires of project advocates for processes that don't result in needless delays. "We're trying to find that middle ground to resolve that issue," Dinges said.

Other issues could also derail the WRDA reauthorization this fall, including the short pre-election calendar and the Bush administration's opposition to the bill's estimated \$10 billion-to-\$12 billion cost of projects. Nonetheless, advocates see this month as their best chance in six years to win approval. Lisa Kelley, director of public policy for the corn growers, said that her group's members talked with lawmakers throughout the August recess about the importance of WRDA passage. "It's lingered for six years, and it's time to have a bill," Kelley said.