

WATER RESOURCES DEVELOPMENT ACT OF 1999

HEARING

BEFORE THE

**COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE**

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

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MARCH 11, 1999
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WATER RESOURCES DEVELOPMENT ACT OF 1999

THURSDAY, MARCH 11, 1999

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:32 a.m. in room 406, Dirksen Senate Office Building, Hon. John H. Chafee (chairman of the committee) presiding.

Present: Senators Chafee, Warner, Baucus, Voinovich, Lautenberg, Graham, and Crapo.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Today we want to welcome Dr. Westphal, Assistant Secretary of the Army for Civil Works.

Today we will be considering the Water Resources Development Act for 1999 in regards to its fiscal year 2000 budget request for the Army Corps Civil Works program.

On March 2 of this year, just last week, Senator Warner, joined by Senators Baucus, Voinovich, Lautenberg, Bennett, Boxer, and myself introduced the Water Resources Development Act of 1999, which is S. 507.

This bill, which authorizes an estimated \$2 billion in Federal funds for flood control, navigation, environment, and shore protection projects and studies, is virtually identical to legislation which we adopted last October in the Senate.

This is good legislation that is important to different States and communities across the country. These non-Federal sponsors have dutifully cost-shared all of the studies, the design work, and other preparatory steps for the construction phase of flood control, shoreline protection, environmental, and navigation projects.

I see it as our duty to now move forward with the authorization of worthwhile projects. This is what this bill does, and I hope we can advance it swiftly, particularly since it was approved, as I mentioned before, by the Senate late last year on October 9, 1998.

Secretary Westphal was very helpful last year, and I look forward to working closely with him again.

Secretary Westphal is also here this morning to present the fiscal year 2000 budget request for the Army Corps. This budget request of \$3.9 billion is essentially level with that appropriated by Congress for the current fiscal year. A large portion of the 2000 request, however, includes assumed revenues from this new Harbor Services Fund. Almost 25 percent of the overall budget request is

made up by the estimated \$950 million that has been set aside under this new fund.

Obviously, we need to take a close look at this. We need to hold hearings with all of the stakeholders. Who are they? The shippers, the vessel operators, ports, and others—to make sure that there is equal burden-sharing and to examine the budget implications.

We should continue with some kind of user fund system, but I must say I don't know just which approach we should take, but I'm eager to receive detailed proposals from the Administration so we may begin the process of responding to last year's Supreme Court ruling.

I see Senator Baucus is here. Senator, did you have a statement?

**OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR
FROM THE STATE OF MONTANA**

Senator BAUCUS. Thank you very much, Mr. Chairman. I join you in welcoming Dr. Westphal this morning.

As you know, Mr. Chairman, today's hearing on S. 507, the Water Resources Development Act, gives us an opportunity to hear the Administration's proposal for policies and projects for the Corps of Engineers. This year's WRDA bill is essentially the same bill the Senate passed during the 105th Congress. It was not enacted because there was no companion bill in the House.

I hope that our swift action on the bill early this session will spur House discussions on the flood control project for Sacramento. If an agreement can be reached, we can get WRDA 1999 signed into law and look forward to WRDA 2000.

WRDA 1999 proposes a number of new initiatives: establishment of the Challenge 21 program, which would authorize non-structural flood control and river ecosystem restoration projects; an aquatic restoration program for the Missouri River; changing the cost share for shoreline protection, making beach renourishment a 50/50 Federal/non-Federal responsibility; and allocating additional recreational fees collected at Corps facilities.

I applaud the Administration for recognizing recreation in the Corps' mission and the need to keep our recreational facilities in shape.

I also look forward to hearing the views of the Administration on the future of the Harbor Maintenance Trust Fund and the alternative that they are considering.

Now that the Supreme Court has ruled that the ad valorem fee on exporters is unconstitutional, we need to find an equitable source of funding to ensure the continued viability of our Nation's ports.

This committee wants to be very helpful, it wants to be involved in developing that alternative, and we look forward very much to hearing from you Honorable Westphal this morning.

Thank you.

Senator CHAFEE. Thank you, Senator.

Senator Warner.

**OPENING STATEMENT OF HON. JOHN W. WARNER,
U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA**

Senator WARNER. Thank you, Mr. Chairman. I appreciate the support that you gave me last year as the subcommittee chairman and the support I received from our distinguished ranking member who, indeed, worked with me a great deal on this, and for the courtesies accorded this Senator from our newest member here, Senator Voinovich.

The important thing is that America looks upon this legislation as being predictable. I have observed, as other Members of the Senate, through the years, the care with which the communities try to order their priorities, and in the end put up such matching funds as are required.

Our waterways are our links and our lifelines. This is America, a maritime nation. We must project across the oceans, not only for our national security but our own economic security, and therefore it is essential that the Congress, in a timely and hopefully predictable manner, can work with the communities and States across this Nation to develop those facilities and to improve them.

I join in welcoming our distinguished guest.

Which title do you like best, Doctor or Secretary?

Dr. WESTPHAL. I'd prefer Joe.

Senator WARNER. It kind of muddles up the record, so you have to make a choice between the two.

Thank you, Sir.

Senator CHAFEE. Senator Voinovich is the chairman of the subcommittee that deals with this, and so his panel has jurisdiction and we're delighted you're here, Senator.

**OPENING STATEMENT OF OF HON. GEORGE V. VOINOVICH,
U.S. SENATOR FROM THE STATE OF OHIO**

Senator VOINOVICH. Thank you, Mr. Chairman. I'm pleased to be here today as the new subcommittee chairman on Transportation and Infrastructure. I have worked with my colleagues on the committee to seek swift passage of Senate bill 507, and particularly I'd like to recognize the efforts of Senator Warner, the sponsor of this year's bill, along with Senator Chafee and Senator Baucus, who had worked diligently for final passage of this bill in the 105th and didn't get there, and I'm pleased to join them this year as an original co-sponsor of Senate Bill 507.

As has already been mentioned, it is identical with the legislation last year, and when I found out about that I asked the chairman if he would bypass the subcommittee level so that we could get on with it and get it passed, since it didn't get passed last year.

I join my colleagues in the belief that it is important that we continue to enact Water Resources Development Acts every 2 years without lapse to ensure that our Nation's infrastructure is maintained and constructed in a timely manner. I think that is really important, more important today than ever before, because in so many of these projects you're looking for local sponsorship of them and partial payment of them, and people get on to a schedule, and the most important things they can rely upon that it's going to take place, so I think it is real important that this be done every 2 years.

I think it is wonderful that this is a bipartisan effort with Congress and the Administration, particularly the Army Corps of Engineers and the Office of Assistant Secretary of Army for Civil Works to ensure, as Senator Warner said, that our large water resources program is effective and responsive to future and current needs.

I am particularly pleased—and this is maybe a little bit provincial—that the bill under section 224 provides for a Great Lakes Basin program. This section directs the Corps to develop a strategic plan for programs within the Great Lakes basin, and further will provide the means for assessing the ability of Corps' projects and programs to meet regional water resource needs.

I am particularly interested in it because I was chairman of the Council of Great Lakes Governors, and we were concerned about the Great Lakes and the fact that we didn't have that kind of a plan, and one of the projects that I undertook as Governor of Ohio was to do a Lake Erie water quality index. We had made great progress, but we had no baseline numbers to determine whether or not we were really getting the job done. And so we identified 10 indexes that were going to measure our progress, and if we can get this plan done for the Great Lakes, that then could be coordinated with this project and we could really monitor how we are doing in terms of the Great Lakes.

I'd also like to note that I think Senator Glenn, was also very interested in moving forward with that, so I am pleased that we are moving forward with that.

Mr. Secretary, we look forward to your testimony this morning.

Senator CHAFEE. Thank you very much, Senator.

Senator Lautenberg, do you have a statement?

Senator LAUTENBERG. Mr. Chairman, I'll submit my statement for the record.

Senator CHAFEE. Again, we welcome you, Dr. Westphal. Why don't you proceed with your testimony?

Senator WARNER. OK, Joe, give it to us.

STATEMENT OF HON. JOSEPH W. WESTPHAL, ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS; ACCOMPANIED BY MICHAEL DAVIS, DEPUTY ASSISTANT SECRETARY FOR POLICY AND LEGISLATION

Dr. WESTPHAL. Thank you, Mr. Chairman. It is an honor to come before your committee, Mr. Chairman and distinguished ranking colleague, Senator Baucus. Also, I am here before three of my chairmen—yourself, my chairman of the Armed Services Committee, and my mentor, a person I've learned a lot from over the years, and my new chairman of the subcommittee, Senator Voinovich, so I'm delighted to be here and I look forward to responding to all your questions as best as I can.

I'm accompanied before you today by my Deputy Assistant Secretary for Policy and Legislation, Mr. Michael Davis.

Senator CHAFEE. We welcome you, Mr. Davis.

Mr. DAVIS. Thank you.

Dr. WESTPHAL. Mr. Chairman, I am going to be very brief. I'm going to just summarize some of my testimony, if you don't mind, and just submit the full testimony for the record.

Let me begin first by noting that the large differences between the Administration's budget proposal last year and what you appropriated in the Congress in both fiscal year 1998 and 1999 are now, I think, reconciled in the fiscal year 2000 budget that I am about to discuss.

The President has consistently stressed two major themes that I think are particularly important to the way we should formulate and implement civil works policy.

The first, policy must be based on building strong partnerships with our States and our local communities, as well as our sister Federal agencies. That's the point that I think Senator Warner just addressed very eloquently.

Second, we must strive to help our economy grow and prosper by combining sound infrastructure management and development with environmental protection and ecosystem restoration.

I believe our program excels in both of these mandates, and that the budget I will present to you today reflects their important priority.

I am pleased to say that funding in the President's fiscal year 2000 budget supports a strong civil works program. It is consistent with levels enacted by Congress in recent years, and with the President's overall domestic priorities, his commitment to a balanced budget, and his goal for protecting Social Security.

The President's budget for the civil works program for fiscal year 2000 includes \$3.9 billion for the discretionary program comparable to the amount appropriated in the program in 1999, and significantly above last year's budget.

With cost sharing contributions by our partners, the non-Federal sponsors, plus other funding, the fiscal year 2000 program totals about \$4.2 billion.

I look forward to working with both the houses of Congress in meeting the challenges of these partnerships. I'd like to point out that in the fiscal year 2000 budget, civil works operations and maintenance general program is \$1.84 billion. This level of funding is very strong, demonstrating the Administration's commitment to maintaining our existing infrastructure, much of which is aging and requires greater upkeep.

Funding for construction general program is \$1.24 billion, a significant increase over last year's request.

On new investments, the fiscal year 2000 budget for the Army civil works program provides a strong program of new work, including 1 new survey, 19 new construction projects, 5 new operation and maintenance new starts, and 6 new plant replacement and improvement program major acquisitions in the Challenge 21 program.

And I also want to emphasize, like you, Mr. Chairman, and other members of the committee, our commitment to water resources development and biannual authorization of WRDA. A strong water resources development program is a sound investment in our Nation's economic future and environmental stability. Communities across the country benefit from water resources projects to reduce flood damages, compete more effectively in world trade, provide needed water and power, and protect and restore our rich aquatic resources.

In this regard, we will work with Congress to complete a Water Resources Development Act in 1999, building on the progress that you made and we made last fall in the proposed WRDA 1998 bill.

As you know, the Army, on behalf of the Administration, submitted to Congress a proposal in 1998. We believe this proposal should serve as the basis for the WRDA 1999. The Senate version of WRDA 1998 included important Administration policy initiatives, such as our Challenge 21 program, changes to shore protection policy, and much-needed improvements in our recreation program.

We hope that, based on our bill and with the assistance of the authorizing committees, we can come to closure on our WRDA 1999 bill early this year, and that it includes important policy initiatives and vital projects, while recognizing the continued budget constraints.

This would put us in a better position to address new policy and project needs in a WRDA 2000 bill.

We appreciate your commitment to WRDA 1999. The Administration, however, has concerns about the total cost of S. 507 and the impacts of authorizing a sizable number of new projects at this time, in view of existing backlog and continued budget constraints. Therefore, we urge this committee to limit the number of new projects authorizations in its legislation, as we have done in our proposal, to reflect only those additional costs that one might expect to be able to fund within a reasonable timeframe.

We are particularly be concerned about the use of contingent authorizations which bypass the existing project planning and review process by preauthorizing projects contingent upon the issuance of a report by the Chief of Engineers.

Senator CHAFEE. Mr. Secretary, I know that you are moving ahead on this. What page are you roughly on?

Dr. WESTPHAL. I'm summarizing, so let me---

Senator CHAFEE. I appreciate that.

Dr. WESTPHAL. You bet.

Senator CHAFEE. But sometimes it is helpful if we can kind of follow along roughly where you are.

Dr. WESTPHAL. We're on page 3, Sir.

Senator CHAFEE. You're on page 3? OK.

Dr. WESTPHAL. Third paragraph of page 3.

Senator CHAFEE. All right. Why don't you keep going, then? You did the, "Each new project authorization adds to the existing large backlog," at the top of page 3. You've done that. Yes. OK.

Dr. WESTPHAL. Yes. And concerned about the contingent authorization projects.

We believe these provisions would weaken the study process and review responsibilities of the Army Corps of Engineers and my office and would undermine the biannual WRDA process that has been the goal of Congress and every Administration since 1986.

The Administration appreciates the committee's support of these projects that have completed the normal planning and review process and the inclusion of some of our initiatives. We are optimistic that we can work with your committee to resolve our concerns in a manner that allows us to fully support S. 507.

On the Harbor Services Fund proposal, a key component of the President's fiscal year 2000 budget for the civil works program is

the proposal for a new Harbor Services Fund and harbor services user fee. This proposal would provide a reliable source of funding for important navigation needs, including construction, operations, and maintenance, and results in a significantly greater funding for these port and harbor activities.

The President's budget for fiscal year 2000 includes \$951 million to be derived from the Harbor Services Fund, an overall increase of \$382 million over the President's fiscal year 1999 budget for harbor-related activities.

This level of funding will allow us to proceed at an optimal rate on nearly all operations and maintenance and construction activities related to ports and harbors using funds contributed by the users.

As you know, in March 1998 the U.S. Supreme Court ruled that the harbor maintenance tax was unconstitutional as applied to exports. In that ruling, the court concluded that the harbor maintenance tax, which imposed a large charge based on the value of commercial cargo being shipped, constituted a tax on goods in export transit and therefore violated the export clause of the Constitution.

Because of this ruling, collections of the harbor maintenance tax on export stopped on April 25, 1998. The new harbor services user fee being proposed avoids the constitutional infirmities of the harbor maintenance tax. This assessment is a user fee, not a tax. It fairly approximates the harbor benefits and services vessels in each category receive through port use. It is not imposed based on the cargo of the vessel.

The user fees will generate funds sufficient to pay for the Department of the Army's annual cost of developing, operating, and maintaining the Nation's ports. The legislative proposal will make the total amount of the user fees collected pursuant to this proposed legislation in 1 year available to the next fiscal year for appropriations.

We are coming to completion on the details of the proposal in light of discussions and comments with interest groups. We plan to present the legislative proposal to Congress in the very near future. Our plan is to pursue the Harbor Services Fund legislative proposal separately from WRDA.

The Administration is committed to the traditional mission areas of improving our navigation and transportation system, protecting our local communities from flood damages and other disasters, and maintaining and improving hydropower facilities across the country.

In addition, the protection and restoration of the environment is an important and integral part of the civil works portfolio. The President has strongly advocated linking economic growth and protection of the environment. To help meet this objective, we will support projects that feature strong economic benefits, as well as projects that incorporate environmental restoration and enhancement. Of course, individual environmental restoration projects are also an important part of the civil works mission.

An example of a program that will integrate the environmental concerns into more-traditional civil works missions is our Challenge 21, the Riverine Ecosystem Restoration and Flood Hazard Mitigation initiative. Like last year, this year's budget includes \$25 million to begin the Challenge 21 program. It is designed to accom-

plish both flood hazard mitigation and ecosystem restoration, and emphasizes non-structural measures as a means to accomplish these objectives.

The fiscal year 2000 budget for the civil works regulatory program is \$117 million, an increase of \$11 million over the enacted levels in fiscal year 1999. In this program, we are proud that we not only protect our aquatic resources, but we try to help people within the law to find environmentally sustainable solutions to their problems.

In fiscal year 1998, the regulatory program authorized 90,000 activities in writing, the most in any year, and nearly 95 percent of all actions were authorized in less than 60 days.

This budget will ensure that we can continue to protect the environment, and that the level of service is maintained and improved, even with an increasing volume of work.

In summary, the President's fiscal year 2000 budget for the Army civil works program is a good one. It demonstrates a commitment to civil works missions, with strong support of all programs, a plan to solve the Constitutional problem with the existing harbor maintenance tax, an especially strong program of new construction, a firm commitment to maintaining an existing water resources management infrastructure, and increased application of civil works program expertise to environmental protection and restoration.

With that, Mr. Chairman, I end my statement and thank you for the opportunity to testify to you before the committee today.

Senator CHAFEE. Thank you, Mr. Secretary.

Now, this user fee is a great big part of your expected revenues. What makes you think everything is going to be all right now as far as the Supreme Court goes and the commerce clause?

Dr. WESTPHAL. If I could take a second just to give you a little background on the history of how this proposal was developed, initially the development of it began before I came on board as Assistant Secretary of the Army, and when we received the initial proposal, we vetted it with a number of stakeholders.

We felt that we had at that point satisfied the requirements of the Court and could meet the constitutional test, but we did not feel that we had completely addressed all the issues addressed by the stakeholders, and that we still had a lot of adjustments to make in the way we calculated the fee, so we went back to the drawing board—I'm talking about August, September of last year—and spent most of last year, the remaining part of last year and early part of this year, revising the proposal, addressing its impact on different sectors in the economy, and making sure that we met the constitutional test.

We have a proposal now. It is finished. It is being vetted with all the other Federal agencies. It is in an inter-agency review process, which I think is almost done.

We hope to be able to deliver that proposal to Congress within the next few weeks, and I think it is a much better proposal, it is much stronger, it meets the constitutional test because it is a fee based on the equivalent of work that has to be done to maintain—

Senator CHAFEE. I don't quite understand how it works. First of all, in addition to the constitutional problems, you've got the GATT problems, likewise.

Dr. WESTPHAL. Right.

Senator CHAFEE. Now, I know that the last time you did this it was based upon the value of the cargo. In other words, a shipment of computers would be a lot more than a shipment of wheat.

Dr. WESTPHAL. That's correct.

Senator CHAFEE. But how is this new one going to work now?

Dr. WESTPHAL. Well, this—

Senator CHAFEE. And that was tossed out by the Supreme Court.

Dr. WESTPHAL. Right. First of all, it is addressed to the vessel, itself, the carrier, not to the shipper, and not to the commodity on the ship. So it is proportional to the amount of work that we have to do to maintain the channel, depending upon the type of vessel and the size and its impact on the channel.

We are trying to collect only as much money from the fee as we historically have had to put into the maintenance of our ports.

Senator CHAFEE. Obviously, we're going to have to spend some time on this. I must confess I don't understand it. If you come into Baltimore, is there a different fee than you might get coming into Norfolk?

Dr. WESTPHAL. No. The fee is the same. It will vary among the different types of vessels, not from what you're carrying—wheat or cars or general cargo—because the ships are different. Because of the size of the ship and the tonnage of the ship.

I kept sending it back to the drawing board because we had a lot of different scenarios and we wanted to make sure that we understood clearly and addressed the issues of how it would impact different sectors. You have your cultural sector, the—

Senator CHAFEE. Well, this is a long, complicated subject, I think, and it is for another day.

Dr. WESTPHAL. Let me just say my plan, hopefully, is that when the proposal has been finally vetted by the other Federal agencies, that we will have a chance to come before your committee, not in a formal way, but informally with your staff and present the proposal, brief the staff, brief you, and make sure that before you get the final proposal in hand—

Senator CHAFEE. I suppose the Finance Committee, too, will be deeply involved with this. But let's go on to the next one.

Senator VOINOVICH. Mr. Chairman?

Senator CHAFEE. Yes?

Senator VOINOVICH. I'm not that familiar with how much it raises and—

Senator CHAFEE. Well, it raises 25 percent of their total budget, as I understand.

Senator VOINOVICH. And when do you anticipate it coming in, and how much of your 2000 budget is based on this new tax?

Dr. WESTPHAL. Of the 2000 budget, about \$300 million.

Senator CHAFEE. What's the percentage of that? The percentage of that is what, 25 percent?

Dr. WESTPHAL. Well, the amount that would be needed on the 2000 budget, it would be less than that. The fund assumes that

historically we have needed about \$600 million on the O&M side and another \$300 million on the construction side.

Senator CHAFEE. I'll tell you what, let me—I just want to get my questions in here and we'll go back and forth.

Senator VOINOVICH. OK.

Senator CHAFEE. As you know, last year we got tripped up on the Sacramento problem. Is there any suggestion that that has been straightened out or going to be?

Dr. WESTPHAL. Well, it hasn't been straightened out yet. In fact, yesterday I met with Representative Doolittle of California. I have been speaking with Representative Matsui in previous weeks, as well. They have been talking and negotiating this, along with the other members of the California delegation whose Districts are impacted. They are on the verge of an agreement, but it is——

Senator CHAFEE. Well, we'll keep our fingers crossed.

Dr. WESTPHAL. It is tentative.

Senator CHAFEE. All right. Drop the other shoe. What's the "but"?

Dr. WESTPHAL. Well, they're on the verge, but we have to make sure that, first of all, the committees of Congress who have to appropriate and authorize are going to get a proposal that is reasonable, and so we are trying to——

Senator CHAFEE. That's the question. Is it going to devour the other 49 States?

Dr. WESTPHAL. Right. We are trying to help them to put forth a proposal that we think will work with you and will work with the appropriators, as well. At this point I have my staff working with Mr. Doolittle's staff and Mr. Matsui's staff in crafting that.

The committee staff has been very helpful in that regard, but now I think they've asked me to weigh in on my side.

Senator CHAFEE. Well, my time is up. Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

Secretary Westphal, as you know, this committee has jurisdiction over the Harbor Maintenance Trust Fund, as authorized in WRDA in 1986, and I expect that your proposal will be drafted in a way so this committee continues to have jurisdiction; is that correct?

Dr. WESTPHAL. Yes, Sir.

Senator BAUCUS. Yes?

Dr. WESTPHAL. Yes.

Senator BAUCUS. Thank you. A couple of questions on the fund, the trust fund proposal.

I take it the constitutional infirmity was essentially that the collection of the fee, as it was intended to be at the time, was used generally for the Corps and not applied specifically to the work to be done in that specific harbor or area; is that correct? Is that one of the infirmities that the court found, that the revenue was used generally although the collection was collected specifically?

Dr. WESTPHAL. The infirmity was the fact that it was a tax on exports.

Senator BAUCUS. We still have a fee on exports, but it——

Dr. WESTPHAL. Well, we don't have a fee on exports any more.

Senator BAUCUS. I understand.

Dr. WESTPHAL. Under this new proposal——

Senator BAUCUS. What was the court's problem? That's the basic question.

Dr. WESTPHAL. Just that you were levying a tax on exports, and they felt that violated—

Senator BAUCUS. Because—

Dr. WESTPHAL. Because it was on the commodity.

Senator BAUCUS. Whether it is a fee or tax or whatever it is called was on exports?

Dr. WESTPHAL. It was on exports and it was on the commodity. It was on what you were exporting. What we are doing is replacing that with a fee on the service provided to the vessels. No relationship to the commodity.

Senator BAUCUS. OK. Now, if the new fee is on ships, depending upon the size of the ship or the amount of work that the Corps must do to accommodate that ship—that is, draft channels and so forth—in the back of my mind it sort of sounds like the larger the ship the greater the fee; is that correct?

Dr. WESTPHAL. Well, it is not just the size of the ship, but it is also the use of the channel by ships. Some ships, for example, make several trips, make continuous trips. Other ships make less use of the channel.

Senator BAUCUS. Right. What I'm getting at is—

Dr. WESTPHAL. It's based on that.

Senator BAUCUS [continuing]. Our economy is changing dramatically, and commodities are low in value, and my guess is, frankly, they are going to always be relatively lower than manufactured products or services or financial industries and so forth, oil.

Now, maybe the price of oil will go up. Maybe OPEC is going to finally start ratcheting down production and the price is going to go up. I don't know. But there is a glut of oil today. The same with wheat. The same with a lot of agriculture commodities. It has just been a continual trend the last several years, decline in price.

These commodities are bulk commodities. They are in big ships. And I just don't know if the right policy would be to hit them again, in effect, compared with other commodities which are higher-value commodities but lower in bulk and just don't require the same amount of work by the Corps to keep the channels open and the harbors operating and so forth.

Have you considered that?

Senator WARNER. I'd like to associate myself with your point there, because coal is a major export from my State, and it seems to me, as you are saying, Senator, it is not a good standard.

Senator BAUCUS. Right. So I wonder the degree to which you've considered all of that in drafting your proposal.

Dr. WESTPHAL. Well, we considered it after we started doing the impact analysis, and we looked at what the impact would be to, for example, bulkers who carry predominantly either the coal or grain, and so I sent folks back to the drawing board. I said:

We've got to make sure that we come up with something here that addresses the differences between those types of commodities and others.

Even though this is not a tax on commodities, we had to make some adjustments in the way we came up with the fee to compensate for those types of carriers, because, for example, a bulk carrier will generally make a port-to-port visit in one trip. It will

go from one port to another, deliver its cargo, and that's it, whereas general cargo vessels tend to make multiple stops.

And so the way the fee was—it's too complicated probably to get into how it was actually formulated in the formula, itself, but I can tell you we adjusted the formula to make sure that we weren't affecting those bulk carriers in an adverse fashion.

We will be able to present to your staffs a more-detailed analysis that gives you examples of shipments and what the differences would be between the harbor services user fee and what they'd have to pay under that and what they were paying under the harbor maintenance tax.

In most cases, in almost every case, I believe, that's going to—

Senator BAUCUS. Well, I appreciate that very much, and I also very much appreciate your volunteering to consult with our staff informally before it is made public so that we can work out any kinks or problems in it in the meantime.

Dr. WESTPHAL. Yes, we'll do that.

Senator BAUCUS. Thank you very much.

Senator CHAFEE. Senator Warner.

Senator WARNER. I listened very carefully, Mr. Chairman, and Mr. Baucus, and I'm not sure I understand how you protect the bulk coal, grain, and so forth carrier, but you say you do it?

Dr. WESTPHAL. Well, we do it in a way that we calculate the formula, because the formula is based—

Senator WARNER. Is this all in the industry now and they know what it is?

Dr. WESTPHAL. No. The proposal is still being vetted through the agencies, so—

Senator WARNER. I'm going to put a place holder.

Dr. WESTPHAL. OK.

Senator WARNER. I accept your representation, but I'm going to put a place holder for the future. All right?

Dr. WESTPHAL. OK, sir.

Senator WARNER. Fair enough.

This is a bit of a detailed question, but you're a detail man. Mr. Secretary, as we've discussed before, I believe the Federal Government has a fundamental responsibility to assist and protect the coastal communities. I have strongly opposed the Administration's policy that the protection of our Nation's shorelines from hurricanes and severe storms is a local responsibility. Congress also has rejected this policy and continues to provide the Federal share of the cost of construction for these projects.

Last year legislation enacted by the Senate made modifications to the cost-sharing requirements for shore protection projects. With a 50-year life of a project, the local sponsor would be required to finance 50 percent of the cost of all renourishment work. This is an increase from the current requirement of 35 percent.

I fought this policy change because the Administration's earlier statement said shifting greater cost to local communities would encourage the Administration to begin budgeting for these important projects.

Now, Mr. Secretary, have I correctly stated the situation? Will the Administration return to budgeting for those projects under the new financing arrangement provided in the Senate bill?

Dr. WESTPHAL. Yes, Sir, we will.

Senator WARNER. That's a good answer. Stop right there.

Now, Mr. Secretary, the Harbor Services Fund. The replacement of the harbor services fee will require a great deal of examination by this committee. I am very concerned by the early reports that the Administration has not worked closely with the various port authorities and other user groups in the development of this proposal. Mild criticism to a good man there.

Can you tell me how this proposal will differ from the Administration's draft proposal released last fall? What efforts have you undertaken to respond to concerns that have been raised to date?

Dr. WESTPHAL. Well, Mr. Chairman, I held a series of meetings with stakeholders, which included the ports, included the shippers, included various commodity groups, as well.

We held those sessions and we got back a long list of concerns. We tabulated those concerns, and then I sent staff to work on each one of those concerns and do essentially, as best as we could, an impact assessment.

One of the problems with doing this is that the data is somewhat limited. For example, just in getting information about what ports charge or what foreign ports charge—we make some comparisons about how our trade posture would compare to other foreign countries—it was very difficult and sometimes totally impossible to get. They would not release it.

But we got as much data as we could, put it together, we addressed these concerns, and then over and over I kept getting briefed by the analysts who were doing this and I kept sending them back to the work table to fix this, fix that, give me a better answer on this to make this proposal one that we could defend.

I also, having been one of your students, recognized that the Congress is the best place eventually to make these decisions. And, as you will hear from your constituents and you will be able to work with your staff to fine-tune the proposal, we believe now that we've got a proposal we can hand off to you that we can explain to you, we can give you the necessary impact assessments that we've done, and we can support your efforts to make sure that whatever you do in the end is the right decision on this particular issue, which I agree is complex, has a serious impact on our economy and our country and our trade.

Senator WARNER. I thank the witness.

Thank you, Mr. Chairman.

Senator CHAFEE. Senator Voinovich.

Senator VOINOVICH. Mr. Secretary, I know the Corps is conducting a navigation modernization study of the Ohio system's dams and locks, which are getting pretty old, and the Ohio River is pretty important to our economic well-being, and there is a project called the "green-up project." Are you familiar with it?

Dr. WESTPHAL. I'm sorry, Sir, I'm not.

Senator VOINOVICH. It is a project that Senator Byrd and Senator McConnell and myself are interested in. It involves West Virginia, Kentucky, and Ohio. It is down near Portsmouth, OH.

There is a study, a modernization study, that is being looked at, and I'd like to know what the status of that project is, because, if we don't get moving on that, by the year 2010 we are going to have

a real problem in terms of moving cargo through that particular lock area. So if you could give me an answer on that——

Dr. WESTPHAL. I will certainly do that.

Senator VOINOVICH. I'd be grateful.

Dr. WESTPHAL. I will get you an answer right away on that.

[The information follows:]

As part of the ongoing Ohio River Main Stem study, a draft interim report on potential modifications for both Greenup Locks and Dam and John T. Myers Locks and Dam is scheduled to be sent out for public review in January 2000.

Senator VOINOVICH. In addition, as Governor I was working on the Columbus flood wall. Are you familiar with that project?

Dr. WESTPHAL. I know of it. I don't know the details of the funding part of that.

Senator VOINOVICH. The question I have is that there is an authorization in the budget of \$8 million for that flood wall, and what I'm interested in knowing is, from your best estimate, will that meet the construction schedule that the Corps has agreed to in moving forward with that?

We have been very lucky that we haven't had a major flood in that area, because without this flood wall that area is very vulnerable, and I have been through two floods in the last 2 years in Ohio, and they have been devastating.

Dr. WESTPHAL. So you need to know the capability?

Senator VOINOVICH. I'd like to know whether the authorization is going to keep this on track or not.

Dr. WESTPHAL. Right. OK.

Senator VOINOVICH. And whether additional money may be needed to stay on track.

Dr. WESTPHAL. I can get you an answer on that right away, too.

[The information follows:]

Our budget request for fiscal year 2000 contains \$8,000,000 to continue levee/floodwall construction and further design for remaining project features. If not constrained, we could use \$16,000,000 in fiscal year 2000 to continue ongoing construction and engineering and design, contract award for reliable power and Phase IIIA (I-70 to Greenlawn Avenue); and contract award for Phase IIID (Rennick Run storm/sanitary pump station); and complete ongoing Phase IIE (Dodge Park Sanitary lift station) contract one year head of schedule.

Senator VOINOVICH. And the last one is one that perhaps has larger implications, and that is: more and more we're finding sites around this country that are abandoned Army depots that pose real problems to communities. In Marion, OH, we have a situation where somehow a brand new school—actually, not a brand new one. It was built many years ago. But somehow they built a school right on top of an abandoned dump, Army dump, and it is highly contaminated. We've seen a dramatic increase in cancer in that area, particularly leukemia.

I know that there is a study going on, and one of the things that I'm interested in knowing is: will that study let us know whether or not, in the Corps' opinion, the contaminants around that site are linked to leukemia, the high incidence of leukemia in the area?

I'm just saying that this is a little Marion, OH, problem; it's a big problem in that community, and they're worried about whether they've got to move the school. If you were a parent having our Ohio EPA—and I compliment the Corps. They've been very cooperative. But the folks there are getting more and more antsy about

this situation, and it is really important that it get high priority by the Corps of Engineers, and it also is taking on a national interest because of the book that is out called, "Civil Action."

Dr. WESTPHAL. I know about that project in two respects. One is that my daughter is getting married this summer to my future son-in-law, who is from Marion, OH, and his dad was telling me all about the issues in the community, and so I got very interested in that. And, in addition, General Ballard, the Chief of Engineers, and I actually spoke about this issue just a few weeks ago, maybe a week ago. I asked him to please get me some more detail on the study so I can keep on top of it, and I will speed that process up and get you some answers on what we know about it at this point in time.

Senator VOINOVICH. I'd really appreciate it.

Dr. WESTPHAL. I know he's very concerned about it and very much involved with it.

Senator VOINOVICH. It would be great if you could get it up on the priority list.

Dr. WESTPHAL. We'll do that.

Senator VOINOVICH. I know I talked with General Van Winkle about it, and he's aware of it. And I say you've been very cooperative, but I think we need to speed it up a little bit for the folks in Marion.

Senator CHAFEE. You set, Senator?

Senator VOINOVICH. Yes.

Senator CHAFEE. Senator Lautenberg.

**OPENING STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator LAUTENBERG. I thank you, Mr. Chairman. And thank you for holding this hearing today.

I am a cosponsor of the Water Resources Development Act of 1999, and I consider it one of the most important public works programs before the Senate.

The legislation includes authorization for numerous water resource projects critical to my State, and I would dare say to other coastal States, and the projects that will protect property, wildlife habitat, and contribute to New Jersey's coastal economy are authorized to proceed, so we resolved in this committee—and I commend you, Mr. Chairman, for it—a dispute with the Administration on the funding for shore projects by arriving at a compromise that is reasonably acceptable.

The thing that I must tell you I don't understand—members of this committee may be tired of hearing me talk about this—but replenishment, sand replenishment is part of the infrastructure of the seashore, one of the biggest tourist attractions in this country, and we are sitting here, three of us from coastal States—that doesn't leave out Ohio, but it does focus on the coastal requirements that we have, and that is: just like any other infrastructure problem, is a flood a natural disaster and its consequences affecting the lives, well-being, the economy of those areas, whether it is in Ohio or along the Mississippi River, or wherever it is? Is that different than the depletion of the sand that attracts people to the

shore communities upon which so many are dependent for their livelihood?

So I see them very much as the same kind of problem, and I think that we should respond to flood threats and I think we should respond to the elimination of an economic opportunity in the coastal communities.

So I sound that theme and will continue to do it as long as I am here, and I hope that we will be able to feel more comfortable about its continuation.

We have something in place if this bill passes. Change the formulas a little bit, but I think we have arrived at a compromise that is fair to the States—fair warning, certainly.

[The prepared statement of Senator Lautenberg follows:]

PREPARED STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE
STATE OF NEW JERSEY

Mr. Chairman, thank you for holding this important hearing today. I am pleased to be a cosponsor of the Water Resources Development Act of 1999, one of the most important public works measures before the Senate.

I applaud you, Mr. Chairman, for bringing this matter so quickly to the committee for consideration.

This legislation includes authorizations for numerous water resources projects critical to my state.

Three shoreline protection projects—which will protect property, wildlife habitat, and contribute to New Jersey's coastal economy—are authorized to proceed to construction in this bill.

Mr. Chairman, I am also pleased that this committee has addressed a serious policy disagreement with the Administration over funding for shore protection projects.

For the past 5 years, the Administration has requested no funding for new shore protection studies and has underfunded the construction work of ongoing projects.

Last year, the Administration proposed modifying the cost-share for shore protection projects to require the states and localities to finance the majority—65 percent, of the costs of periodic renourishment.

This activity is the most expensive portion of the project, since these projects generally receive renourishments approximately once every 3 to 5 years over their 50-year lifetime.

I disagreed with this approach because I believed that it was unfair to those communities that had planned long and hard for these projects, on the expectation of a true partnership with the Federal Government.

During the consideration of this bill in committee last year, I offered an amendment to allow us to phase in a more reasonable cost-sharing formula for shore protection projects.

Those projects which have a feasibility study completed by the end of 1998 (and now, 1999 in our new bill) or which are authorized to proceed to construction in this bill, will continue to be covered by the 65/35 cost-share formula through the life of the projects, just as all flood control projects are cost-shared.

Those projects authorized subsequently will continue to receive the 65/35 cost-share formula for the initial construction. However, States will be required to provide 50 percent for periodic renourishment.

While I was disappointed that we could not maintain the current cost share for all projects, I believe that the committee's proposal is fairer to the communities and States that have planned for these projects.

We have authorized many shore protection projects that have only moved forward because of the efforts of Congress. I sincerely hope that our action today moves the Administration forward to begin planning and budgeting for these projects.

The bill also provides necessary authorization adjustments for projects critical to the movement of cargo through the Port of New York and New Jersey as proposed by Senator Moynihan and me.

The port, which annually handles 1.4 million containers and 30 billion gallons of petroleum products, is the gateway to a thriving economy for New Jersey, New York, and the entire country. By the Year 2010, experts predict that 90 percent of all liner freight will be shipped in containers.

The bill's amendments are important to addressing the increasing cost of dredged material disposal in light of the moratorium on ocean disposal.

Mr. Chairman, the State of New Jersey, local governments and regional authorities have been carefully planning and budgeting for the critical projects that this bill authorizes.

Any further delays could have an adverse impact on the economies of regions that are affected by these projects. I hope that we can move quickly to report this bill out of committee.

I'm also looking forward to discussing the Corps' proposed budget for Fiscal Year 2000 with Dr. Westphal. I believe that this budget has a lot for New Jersey's ports and I'm pleased that both the Kill van Kull project in the north, and the Delaware River project in the south, are adequately funded.

Thank you.

Senator LAUTENBERG. Dr. Westphal, it is good to see you here.

We start out with the bipartisan agreement that I think the Administration has gone halfway on an issue which we've disagreed with you in the past, yet this year again we see no funding proposed for new starts for shore protection projects. Why would you say these projects were not included?

Dr. WESTPHAL. Well, I think that the Administration's proposal initially, in the bill last year, was to hopefully be able to recoup some savings from the change in the cost share on the beach nourishment projects and use that additional resources to fund projects.

Since WRDA didn't pass, we didn't put those in the budget. We didn't put projects like that in the budget. We hope that if WRDA passes this year that we will be able to, in the 2001, begin to budget for them, and we expect to do so.

Senator LAUTENBERG. What's your opinion on the compromise that the committee reached last year on the water resources bill?

Dr. WESTPHAL. Well, I personally think that we need to arrive at least at compromise. I personally believe that one of the problems in funding these projects is really that they require a lot of money, and when they compete with flood protection and navigation and some of the other also important areas that we're working, the resources required around the Nation to do beach renourishment are simply not there.

And so by changing the formula we felt that we could use those cost savings to budget more in this area than we ever have in the past, or before the Administration's new policy.

So I'm hopeful that Congress will move forth on the shore protection and move forth on the WRDA bill and we can get this policy change.

Senator LAUTENBERG. So is it fair to say that you think that this is a reasonable approach?

Dr. WESTPHAL. I believe that it is reasonable. Yes.

Senator LAUTENBERG. It would be good to have your help.

The budget for construction, \$1.25 billion, contrasts sharply with last year's request of less than \$800 million, and I'm pleased that you recognize the need for more funding in the area. To what do we owe this surprise?

Dr. WESTPHAL. Well, Senator, I think the Administration took a long, hard look at our program this year, perhaps focusing more on the need to not only maintain our infrastructure but to take care of some of the backlog that we had there, so on the O&M side we went way up. And on the construction side, we felt it was really also time to move some of the projects that have been studied and ready to go forth, to move them at a more-aggressive pace.

We wanted to make sure that—you know, one of my goals and the goal of the Administration and the folks at OMB and other places was to come up with a budget that is reasonably close to what you have appropriated in the Congress in the last 2 years. The problem was that we were coming up with a budget much smaller than that. And I think that was a goal that we wanted to achieve, and we achieved it this year.

Senator LAUTENBERG. Well, you know, my time is up, but you know, Dr. Westphal, that these are important programs for the States, and there isn't a State in the country that doesn't have some call for assistance in these natural disaster/natural resource areas. Whether it is the deepening of the harbor to keep us competitive, not just—we don't want to be competing with one another and dig faster and deeper, but we do have to recognize that therein lies enormous economic opportunity and we have to do what we can to protect the infrastructure that was built around these harbor and these port activities in the past.

Mr. Chairman, I thank you very much.

Dr. WESTPHAL. Senator, you are leaving a big void. I was personally very saddened to know that you decided not to come back to the Senate in the next cycle.

Senator LAUTENBERG. That's very kind.

Dr. WESTPHAL. I wish you well, and I have enjoyed working with you and will enjoy working with you the remainder of your term here.

Senator LAUTENBERG. That makes you a crowd of one.

Dr. WESTPHAL. I don't think so, Senator.

Senator LAUTENBERG. Thank you very much. I appreciate it.

Senator CHAFEE. Senator Graham.

Senator GRAHAM. Mr. Chairman, I would like to be the second in that crowd expressing those same feelings.

Senator CHAFEE. I'll join in that, too.

Senator GRAHAM. Now we're up to three.

Senator LAUTENBERG. Thank you.

Senator VOINOVICH. Make it four.

Senator GRAHAM. Senator Lautenberg has been an effective advocate for a wide range of issues important to the environment and the continued development of America's infrastructure, and he will be sorely missed. I hope that he'll spend lots of time with his grandchildren, who happen to live in Florida.

Mr. Chairman, I assume that if we have some additional questions we can submit them in writing?

Senator CHAFEE. Sure. Actually, we've got some time here, so why don't you just go ahead and I'll give you 5 minutes, and then we'll have a chance for another round here if you'd like.

[The prepared statement of Senator Graham follows:]

PREPARED STATEMENT OF HON. BOB GRAHAM, U.S. SENATOR FROM THE STATE OF FLORIDA

Mr. President, I would like to take this opportunity to make some remarks regarding S. 507, the Water Resources Development Act introduced by Senator Warner on Monday, March 1, 1999 and the President's budget request for the Energy and Water Appropriations bill.

Both of these pieces of legislation are of vital importance to Florida. In particular, several provisions in each bill will support the restoration of the Everglades, one of the Nation's most precious ecosystems. This vast region, which is home to more

than six million Americans, seven of the ten fastest growing cities in the country, a huge tourism industry, and a large agricultural economy, also encompasses one of the world's unique environmental resources. Over the past 100 years, man-made changes to the region's water flow have provided important economic benefits to the region, but have also had devastating effects on the environment. The Federal Government and the State of Florida have begun a long-term partnership to restore this ecosystem and preserve it for future generations. The actions we are considering today will support this partnership.

In the Fiscal Year 2000 Energy and Water Appropriations bill, the President requested a total of \$129 million in support of Everglades restoration. Of particular interest to me are funds to support the Kissimmee River restoration which will refurbish the headwaters of the Everglades watershed. I initiated work on this project as Governor of Florida in the 1980's and have been supporting its progress since that time. Congress authorized this project in WRDA 1992, and since that time the State of Florida has already expended approximately \$95 million in land acquisition and restoration evaluation. The State has met all of the schedule requirements. I am pleased to say that with the support of Congress last year in the appropriations process, this summer the Army Corps will begin initial construction on schedule. The Fiscal Year 2000 funding request before us today from the Army Corps funds will keep this project on schedule.

The WRDA 1999 bill includes several items related to Everglades restoration. Before I highlight these projects, I would like to first thank my colleague Senator Mack for his partnership in our efforts to produce a WRDA bill that reflects the needs of our State. I would also like to thank Senators Chafee, Baucus, and Warner for their leadership last year on this critical piece of legislation. I am looking forward to working with you, Senator Voinovich, on the 1999 version of the Water Resources Development Act.

First, the WRDA 1999 bill includes an extension of the "critical projects" authority provided to the Army Corps for Everglades restoration in 1996. The critical projects authorized in WRDA 1996 have demonstrated substantial success. The South Florida Ecosystem Restoration Task Force, the Governor's Commission for a Sustainable South Florida, local sponsors, and the Army Corps have completed a review of over 100 potential projects, narrowed the list to 35 and ranked them in order of priority for accelerating the restoration of the South Florida ecosystem. The extension in WRDA 1999 will allow for completion of already authorized projects.

In addition to this extension, the WRDA 1999 bill includes a \$27 million authorization for the Hillsborough and Okeechobee Aquifer Storage and Recovery Project. This technology is presently used to create subsurface reservoirs for drinking water. The Army Corps is considering the use of Aquifer Storage and Recovery as a water storage technology for use in long-term Everglades restoration. Our action to authorize work on this project will allow early evaluation of the viability of this technology.

Finally, the WRDA 1999 bill includes clarifying language to make expenditures by the State of Florida for land acquisitions in the Caloosahatchee River basin eligible for Federal reimbursement if they are identified as part of the Restudy when it is released in July 1999. Our action assures Florida that acquired lands which become part of the Restudy will be eligible for Federal reimbursement.

Those of you who have been following restoration of the Everglades will notice that what is not included in WRDA 1999 is the "Restudy" which some of you may remember this committee authorized in 1996. On July 1 of 1999, the Army Corps of Engineers will submit an Everglades restoration plan to Congress, termed the "Restudy" by the Water Resources Development Act of 1996. This plan reviews the original Central and South Florida Flood Control project which was initiated in the 1940's by the Army Corps and was the source of the ecosystem manipulation that occurred in Florida since that time. The Restudy outlines the basic elements of a plan to restore the Everglades as closely to their natural State as possible. This is a difficult and complex task since the original area of the Everglades was reduced by 50 percent with the development of both coasts with large metropolitan areas.

This will be an expensive project whose costs will be shared on a 50-50 basis with the State of Florida. There has never been a restoration project of this size in the history of the United States or the world. This is an opportunity to preserve a national treasure that was destroyed by our own actions in the past. This plan will restore an adequate water supply for the State of Florida, which is vital given that our population is expected to increase from just over 6 million people today to 8 million people by 2010. Without this plan, the urban residents in the State of Florida, the treasured environment of the Everglades, and the agriculture industry in this portion of the State will face extreme water supply conflicts.

The Army Corps of Engineers has done a superb job in meeting the deadlines set forth by Congress in 1996 for this ambitious project. In WRDA 2000, this committee will play the key role in the Senate in determining the future of this important restoration program. I encourage any of you to contact me should you have any questions regarding the Restudy or the role of the Army Corps of Engineers in this project which is so important to Florida and the Nation.

I am looking forward to our discussion today on both the Energy and Water Appropriations request for Fiscal Year 2000 and WRDA 1999—two pieces of legislation that are of vital importance to my State. Thank you.

Senator GRAHAM. I have some questions that are fairly specific, and—

Senator CHAFEE. Fine. Well, you go to it. You've got your time.

Senator GRAHAM. I'd like to make some comments about the issue that has already been discussed, and that is the coastal protection issue. Your very succinct answer to Senator Warner's question about the effect of Congress passing a 50/50 allocation for construction and long-term maintenance of these coastal protection projects was very encouraging, and I think will get a lot of impetus to getting the 50/50 cost share enacted.

It has been my feeling that, in addition to the cost share, that there were some other steps that needed to be taken in terms of the Federal/State relationship for coastal protection, and those involved issues of establishing prioritization of need for coastal protection projects, the issue of an assured non-Federal share for the financing of those projects, and an ongoing responsibility of a credible non-Federal agency for the management of the projects.

I'm not going to ask you at this point if you have any specific thoughts in that direction, but I would say that I'd look forward to working with you to see if, not necessarily in this WRDA bill—in fact, definitely not in this WRDA bill, but in the one that I anticipate will come in the year 2000, if we might be able to work toward some of those structural issues in the Federal/State relationship on coastal protection.

Dr. WESTPHAL. That's a very good idea, and I look forward to working with you on that.

Senator GRAHAM. Good. Fine. Thank you.

I want to say, Mr. Chairman, that I've had the opportunity of working with Dr. Westphal in the past in several of his previous lives, and this Administration chose very wisely in asking him to take on this important responsibility with the U.S. Army and the Corps of Engineers, and I'm certain that we're going to find that the skills that he has demonstrated in the past will be very valuable and very constructive in our congressional relationship with the Corps.

Dr. WESTPHAL. Thank you, Senator. That's very kind.

Senator GRAHAM. Now we're going to get down to the tougher questions, Doctor.

Dr. WESTPHAL. OK.

Senator GRAHAM. I was concerned last year on one of the aspects of the Everglades project, which was the Kissimmee River, that we started the year with a number, which was \$27.3 million, as to what the next year's costs were going to be, and we advocated strongly for that number, and then we found out, in the middle of the process, that there were some funds that weren't going to be

expended, and so therefore the fiscal year 1999 cost was considerably less than \$27 million.

I'm pleased that we were being frugal, but it affects credibility when it appears as if you may be overstating your case and then can fall back, in this case fall back by almost \$20 million. So my first request is: if there is going to be adjustments in the numbers, let's try to do them as early in the process as possible so that we are all allies in this effort to save the Everglades and that we don't inadvertently affect the ability of our allies to be part of the effort to be successful.

Having made that editorial statement, how much of the funds for the Kissimmee River restoration will be obligated by the end of 1999? That is, of those funds which have been appropriated in fiscal year 1999 and previous years, how much will be expended by September 30, 1999?

Dr. WESTPHAL. We are very certain that 100 percent of those funds will be obligated this year.

Senator GRAHAM. Last year the final figure that you received was \$8 million, which, in conjunction with some carry-over funds, were represented as being sufficient to continue the project on schedule. Is that going to be realized in 1999? That is, will the project be continued as scheduled?

Dr. WESTPHAL. Yes, Sir.

Senator I have with me also Michael Davis, who is my Deputy Assistant Secretary, who has done not only a great job, but an extremely difficult job of managing for us the entire project down there, which, as you know, is a number of projects built into one. And, as I usually have to say to folks from other parts of the country who sometimes ask us about the Everglades and why we are spending so much money there, when the Corps first initiated these projects back in the 1940's—I can't remember the exact populations. Maybe Michael will remember. The population of Florida was about 500,000 people at the time.

Senator GRAHAM. It's a little bit of an understatement. It was approximately two million.

Dr. WESTPHAL. I mean two million. I mean the Miami area, I guess, was—

Senator GRAHAM. Would have been probably 600,000 or 700,000.

Dr. WESTPHAL. OK. That's the figure I was thinking about. And today it is how many million today? About five or six million today, and expected to grow to almost three times that much.

So these projects are of extreme significance in terms of every aspect, not just the environmental restoration that we're doing, and it is so important to the Nation, as a whole, but the other aspects of it, which include water supply and water quality issues and so on.

So in some of your questions I may ask Michael to address them, since he has been so intimately involved in this, to make sure we give you the right answer.

Senator GRAHAM. You are doing God's work, and I encourage you to continue to go out and evangelize on that effort.

Secretary Babbitt recently announced his intention to create a scientific review panel to comment on the development and implementation of the Corps' restudy of the Everglades. What role do

you see the Corps playing in this process of scientific review of your restudy?

Dr. WESTPHAL. Well, we will be intimately involved with that. In fact, I spoke with Secretary Babbitt yesterday about this very issue. We are keeping in touch. We communicate regularly on it. He is very supportive of us playing a major role in this, so we plan to be intimately involved.

I don't know if you want to add anything to that, Michael.

Mr. DAVIS. Senator, the one thing that I would add is that I think it is very important that we have had independent scientific peer review anticipated and built into the restudy process from the very beginning, so that has been part of it. Dr. Westphal and I were involved with Secretary Babbitt in formulating or expediting this scientific team that we're trying to put together now, and we'll be a very integral part of that as a member of the task force that will oversee the team.

Senator GRAHAM. Thank you very much.

Mr. Chairman, I will submit some questions in writing.

Senator CHAFEE. Fine.

I think we will have a chance, if you wish, if you are able to stay—I've got some questions in the Everglades, too. I'm deeply interested.

Senator CRAPO.

Senator CRAPO. Thank you, Mr. Chairman. I have no questions at this time.

Senator CHAFEE. All right. Well, I'd like to pursue, if I might, Mr. Secretary, the line of questioning began by Senator Graham.

As I understand it, in your budget justification you State that \$129 million has been set aside for the Everglades restoration, and I'm curious about that. How are you going to spend the \$129 million?

Dr. WESTPHAL. OK. Well, we expect to spend about \$21 million of what we proposed for what we call the "critical projects"—a lot of small projects, about \$21 million there. On the Kissimmee River it is about—

Senator CHAFEE. Just going back on that so-called "critical projects," these are ones we authorized back in 1996?

Dr. WESTPHAL. Yes.

Senator CHAFEE. So finally we are going to go ahead with them?

Dr. WESTPHAL. Well, they have been ongoing.

Senator CHAFEE. OK.

Dr. WESTPHAL. And this is the 2000 year funding.

Senator CHAFEE. All right. Keep going then, if you would, please.

Dr. WESTPHAL. And then \$39 million for the Kissimmee River restoration project, and then \$48 million, almost \$49 million—\$48,813,000 for the restudy work this year. And so those are the three major elements of that \$129 million.

Senator CHAFEE. Now, I saw that "New York Times" editorial, which was a little bit on the sour side, of March 8, which is just this week. Do you have any comments on it? As I understood that editorial, the objection was that the focus was on water supply for the urban and agricultural communities, rather than water delivery and water quality, the water quality improvements for the Everglades. What do you say about that?

Dr. WESTPHAL. Well, it's not necessarily a fair characterization.

Senator CHAFEE. I must say I agree with the conclusion of the editorial where it says, "This is a very, very difficult job and a thankless job to try and solve this problem."

Dr. WESTPHAL. The primary aim is still the environmental restoration piece, but we are, by law—I think it is by law—to also look at the water supply part of this.

The article refers essentially to the first draft report that was issued on this, which is a report that was vetted to the public. We now have produced a final report, and that report is ready to go forward, also to be vetted, and we're working with the other Federal agencies and the State on that, and we think we have a pretty good report going forward and expect to release it in July.

I don't know if you want to add anything outstanding that, Michael?

Mr. DAVIS. Mr. Chairman, if I could just add a couple of points—

Senator CHAFEE. Have you had a particularly close role to the Everglades, Mr. Davis?

Mr. DAVIS. Yes, Sir.

Senator CHAFEE. Yes.

Mr. DAVIS. I think it is very important to understand—and the article didn't recognize this—that the overarching principle has been ecosystem restoration, and the Corps and our partners, that has been unequivocal in our commitment to do that.

It's not the Corps' plan. The Corps has a leadership role, but the plan was actually put together by scores of scientists and engineers and hydrologists from all Federal agencies involved, the State of Florida, the water management district, and others, so it is really not the Corps' plan. It really is an inter-agency, interdisciplinary team's plan that has been subject to extensive peer review at this point.

We think we do have a very good plan, but it is also very important to understand we have a very flexible plan, and, to the extent that new information is brought out and we can make adjustments to this plan, we designed it that way. So we're very comfortable with what we have right now.

Senator CHAFEE. Well, it is a very difficult job. I suppose involved with all this is the State of Florida, likewise, and the Governor.

Mr. DAVIS. The State of Florida is an equal partner here. They are cost-sharing this project at a 50/50 ratio.

Senator CHAFEE. Switching gears a little bit here—

Senator GRAHAM. Mr. Chairman, if I could?

Senator CHAFEE. Yes.

Senator GRAHAM. It is my understanding that the final report of the restudy, which was authorized in the 1996 WRDA bill, will be submitted this summer and will probably be included in the 2000 WRDA bill for purposes of authorization.

I would hope that some time between the summer and when we take up the next WRDA bill that we'll have an opportunity for a full hearing on this restudy.

Senator CHAFEE. I think so. It is a subject of tremendous interest—obviously deep interest to you. If that's what you wish, sure, we'll be glad to do that, work it out.

Just a quick question going back to the user fees. Did I understand that you tried to ascertain what took place in foreign ports but just found it a maze that you couldn't fight your way through? Is that about it?

Dr. WESTPHAL. We got some data. We went mainly to European ports. We looked at some ports in Asia, as well, to get information not only on their fees, their port fees, but also to understand what types of taxes and fees they use to maintain their ports.

In some cases, we were able to get that information and we will be able to provide it as part of our impact analysis. In some places, we just couldn't get it. They wouldn't release it.

But, generally speaking, we were able to make some comparisons between what some of the major European ports are doing and what we are proposing in this fee.

Senator CHAFEE. My time is up.

Senator Voinovich.

Senator VOINOVICH. In terms of getting all of this work done on the user fee, when do you anticipate it will be done?

Dr. WESTPHAL. We think that the interagency review is almost done. Once all that input comes in, probably a week or so, maybe 2 weeks from today to sort of fix all of that, incorporate any changes that are being proposed by the other Federal agencies involved, like Treasury, for example, and then be ready to bring it forth to hopefully initially committee staff and yourselves and then the stakeholders, as well, and release it.

The way it will come to you, I cannot—I have no idea exactly how that will be packaged as it comes to the Congress. It is a decision that is still sort of working in the White House, and I don't have an answer for that. But we don't intend it to be a part of WRDA.

Senator VOINOVICH. Do you have a vehicle where you sit down with the users before you send that over here to kind of get their feeling, so that if there are some concerns about it they are worked out before it comes here?

Dr. WESTPHAL. Well, we felt that—we did that initially with the stakeholders. We had a very extensive set of meetings with them. We continue to receive input. We asked for input in writing, as well, and we incorporated that in our impact analysis.

So I think we have addressed most of their concerns, but we do want to let them have the proposal ahead of time, as well, so that they have a chance to look at it and, should there be any glaring issues that we can address quickly, we'll do that. But I think the next step is in your house here for it to be addressed here.

Senator VOINOVICH. And you need the money to begin flowing for your fiscal year 2000?

Dr. WESTPHAL. Yes. Now, the existing fund has a balance. The existing fund has a balance, and we continue to collect money on the import side under the harbor maintenance tax. Once this fee is adopted, the harbor tax will be repealed and the balance of the fund will be transferred over to the Harbor Services Fund we are

proposing here. So there is money in the fund from which to appropriate for this purpose until we——

Senator VOINOVICH. So 1999 is OK?

Dr. WESTPHAL. Yes.

Senator VOINOVICH. You've got a carry-over next year, and then——

Dr. WESTPHAL. Yes.

Senator VOINOVICH [continuing]. You anticipate you'd collect about \$200 million in fiscal year 2000?

Dr. WESTPHAL. In fiscal year 2000 we would need to collect about \$200 to \$300 million.

Senator VOINOVICH. Mr. Chairman, could I continue?

Senator CHAFEE. Yes.

Senator VOINOVICH. One of the things that I'm concerned about as I look at the Federal bureaucracy is the incidence of your sitting down with EPA and Interior and looking at your respective responsibilities and looking at how they could be better coordinated and how you can work together. Does that go on?

Dr. WESTPHAL. Yes. Extensively. And more so—and I've worked in other Administrations, and it has worked more so under this Administration than I've ever seen before. I regularly speak with my counterparts at EPA, Interior. When I talk to my district engineers and division commanders out in the field, they are constantly in direct communications with their counterparts at the regional level.

And I think the level of cooperation there between our agencies is excellent. I asked one time, when I first came on board, if they could do a little survey of all the district engineers—we've got 38 districts around the country—which other sister agencies of the Federal Government they were having difficulty in communicating with or having a positive relationship in terms of solving people's problems and addressing them in a timely manner, and the answer I got back—I think it was a pretty honest answer—was that yes, we've got a problem here and there occasionally on some issue because we simply don't agree, but, generally speaking, almost in every corner of the country in all those 38 districts relationships were very, very good with Fish and Wildlife, with EPA, and with other Interior agencies that they tend to deal with.

Senator VOINOVICH. How about State agencies?

Dr. WESTPHAL. The same thing. I mean, the States are integral partners in this. They often cost-share, obviously, our projects. And more and more we are relying on the States to be equal partners in this.

We've got some areas where I have been particularly insistent that we need to help the States where they don't have the resources or the expertise or the capability, help them not by directing them but by actually supplementing them, by giving them the assistance that they need so that they can carry out their proper role in government.

What I mean by that is that, for example, when you're talking about, say, in our regulatory program, wetlands program, that we are able to assist the States so that they can best manage the development and the planning aspects of their communities without us having to get into that role at all, which is not an appropriate role for the Federal Government, to help the State agencies to do

this by being good partners with them and giving them the assistance that they need, and I think we're getting that in most places.

Senator VOINOVICH. One of the things that is kind of disturbing to me is we have, on Lake Erie, an erosion protection effort that, in order to dump any hard fill, to protect property from being eroded you need a permit from the Army Corps of Engineers. We have a new thing where you've got to get a permit also from the State of Ohio. We're doing what we can to make sure that people don't build in areas where studies show that you're going to have erosion, and also to make sure that when we dump hard fill that it is done properly.

At the same time we're doing that, in some of the dredging efforts sand is being picked up and deposited out in the middle of Lake Erie, whereas, if there was better coordination, some of that could be used closer in to protect some of our beaches from disappearing on us.

Dr. WESTPHAL. I think that is an excellent example, and I may actually use that when I talk to General Van Winkle about what is going on on Lake Erie. But I think you're right. I mean, I think the State has to play the critical role there. I know you, in your former position, probably would agree with that, but that's essential that we provide and assist the State in being able to carry out its mission, without being an impediment, without using regulations, but rather try to, again, be of assistance.

We have limited dollars in that the Corps, unlike our other sister agencies, is a project-funded organization. I mean, we are funded on the basis of projects, and so money comes to the Corps for specific projects and we don't have a pot of money that we can move from one area to another and say this year we want to emphasize "A" instead of "B," and so we're just going to shift monies from "B" to "A." We can't do that.

Other agencies have that type of flexibility. We're not a grants agency and so we have to work on the basis of those projects that you have directed us to work on, and we try, as much as we can in our Planning Assistance to States program, to be that additional help. It's a small amount of money that we have in the budget, but we hope to be able to use it in a positive way.

But I agree with what you are saying.

Senator CHAFEE. All right.

Senator CRAPO.

Senator CRAPO. Thank you, Mr. Chairman.

Mr. Westphal, I come from the Pacific Northwest, and I note in the President's proposed budget for this year there is \$100 million in construction funding for the Columbia River fish mitigation program.

Could you give me a brief description of how those dollars are intended to be used?

Dr. WESTPHAL. Well, it is a variety. Probably I will have to get the more-detailed information to you separately, because I don't have it in front of me, but I know it to be a series of projects that essentially are our efforts, as in meeting the requirements of the biological opinion, to do what we can to protect the movement of the species up and down the river.

Senator CRAPO. But you don't have the details right now?

Dr. WESTPHAL. I don't have them with me, but I would be glad to provide it to you. I can give you a detailed assessment of that.

Senator CRAPO. I would appreciate that, because I'd like to have an idea of where the Corps intends to head with these resources because, as you know, this is a very significant issue—

Dr. WESTPHAL. It is.

Senator CHAFEE [continuing]. To put it mildly, out in the Pacific Northwest.

[The information follows:]

Project Cost Breakdown

Lower Granite	\$3,160,000
Little Goose	5,980,000
Lower Monumental	460,000
Ice Harbor	410,000
McNary	9,570,000
John Day	10,030,000
The Dalles	1,850,000
Bonneville	9,090,000
Mitigation Analysis	59,450,000

Senator CRAPO. Specifically, I also note that in the legislation we are preparing we already have authorization in place for fish-friendly turbine development, and that we are looking at increasing the authorization for that because it looks like additional resources will be needed. Are you familiar with that authorization and with that project?

Dr. WESTPHAL. I'm familiar with that idea. When I recently took a trip out to the Northwest to look at the various projects out there, I went with the Corps. I was in Idaho on the Snake River and down the Columbia, and so I stopped at many of the projects and talked to the folks there about that particular issue and others, and so I'm a little bit familiar with the concept behind it.

Senator CRAPO. Do you have the ability to tell me now, or would you like to get back, just with regard to how the development of the fish friendly turbine is proceeding.

Dr. WESTPHAL. No, I couldn't. I don't have the answer to that, but I will be glad to get it for you.

Senator CRAPO. All right. I would appreciate that.

[The information follows:]

An experimental minimum gap runner (MUIR) is currently being installed in Unit 6 at Bonneville First Powerhouse as part of the Bonneville Dam rehabilitation project. The Corps will be testing the unit this fall/winter. The plan is to install the MGR units in all of the Bonneville First Powerhouse turbines during the remainder of the rehab. [A runner is the portion of the turbine that spins like a fan and to which the blades are attached. A Minimum Gap Runner is a runner design that almost eliminates gaps fish could enter when the turbine is operating. This is done by making the corners of the blades longer than those of traditional Kaplan blades, and milling out notches in the hub for the longer corners to fit into when the blades are tilted at a steep angle. The MGR also is a highly efficient blade design.]

Further research will continue within the Turbine Passage Survival Program, which is examining the entire turbine environment.

A 16-member Turbine Technical Working Group is composed of biologists and engineers from the National Marine Fisheries Service, the Corps of Engineers, the Department of Energy, Bonneville Power Administration, public utility districts, the Idaho National Engineering Laboratory and the Electric Power Research Institute.

The group was formed specifically to share information and develop a coordinated approach to studying and solving turbine passage problems.

The Turbine Passage Survival Program was developed by the Corps in coordination with the Technical Working Group. It is a three-year program to investigate short-term and long-term improvements to juvenile passage via the turbine route. The entire turbine environment is being studied. The project study plan was developed in coordination with related activities underway by other organizations (public utility districts, Dept. of Energy, Electric Power Research Institute and Bonneville Power Administration) to eliminate duplication, reduce cost and enhance the effectiveness of the Corps' turbine program. fiscal year 1999 funding for this study is \$3.1 million and \$2.5 million is requested in fiscal year 2000.

Other activities related to protection of migrating fish

As noted in response to question 1, there is considerable activity underway and projected for future years for improving juvenile and adult fish survival at the eight mainstem Corps dams. In brief summary:

- Extended submerged screens installed in the juvenile fish bypass systems at Lower Granite, Little Goose, and McNary dams
- Surface collector prototypes being tested at Lower Granite and Bonneville dams
- Gas abatement through:
 - flow deflectors installed at Ice Harbor and John Day,
 - fast-track effort for additional near gas abatement, and
 - long-term major configuration measures study 60 percent complete.
- Numerous miscellaneous measures, e.g. adult passage improvements, juvenile bypass system improvements underway.
- Major studies ongoing:
 - Lower Snake River Feasibility Study (near completion)
 - John Day drawdown study Phase I begun
 - Turbine studies program (see above).

Senator CRAPO. And then, last, another big issue related to the entire salmon and steelhead recovery issues is the relocation of the Caspian turns from the mouth of the Columbia River. Are you familiar with that activity?

Dr. WESTPHAL. Yes.

Senator CRAPO. I note that we have \$1 million authorized for that activity, but could you just give me whatever information you have and tell me how that is progressing and what we can expect to see out of that activity in the coming year?

Dr. WESTPHAL. Yes. I can tell you that we are working with EPA on that project, and what I don't have is an up-to-date status report on where we are with it, but I will be glad to include it in the three things I owe you already and get that to you as soon as possible.

[The information follows:]

The U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS), the agencies ultimately responsible for the management of the predatory populations, have requested our assistance in reducing bird predation in the Columbia River estuary. Accordingly, we are providing funding and are cooperating in a 1999 pilot program to relocate the Caspian Tern population located on Rice Island further downstream away from the vulnerable juvenile salmon. Initial seeding has been completed on Rice Island (to discourage nesting) and habitat improvements on East Sand Island should be completed next week. Further actions in fiscal year 2000 and beyond for the bird predators will be dependent on the results of the pilot program and upon subsequent management plans developed by NMFS and the USFWS.

Senator CRAPO. One last area, Mr. Westphal, is it is my understanding that there has been some cooperative effort between the Corps of Engineers and the Department of Energy with regard to some of the cleanup activities at particularly the site that I'm interested in at the Idaho National Engineering and Environmental

Laboratory. Are you familiar with some of that activity on the Corps' behalf that is being undertaken there?

Dr. WESTPHAL. No, Sir, I'm not. I'm sorry.

Senator CRAPO. OK. I'll have to ask if you can get me some information.

Dr. WESTPHAL. I will do that. I apologize for that, but I don't know the details of that.

Senator CRAPO. All right. Thank you.

Dr. WESTPHAL. But we will get you that. I will get you that immediately, and within the next couple of days I will get you all that information.

Senator CRAPO. All right. I'd appreciate that. Thank you.

Dr. WESTPHAL. Sure.

[The information follows:]

The Walla Walla District has completed 16 months of cost engineering at the Department of Energy (DOE) Idaho National Engineering and Environmental Laboratory (INEEL), following up the Project EM assessments conducted at INEEL and other DOE sites during 1996–1998. In the Project EM, the Corps reviewed the DOE multi-year cost and schedule baselines for cleanup of 13 major contaminated sites and identified \$1.9 billion in overestimates, or potential cost savings. In the follow-up work at INEEL, the Walla Walla District team identified additional possible savings of \$1.2 billion and assisted the DOE staff to implement a major recommendation of the Project-EM to convert their budget support documentation from level-of-effort estimates to the more reliable activity-based cost (ABC) estimates. Expressing satisfaction over the results of the Corps' work, the INEEL management asked Walla Walla District for a proposal to revise the remaining 250 sets of cost baselines through the rest of the fiscal year. However, the original funding from DOE headquarters for this work is nearly gone and no additional funds have been provided. INEEL has indicated they will use their contractors to finish converting the sets of cost estimates.

Senator CRAPO. I have no further questions, Mr. Chairman.

Senator CHAFEE. All right.

Mr. Westphal, before I go any further, I just wanted to say that I, along, I'm sure, with every member of this committee, share great admiration for the Corps of Engineers. We've seen the Corps work not only in this country but overseas.

I'll never forget being in Saudi Arabia and hearing from the Saudis the high respect that they had for the Corps, which was doing some major construction work in some of those cities over there. They always relied on the honesty and professionalism—they did, to a great degree, rely on the honesty and professionalism of our Corps of Engineers, and I think that is a great tribute to the United States that they dealt, obviously, with private contractors, but they had this tremendous respect for the U.S. Army Corps of Engineers. I found it very flattering to the United States and a wonderful tribute to the organization that you head up.

Dr. WESTPHAL. Yes, Sir.

Senator CHAFEE. Now, apparently the Administration has decided to end the practice of providing general revenues for construction of the deep draft harbors, and, as I understand it, the operation and maintenance of these facilities is going to be through this fee business you've got, but construction, as I understand it currently, is cost-shared on another system based on the depth of the channel and so forth.

Now, in other words, are you now shifting the construction costs, along with the operation and maintenance, over to the user fees, likewise?

Dr. WESTPHAL. Yes.

Senator CHAFEE. In other words, is it all going over to the user fees?

Dr. WESTPHAL. That's right. The Federal portion of it, the Federal share of the construction, could be now funded under the harbor services user fee proposal. We just simply believe that these harbor projects are so important to the Nation's trade posture that, by putting them in as part of this fund, we are essentially protecting that area of spending somewhat. We realize it is obviously up to the Appropriations Committees to make that final judgment, but we believe that, by doing that, we will have the resources necessary to maintain our harbors competitive around the world.

Those projects will be able to be fully funded at an optimal schedule, meaning they will be on schedule as they proceed, so we believe that that's a better way of doing it than relying simply on the General Fund on the construction side.

Senator CHAFEE. Well, I must say you're putting a lot of faith in these users fees, and we'll just have to see how that shakes out, but that is all to come, and you're going to polish that up and then come forward with your suggestions.

Dr. WESTPHAL. Yes, Sir.

Senator CHAFEE. All right.

Senator VOINOVICH.

Senator VOINOVICH. And that proposal will come to this committee? That's not just going to go to Appropriations, the language that you would tuck into appropriations?

Dr. WESTPHAL. No. It won't be—to my knowledge, no, I don't think it will go to Appropriations, but how it will be packaged I don't know.

Senator VOINOVICH. But it will come to this committee?

Dr. WESTPHAL. I would assume that the committee will deal with it. Yes, Sir.

Senator VOINOVICH. I think that I'd like to see it—

Dr. WESTPHAL. I don't know, for example, on the tax part, whether the Finance Committee would have to get involved because it calls for the repeal of the tax, so I imagine there will probably be some joint disposition of the proposal between this committee and Finance.

The mechanism for triggering the funding is—in other words, the triggering of the funding has to be done, obviously, by the appropriators in consultation with this committee.

Senator CHAFEE. Senator, have you got some more?

Senator VOINOVICH. I have no other questions.

Senator CHAFEE. All right. Well, obviously this harbor services fee is a great big item here, because, as we mentioned before, it is a substantial portion of your budget and it is going to go into the areas that so many of the members of this committee are deeply interested in—namely, their ports. So we'll see what you come up with and look forward to further work with you, and when you get the thing ready we'll get you back up here again.

Dr. WESTPHAL. OK, Sir.

Senator CHAFEE. OK. Fine. Thanks a lot, Mr. Secretary. Thanks, Mr. Davis.

Dr. WESTPHAL. Thank you, Senator.

Senator CHAFEE. We appreciate your coming up.

Dr. WESTPHAL. Thank you.

[Whereupon, at 10:56 a.m., the committee was adjourned, to reconvene at the call of the chair.]

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, U.S. SENATOR FROM
THE STATE OF NEW YORK

My great thanks to Assistant Secretary Westphal for indulging us again on the Water Resources Development Act of 1998, now 1999. With the capable leadership of our Chairman Senator Chafee, Senator Warner, Senator Baucus, and Senator Voinovich, we might well convince our friends in the other body that this legislation must be passed. And not a moment too soon.

Since the first Water Resources Development Act in 1986, when we introduced rational economic criteria and equitable cost-sharing to the Federal water planning process, we have witnessed nothing short of a quiet revolution in the development of water resource projects. Much credit for that success is due to the professionalism of the Army Corps of Engineers. My friends on the committee who were here with me then will agree that the free-booting days when the Subcommittee Chairman got two dams, the Ranking Member got one, and everyone else on the committee got a promise—are long over. For the past 13 years we have reviewed and accepted authorizations for projects in a responsible manner, and should be justifiably proud.

The greatest problems with the WRDA process come only when we fail to reauthorize the legislation as we had in 1994 and then again last year. Projects are stalled. Costs increase. Three years have passed since we last passed WRDA legislation and it is time to move this bill. If we should need address WRDA again next year also, so be it. Our Nation's rivers, flood plains, and harbors can stand the attention.

I would close my remarks by urging the Administration to get that Harbor Maintenance Tax proposal to us. While we all surely understand the difficulty in devising a proper and fair user fee for the maintenance of our harbors in light of the Supreme Court decision last March, our chances of establishing a sound, equitable policy diminish the longer the debate is forestalled.

PREPARED STATEMENT OF JOSEPH W. WESTPHAL, ASSISTANT SECRETARY
OF THE ARMY

Mr. Chairman and distinguished Members of the committee: It is an honor and a pleasure to testify before the committee on the President's Army Civil Works budget priorities for the year 2000, and on the 1999 Water Resources Development bill.

Accompanying me today is Mr. Michael Davis, my Deputy Assistant Secretary for Policy and Legislation.

Let me begin by noting that the large differences between the Administration's budget proposal last year and what was appropriated in both fiscal year 1998 and fiscal year 1999 are now reconciled in the fiscal year 2000 budget I am about to outline.

The President has consistently stressed two major themes that I think are particularly important to the way we should formulate and implement Civil Works policy. First, it must be based on building strong partnerships with our states and local communities as well as among our sister Federal agencies. Second, we must strive to help our economy grow and prosper by combining sound infrastructure management and development with environmental protection and ecosystem restoration. I believe our program excels in both of these mandates and that the budget I will present today reflects their importance and priority.

I am pleased to say that funding in the President's fiscal year 2000 budget supports a strong Civil Works Program. It is consistent with levels enacted by Congress in recent years, and with the President's overall domestic priorities, his commitment to a balanced budget, and his goal of protecting Social Security and meeting the challenges of the 21st Century.

My statement covers the following subjects:

- The fiscal year 2000 Civil Works Program Budget,
- Water Resources Development Acts of 1999 and 2000,
- Civil Works Program Performance,
- The Harbor Services Fund Proposal,

- The Economy and Environment,
- New Investments, and
- Highlights of the fiscal year 2000 Continuing Program.

FY 2000 CIVIL WORKS PROGRAM BUDGET

The President's budget for the Civil Works Program for fiscal year 2000 includes \$3.9 billion for the discretionary program, comparable to the amount appropriated for the program in fiscal year 1999, and significantly above last year's budget request. Details are presented in Table A.

The Administration appreciates the significant commitments made by our partners, the non-Federal sponsors who cost-share studies and projects of the Civil Works Program. These commitments demonstrate the value of the program to the sponsors. With cost-sharing contributions and other funding, total funding for the fiscal year 2000 program is \$4.2 billion. In fiscal year 2000, we will be asking non-Federal sponsors to contribute over \$251 million as their cost share of projects throughout the Nation. They are our partners in this program and we are committed to a very responsive and timely allocation of resources to meet their efforts. I look forward to working with both Houses of Congress to meeting the challenges of this partnership.

WATER RESOURCES DEVELOPMENT ACTS OF 1999 AND 2000

I also want to emphasize our commitment to water resources development and the biennial authorization cycle. A strong water resources development program is a sound investment in our Nation's economic future and environmental stability. Communities across the country benefit from water resource projects to reduce flood damages, compete more efficiently in world trade, provide needed water and power, and protect and restore our rich aquatic resources. In this regard, we will work with the Congress to complete a Water Resources Development Act (WRDA) in 1999—building on the progress that we made last fall on the proposed WRDA 1998.

As you know, the Army, on behalf of the Administration, submitted to Congress a WRDA proposal in 1998. We believe this proposal should serve as the basis for a WRDA 1999. The Senate version of WRDA '98 included important Administration policy initiatives such as our Challenge 21 program, changes to shore protection policy, and improvements to our recreation program. We hope that, based on our bill, and then with the assistance of the authorizing committees, we can come to closure on a responsible WRDA 1999 early this year that includes important policy initiatives and vital projects, while recognizing the continuing budget constraints. This would put us in a better position to address new policy and project needs in a WRDA 2000 bill that will include such important initiatives as the restoration of the Everglades.

We appreciate your commitment to a WRDA 1999. The Administration, however, has concerns about the total cost of S. 507 and the impacts of authorizing a sizable number of new projects at this time in view of the existing backlog and continuing budget constraints. Each new project authorization adds to the already large existing backlog of Corps projects under or awaiting construction. Therefore, we urge this committee to limit the number of new project authorizations in its legislation, as we have done in our proposal, to reflect only those additional costs that one might expect to be able to fund within a reasonable timeframe.

We are particularly concerned about authorizations which bypass the existing project planning and review process by authorizing and preauthorizing projects upon the issuance of a report by the Chief of Engineers. These provisions weaken the review responsibilities of the Secretary of the Army and the Administration, and for those authorizations which are "contingent" on a report of the Chief of Engineers weaken the study and review responsibility of the Army Corps of Engineers itself. Such authorizations would undermine the biennial WRDA process that has been the goal of Congress and every Administration since 1986. While there may be a compelling reason, on rare occasion, to expedite the authorization of an individual project, as the Administration proposed and the Congress accepted in the case of Grand Forks, ND and East Forks, MN, we believe that projects generally should await the completion of review by the Chief of Engineers, the Army, and the Administration before authorization.

In addition, we are concerned about other provisions in S. 507, including those that would provide special exemptions from cost-sharing requirements, authorize projects based upon what may be outdated studies, or authorize projects that either are not economically justified or fall outside of the traditional missions of the Army Corps.

The Administration appreciates this committee's support for those projects that have completed the normal planning, review, and approval process and the inclusion of some of our initiatives. We are optimistic that we can work with your committee to resolve our concerns in a manner that allows us to fully support S. 507.

CIVIL WORKS PROGRAM PERFORMANCE

The Government Performance and Results Act of 1993 (GPRA) requires that the Army Corps of Engineers show how improvements in its business processes impact the quality and delivery of our products and services to the Nation.

The Corps is improving its business processes by streamlining decision document review procedures, eliminating duplication of functions at different levels; intensively monitoring policy review to reduce review times; extending the use of standardized project cooperation agreements; continuing to strengthen partnerships with local sponsors; and intensively managing program execution, for more efficient and timely production and greater customer satisfaction. In particular, the Chief of Engineers has developed a process to streamline project planning and I look forward to working with him on this.

The Corps is currently implementing the first annual performance plan required by GPRA on its fiscal year 1999 program. The Corps is testing an initial set of results-oriented program performance measures to assess the benefits of process improvements made at the project level. The Corps will evaluate the initial set of results-oriented program performance measures during fiscal year 1999 program execution and will extend successful applications of the measures into the fiscal year 2000 program and continue to develop improved performance measures in the future.

HARBOR SERVICES FUND PROPOSAL

A key component of the President's fiscal year 2000 budget for the Army Civil Works program is the proposal for a new Harbor Services Fund and Harbor Services User Fee. This proposal will provide a reliable source of funding for important navigation needs including construction, operation, and maintenance. It results in significantly greater funding for these port and harbor activities. The President's budget for fiscal year 2000 includes \$951 million to be derived from the Harbor Services Fund, an overall increase of \$382 million over the President's fiscal year 1999 budget for harbor-related activities. This level of funding will allow us to proceed at an *optimal rate* on nearly all operation and maintenance *and* construction activities related to ports and harbors, using funds contributed by the users.

In March 1998, the U.S. Supreme Court ruled that the Harbor Maintenance Tax (HMT) was unconstitutional, as applied to exports. In that ruling, the Court concluded that the HMT, which imposed a charge based on the value of the commercial cargo being shipped, constituted a tax on goods in export transit and therefore violated the Export Clause of the Constitution. Because of this ruling, the HMT stopped being collected on exports on April 25, 1998. The new Harbor Services User Fee being proposed avoids the constitutional infirmities of the HMT. The assessment is a user fee, not a tax: it fairly approximates the harbor benefits and services vessels in each vessel category received through port use. It is not imposed based on the cargo of a vessel.

The user fees will generate funds sufficient to pay the Department of the Army's annual costs of developing, operating, and maintaining the Nation's ports. The legislative proposal will make the total amount of the user fees collected pursuant to this proposed legislation in 1 year available the next fiscal year for appropriation to fund the projected total annual expenditures of the Department of the Army for harbor development, operation, and maintenance.

Thus, this proposal will address all of the biggest problems associated with the existing Harbor Maintenance Tax and Trust Fund (HMTF). First, we will stop collections on imports, domestic shippers, and passengers collected under the existing HMT, eliminating the uncertainties involved with our foreign trading partners.

Second, we would institute a new fee mechanism based on vessel type linking the fee with the level of service provided to certain types of vessels, which will meet the Supreme Court's test for constitutionality. Those fees would be placed in the new Harbor Services Fund (HSF), along with remaining balances from the old HMTF. A portion of those balances will be used to fund the program in the first year, fiscal year 2000.

And third, the proposal will directly link the amount of fees collected with the funds appropriated, thus avoiding buildup balances in the HSF. For budget purposes, the user fees will be treated as offsetting collections.

We are coming to completion on details of the proposal in light of discussions and comments from interested groups. We plan to present a legislative proposal to Congress in the near future. Our plan is to pursue the HSF legislative proposal separately from WRDA 1999.

ECONOMY AND THE ENVIRONMENT

The Administration is committed to the traditional mission areas of improving our navigation and transportation system, protection of our local communities from flood damages and other disasters, and maintaining and improving hydropower facilities across the country. In addition, the protection and restoration of the environment are an important and integral part of the Civil Works mission portfolio. The President has strongly advocated linking economic growth with protection of the environment. To help meet this objective, we will support projects that feature strong economic benefits, as well as projects that incorporate environmental restoration and enhancement. Of course, individual environmental restoration projects are also an important part of the Civil Works mission. These environmental objectives make the Army Corps an important participant in advancing the goals of the President's Clean Water Action Plan.

An example of a program that will integrate environmental concerns into more traditional Civil Works missions is our Challenge 21: Riverine Ecosystem Restoration and Flood Hazard Mitigation Initiative. Like last year, this year's budget includes \$25 M to begin the Challenge 21 program. It is designed to accomplish both flood hazard mitigation and ecosystem restoration and emphasizes nonstructural measures as a means to accomplish these objectives. Challenge 21 was proposed for authorization last year, and came close to becoming a reality in the proposed WRDA 1998. In fact, the Senate version of WRDA 1998 included a Challenge 21 program. We will continue to work with Congress to pass this much-needed legislation. The key to this program is that it will be implemented at the request of local communities and not imposed as a solution by the Federal Government. To date, over 50 communities have expressed interest in participating in Challenge 21.

Environmental programs make up about 18 percent of the fiscal year 2000 Army Civil Works budget, and are integrated into all of the major areas of work. Some environmental programs of note are in the following areas. There is \$100 million in construction funding for the Columbia River Fish Mitigation program in the Pacific Northwest. There is \$129 million in overall funding for the ongoing effort in south Florida to restore, preserve and protect the Everglades. We have also budgeted \$14 million to fund our ongoing environmental restoration continuing authorities programs (Section 204, the Beneficial Uses of Dredged Materials program, Section 206, the Aquatic Ecosystem Restoration program, and Section 1135 Project Modifications for Improvements of the Environment). This funding will allow us to implement projects to create and restore aquatic habitats and to modify Civil Works projects to improve the environment.

The Formerly Utilized Sites Remedial Action Program, FUSRAP, is an environmental cleanup program that was transferred by Congress from the Department of Energy (DOE) to the Army Civil Works program in the fiscal year 1998 Appropriations Act. We are continuing the smooth implementation of needed cleanup of contaminated sites, with no slippage of the program during the transition from DOE to the Civil Works program. In fact, we have exceeded the DOE schedules for the Middlesex, Maywood, and Wayne sites in New Jersey, and surpassed DOE's planned quantities of soil removed and disposed. This year's budget includes \$150 million for this program, an increase of \$10 million over the past 2 years. This will help improve the rate of cleanups of the sites.

NEW INVESTMENTS

The fiscal year 2000 budget for the Army Civil Works program provides a strong program of new work. Details are presented in Table B.

Our program of new work includes one new survey and 19 new construction projects, 5 new operation and maintenance new starts, and 6 new Plant Replacement and Improvement Program (PRIP) major acquisitions, and the Challenge 21 program.

The budget includes \$80 million in fiscal year 2000 for the new investments in the construction account, including \$55 million for new construction starts, and \$25 million for Challenge 21. Capital costs for these new investments total \$1.8 billion. Of that, \$1.3 billion will be provided by the Federal Government. The balance, covering costs of lands, easements, rights-of-way, and relocations, will be financed directly by non-Federal sponsors.

The 19 new construction projects include:

- 5 for commercial navigation,
- 3 for flood damage reduction,
- 2 for environmental restoration,
- 7 for major rehabilitation, and
- 2 for dam safety assurance.

HIGHLIGHTS OF THE FISCAL YEAR 2000 CONTINUING PROGRAM

Operation and Maintenance, General

The fiscal year 2000 budget for the Civil Works Operation and Maintenance, General (O&M) Program is \$1.84 billion. This level of funding is very strong, demonstrating the Administration's commitment to maintaining our existing infrastructure, much of which is aging and requires greater upkeep. Of the \$1.84 billion, \$693 million would be for port and harbor activities, derived from the proposed HSF, including \$75 million to maintain small boat harbors, important to the economies of local communities. In addition, operation and maintenance of hydropower facilities in the Pacific Northwest will be financed by a transfer of approximately \$107 million from the Bonneville Power Administration, pursuant to an agreement signed 2 years ago.

The budget also provides \$226 million to continue the operation and maintenance of recreation areas at Civil Works projects.

Construction, General

The fiscal year 2000 budget for the Civil Works Construction, General Program is \$1.24 billion, of which \$1.16 billion is for the continuing program. Of the total, \$258 million would be for port and harbor construction projects derived from the Harbor Services Fund, allowing port related projects to proceed at optimal rates. This will enhance the competitiveness of our Nation's ports and harbors.

Following are highlights of the Continuing Program.

South Florida Ecosystem Restoration.—The Everglades is an ecosystem of international importance. It is also one that has dramatically deteriorated since the turn of the century. It is very important that we aggressively continue the work that we have underway to start the process of restoring this treasure that is so important to the Nation. Construction funding for these projects is \$110 million for restoration of the Everglades and South Florida Ecosystem, a major environmental activity to which we are strongly committed. This amount includes \$49 million for the Central and Southern Florida project to continue construction work at West Palm Beach Canal, South Dade County, and manatee pass-through gates, as well as planning, engineering and design work on the Comprehensive Restoration Plan, also known as the "Restudy"; \$40 million to continue construction on the Kissimmee River Restoration project; and \$21 million for critical restoration projects authorized under the Everglades and South Florida Ecosystem Restoration program.

Pacific Northwest Salmon.— The budget includes \$100 million for Army Corps construction activities associated with the Columbia River Fish Mitigation project at 8 Corps dams on the Columbia and Snake rivers and to continue the mitigation analysis which evaluates additional measures to increase fish survival at those dams. This includes \$59 million for studies of surface bypass facilities, drawdown of Lower Snake Reservoirs, John Day drawdown and hatchery mitigation, turbine passage, gas abatement, adult passage, and Lower Columbia configuration.

Montgomery Point Lock and Dam.— The budget includes \$20 million for the Montgomery Point Lock and Dam project on the McClellan-Kerr Arkansas River Navigation System to continue construction of the lock and dam. The project is programmed to be financed entirely from the Construction account.

Kentucky Lock and Dam, Kentucky.— The budget includes \$7.75 million for the Kentucky Lock and Dam project on the Tennessee River to continue detailed design of the new lock and to relocate the Tennessee Valley Authority's power transmission towers at the project site. The addition of a new lock will greatly reduce delays at the existing lock which is too small to handle modern 15 barge tows without 2 lockages.

Olmsted Locks and Dam, Illinois and Kentucky.— The budget includes \$28.6 million to continue construction of 2 new locks on the Ohio River near Olmsted, Illinois, to replace Locks 52 and 53 which are over 60 years old. Virtually all waterway traffic moving between the Ohio and Mississippi Rivers passes through the project area, and both of the existing locks have temporary lock chambers that are inefficient. Projected increases in waterway traffic demands in combination with the limited capacity of the existing locks will result in increased lockage delays without the new locks.

New York and New Jersey Harbors, New York and New Jersey.— The budget includes \$60 million for the Kill Van Kull and Newark Bay, New York and New Jersey, project to continue construction of the deepening of 5 miles of Kill Van Kull channels and 3 miles of Newark Bay channels from 40 to 45 feet. The deeper project will accommodate larger, fully loaded, more modern containerships. The budget also includes \$2 million for the New York Harbor and Adjacent Channels, Port Jersey Channel, New Jersey, project. Deepening Port Jersey channel from 35 feet to 41 feet will accommodate larger, deeper draft, cargo ships.

Los Angeles County Drainage Area, California.— The budget includes \$30 million for up grading the existing system, raising channel walls and converting the trapezoidal channel to a rectangular channel, and bridge modifications. These improvements would protect residential, commercial, and industrial properties in Long Beach by accommodating the increased runoff resulting from urbanization over the past 40 years.

Southeast Louisiana.—The budget includes \$47 million to continue construction activities for the Southeast Louisiana project including Canal 3, Suburban Canal, Elmwood Canal, Railroad Canal, Whitney Barataria Pumping Station in Jefferson Parish, and Napoleon Avenue Canal, Dwyer Road Pumping Station, and Broad Street Pumping Station in Orleans Parish.

Continuing Authorities Program.— The budget includes \$57 million for a full program of continuing and new work under the 9 activities in the Continuing Authorities Program. This amount includes \$2.5 million for beach erosion control projects (Section 103), \$8.5 million for emergency streambank and shoreline protection projects (Section 14), \$26.9 million for flood damage reduction projects (Section 205), \$0.5 million for navigation mitigation projects (Section 111), \$4.5 million for navigation projects (Section 107), \$0.1 million for snagging and clearing projects (Section 208), \$4.5 million for aquatic ecosystem restoration (Section 206), \$8.5 million for project modifications for improvement of the environment (Section 1135), and \$1 million for beneficial uses of dredged material (Section 204).

GENERAL INVESTIGATIONS

The budget for the Civil Works General Investigations (GI) Program is \$135 million. While this is a lower level than usual, it is a key element of our plan to stabilize the Civil Works budget in the future. The study program feeds the pipeline of construction work. There is a large amount of construction work already waiting for funding—far more than the funds we can reasonably expect in the future. This budget cuts back on project study funding, in order to reduce the backlog of potential construction projects that are beyond our capacity to budget within a reasonable timeframe. Once the backlog of costly projects is reduced, then we would be able to resume funding for studies at a higher level.

We believe that cutting back on study funding on a temporary basis is the right thing to do for our local sponsors, who expect timely construction of projects, once studies are completed and the projects are authorized.

REGULATORY PROGRAM

The fiscal year 2000 budget for the Civil Works Regulatory Program is \$117 million, an increase of \$11 million over the enacted level of fiscal year 1999 funding. This will ensure that we continue to provide for effective and equitable regulation of the Nation's waters, including wetlands. Through the Regulatory Program the Corps is committed to protecting the aquatic environment and serving the public in a fair and reasonable manner. In fiscal year 1998, the Regulatory Program authorized 90,000 activities in writing, the most in any year, and nearly 95 percent of all actions were authorized in less than 60 days.

One of the goals of the Army Corps is to help people find solutions to their problems. In this program, we are proud that we not only protect our vital aquatic resources, but we try to help people, within the law, to find environmentally sustainable solutions to their problems. This budget will ensure that this level of service is maintained and improved, even with an increasing volume of work. The proposed increase would also enable the Corps to broaden its partnerships with States and local communities through watershed planning efforts.

We will also continue to pursue important initiatives as part of the Regulatory Program. For example, under the Regulatory Program, we are also active in the preparation of Special Area Management Plans (SAMPs) to address development in environmentally sensitive areas. We will build on existing relationships with Federal and State resource agencies through our consultation responsibilities to minimize habitat losses and mitigate unavoidable wetland losses. With the amount included in the President's budget, we will establish a full administrative appeals

process that will allow the public to challenge permit decisions and jurisdiction determinations without costly, time-consuming litigation.

Again this year, we are proposing a reasonable increase in the permit application fees for commercial applicants as a means to offset a portion of the costs of the Regulatory Program. We are prepared to work closely with this committee and the public to ensure that any revisions that we may adopt are reasonable.

CONCLUSION

In summary, the President's fiscal year 2000 budget for the Army Civil Works Program is a good one. It demonstrates a commitment to Civil Works missions, with strong support for all programs, a plan to solve the constitutional problem with the existing Harbor Maintenance Tax, an especially strong program of new construction, a firm commitment to maintaining existing water resource management infrastructure, and increased application of Civil Works Program expertise to environmental protection and restoration.

Thank you Mr. Chairman and Members of the committee. This concludes my statement.

Table A.—Department of the Army, Corps of Engineers Civil Works, Fiscal Year 2000 Direct Program, President's Program
[Funding (\$K)]

Program	Fund											Total
	Special				Trust			General		Transfer	Trust	
	Harbor Serv- ices ¹	Permanent Appropriations	Permit Ap- plication Fees ²	Rcrth User Fees	Coastal Wet- lands Re- striction ³	Harbor Maintenance	Inland Wa- terway	Ultimate ⁴	Initial ⁵	Bonneville Power Ad- ministration	River and Harbor Con- tributions	
Combined (discretionary and mandatory)												
Defense:												
Formerly Utilized Sites Remedial Action Program							150,000	150,000				150,000
Domestic:												
General Investigations							135,000	135,000			39,827	174,827
Construction, General	257,700					55,000	927,200	1,239,900			156,786	1,396,666
Operation and Maintenance, General	692,900			35,700			1,107,300	1,835,900	107,000		8,055	1,950,955
Flood Control, Mississippi River and Trib- utaries Project							280,000	280,000			45,673	325,673
Regulatory Program			7,000				117,000	117,000				117,000
General Expenses							148,000	148,000				148,000
Flood Control and Coastal Emergencies ...							0	0				0
Revolving Fund							0	0				0
Coastal Wetlands Restoration					54,180						800	10,800
Permanent Appropriations		18,576										18,576
All	960,600	18,576	7,000	35,700	54,180	0	55,000	2,864,500	3,905,800	107,000	251,141	4,292,517
Discretionary								2,864,500	2,864,500			2,864,500
Mandatory	950,600	18,576	7,000	35,700	54,180	0	55,000		1,041,300	107,000	251,141	1,428,017

¹ Proposed special fund to replace Harbor Maintenance Trust Fund.

² Proposed fees for processing permit applications, to be paid to General Fund receipt account, not available to Corps.

³ Total for interagency task force; Corps' place of \$10 million is reflected under "Total."

⁴ Net direct Congressional appropriation after reimbursement from mandatory "Special" and "Trust" funds, as applicable.

⁵ Direct Congressional appropriation. The total for all accounts comes from the General Fund, initially. Ultimately, it is reimbursed from mandatory accounts in the amount shown opposite "Mandatory."

Table B.—Department of the Army, Corps of Engineers Civil Works Fiscal Year 2000 Direct Program, President's New Starts and Other New Work Program
[Funding (\$K)]

Account/Category	#	Funding									
		First Cost					Budget Year				
		Total	Federal			Nonfederal	Total	Federal			Nonfederal
			GF	HSF	IWTF			GF	HSF	NWTF	
General Investigations:											
Surveys:											
Santa Inez River, CA	1	100	100	0	0	0	100	100	0	0	0
All (Surveys)	1	100	100	0	0	0	100	100	0	0	0
Construction, General:											
Projects:											
(Regular/Environmental):											
Cheyenne River Sioux Tribe, Lower Brute Sioux, ND	1	108,000	108,000	0	0	0	2,000	2,000	0	0	0
Willamette River Temperature Control, OR	1	70,600	70,600	0	0	0	1,700	1,700	0	0	0
Flood Production:											
Arecibo River, PR	1	23,100	12,500	0	0	10,600	8,742	2,500	0	0	6,242
Grand Forks, ND—East Grand Forks, MN	1	350,250	175,900	0	0	174,350	30,600	10,000	0	0	20,600
Napa River, CA	1	182,000	91,000	0	0	91,000	42,528	4,500	0	0	38,028
Navigation:											
Baltimore Harbor and Channels, MD., Brewerton Channel	1	14,035	10,530	0	0	3,505	13,083	9,578	0	0	3,505
Kikiaola Small Boat Harbor, Kaula, HI	1	5,653	4,997	0	0	656	185	75	0	0	110
Neches River and Tributaries Saltwater Barrier, TX	1	55,880	41,895	0	0	13,965	5,661	2,000	0	0	3,661
Port Fourchon, LA	1	4,930	2,557	0	0	2,373	4,557	2,184	0	0	2,373
Santa Barbara Harbor, CA	1	6,700	5,360	0	0	1,340	6,300	4,960	0	0	1,340
All (Regular Projects)	10	821,128	523,339	0	0	297,789	115,356	39,497	0	0	75,859
Major Rehabilitation:											
Cape Cod Canal Railroad Bridge, MA	1	30,500	30,500	0	0	0	5,000	5,000	0	0	0
John H. Kerr Powerhouse, VA & NC	1	59,600	59,600	0	0	0	1,400	1,400	0	0	0
Lock and Dam 12, Mississippi River, IA	1	15,500	7,750	0	7,750	0	2,600	1,300	0	1,300	0

Table B.—Department of the Army, Corps of Engineers Civil Works Fiscal Year 2000 Direct Program, President's New Starts and Other New Work Program—
Continued
[Funding (\$K)]

Account/Category	#	Funding									
		First Cost					Budget Year				
		Total	Federal			Nonfederal	Total	Federal			Nonfederal
			GF	HSF	IWTF			GF	HSF	NWTF	
Lock and Dam 24, Part 2, Mississippi River, IL & MO	1	38,400	19,200	0	19,200	0	1,200	600	0	600	0
London Locks and Dam, Kanawha River, WV ...	1	20,300	10,150	0	10,150	0	600	0	0	600	0
Patoka Lake, IN	1	7,200	7,200	0	0	0	2,000	2,000	0	0	0
Walter F. George Powerhouse and Dam, AL & GA	1	37,000	37,000	0	0	0	750	750	0	0	0
All (Major Rehabilitation Projects)	7	208,500	171,400	0	37,100	0	13,550	11,050	0	2,500	0
Dam Safety Assurance:											
Bluestone Lake, WV	1	107,300	107,300	0	0	0	750	750	0	0	0
Success Dam, CA	1	30,900	30,900	0	0	0	1,250	1,250	0	0	0
All (Dam Safety Assurance Projects)	2	138,200	138,200	0	0	0	2,000	2,000	0	0	0
All (Projects)	19	1,167,828	832,939	0	37,100	297,789	130,906	52,547	0	2,500	75,859
Program:											
Riverine Ecosystem Restoration and Flood Hazard Mitigation Program	1	654,000	425,000	0	0	229,000	35,000	25,000	0	0	10,000
All (Projects and Program)	20	1,821,828	1,257,939	0	37,100	526,789	165,906	77,547	0	2,500	85,859
Operation and Maintenance, General:											
Dredge Wheeler Ready Reserve ¹	1	0	0	0	0	0	12,450	12,450	0	0	0
Management Tools for Operation and Management	1	2,265	2,265	0	0	0	975	975	0	0	0
National Dam Security Program ¹	1	0	0	0	0	0	20	20	0	0	0
Wetlands Functional Assessment Methodology	1	7,398	7,398	0	0	0	1,000	1,000	0	0	0
Zebra Mussel Research Program	1	13,378	13,378	0	0	0	1,500	1,500	0	0	0

All (Remaining Items)	5	23,041	23,041	0	0	0	0	15,945	0	0	0
Revolving Fund:											
Plant Replacement and Improvement Program (PRIP) Major Acquisitions ² :											
Towboat Raymond C. Peck Replacement	1	5,500	5,500	0	0	0	0	5,160	0	0	0
Fuel Oil Barge Replacement	1	1,495	1,495	0	0	0	0	1,390	0	0	0
Survey Boat Granada Replacement	1	1,533	1,533	0	0	0	0	1,285	0	0	0
Derrickboat No. 6 Replacement	1	775	775	0	0	0	0	660	0	0	0
Panama City Crane Barge Replacement	1	6,400	6,400	0	0	0	0	125	0	0	0
Survey Boat Gatlin Replacement	1	1,800	1,800	0	0	0	0	1,550	0	0	0
All (PRIP Major Acquisitions)	6	17,503	17,503	0	0	0	0	10,170	0	0	0
All	32	1,862,472	1,296,583	0	37,100	526,789	192,121	103,762	0	2,500	85,859

¹ Fiscal Year 2000 funding reflects annual requirement.

² Funding is available from the Revolving Fund.

Table C.—Department of the Army Corps of Engineers Civil Works, Fiscal Year 2000 Total (Direct and Reimbursed) Program President's Environmental Program
[Funding (\$000)]

Category	FY								
	Appropriation				Budget				
					00				
	Account								
96	97	98	99	All	G1	C,G	OAM,G	Others	
Direct Program:									
Discretionary Program Study and Project Specific Activities:									
Mitigation	156,010	177,515	128,833	158,840	148,700	3,887	141,516	0	3,366
Restoration	105,782	74,031	181,516	82,289	138,940	15,584	97,154	10,702	18,500
Protection	79,450	90,594	126,875	81,852	86,319	459	3,909	74,044	7,907
Cleanup	12,020	3,458	317	540	0	0	0	0	0
Compliance	9,864	360	395	2,480	1,327	304	468	0	555
All (Study and Project Specific Activities)	383,098	345,958	438,036	324,001	376,355	20,234	243,047	84,746	27,328
Programmatic Activities:									
Aquatic Plant Control	4,000	2,000	5,000	3,000	3,000	0	3,000	0	0
Aquatic Ecosystem Restoration (SEC 206)	0	0	6,000	11,200	4,500	0	4,500	0	0
Beneficial Uses of Dredged Material (SEC 204)	2,500	1,500	2,000	350	1,000	0	1,000	0	0
Dredging Operations and Environmental Research (DOER)	0	1,500	4,000	5,000	8,000	0	0	8,000	0
Environmental Data Studies	0	100	100	100	100	100	0	0	0
Environmental Infrastructure	0	0	5,000	0	0	0	0	0	0
Environmental Review Guide for Operations (ERGO)	0	0	0	0	0	0	0	0	0
Formerly Utilized Sirtes Remedial Action Program (FUSRAP)	0	0	162,718 ¹	140,000	150,000	0	0	0	150,000
Great Lakes Remedial Action Program (SEC 401)	500	500	500	500	0	0	0	0	0
Hazardous Waste Site Restoration Initiative	3,500	0	0	0	0	0	0	0	0
National Recreation Management Support (NRMS)	0	0	0	1,000	0	0	0	0	0
Natural Resources Technical Support (NRTS)	0	0	700	0	0	0	0	0	0
Oil Spill Research Program	840	0	0	0	0	0	0	0	0
Pollution Prevention Program	5,000	0	0	0	0	0	0	0	0
Project Modification for Improvement of the Environment (SEC 1135)	10,850	17,000	21,175	11,000	8,500	0	8,500	0	0
Regulatory Program	101,000	106,000	108,000	106,000	117,000	0	0	0	117,000
Research and Development	8,331	10,399	17,450	19,450	18,000	4,500	3,000	10,500	0
Riverine Ecosystem Restoration and Flood Hazard Mitigation	0	0	0	0	25,000	0	25,000	0	0

RESPONSES BY ASSISTANT SECRETARY JOSEPH W. WESTPHAL TO ADDITIONAL
QUESTIONS FROM SENATOR LAUTENBERG

Question 1. Harbor Maintenance Tax.—I am concerned that any new or replacement fee on port users may ultimately serve to divert cargo from U.S. ports to those of Canada or Mexico, especially if the fee is assessed on the vessel. As you know, competition between ports in the Northeast and the Pacific Northwest and their Canada counterparts is very real. In New Jersey, for example, we are waiting to see if Halifax will take Sea-Land and Maersk business from New York Harbor. What are you doing to ensure that the Administration's draft proposal will not have that unintended consequence?

Answer. The Administration is very sensitive to this issue and has taken several steps to ensure that the potential for any such cargo diversions is minimized. First, we believe that because the proposed Harbor Services User Fee was structured as a user fee to be imposed on vessels and not on cargo, the incentive for shippers to redirect cargo away from U.S. ports is minimized. Second, the Administration decided to impose the Harbor Services User Fee on a "voyage" basis, rather than a "port call" basis, so that any incentive for vessel operators to reduce the number of calls to the United States during a particular voyage is eliminated. As an additional consideration, the imposition of the fee on a "voyage" basis was structured to be independent of the order of port calls between the United States and other North American ports to further minimize the potential for any unintended diversions of cargo.

With the fee structured as described above, vessel operators may be motivated to more fully utilize their vessel cargo capacity by carrying the maximum amount of goods on voyages to U.S. ports. A vessel could completely avoid the fee only by not calling at any U.S. ports on a particular voyage (presumably in favor of calling in Canada or Mexico). This is considered highly unlikely for virtually all U.S. trade due to the size and importance of the U.S. market and the overland transportation costs from Canadian and Mexican ports to the United States.

Question 2. Kill van Kull Project.—Dr. Westphal, I was very pleased that recently, Vice president Gore and you were able to join us in Elizabeth for the signing of the agreement between the Corps of Engineers and the Port Authority on the Kill van Kull to Newark Bay deepening project. That project has been a long time coming and it is important to both sides of the harbor. Please tell me the status of the bidding process and how soon the digging will start.

Answer. Bid opening on the first contract for work on the project occurred on March 11, 1999. The work is for removal of rock and non-rock material in the Constable hook area. From bid opening through award of contract to initiation of construction normally takes 60 to 90 days.

Question 3. FUSRAP/Thorium.—I note that the Administration proposes a \$10 million increase in the budget for the Formerly Utilized Sites Remedial Action Program—or "FUSRAP." I was pleased to see this increase as my state, New Jersey, has four sites contaminated with thorium waste. I'm also pleased to tell you, Dr. Westphal, that I'm very satisfied with the speed with which you are cleaning up these sites in my state. Some of these are located right in residential neighborhoods. To what do you owe the increased funding? And, with this increase, do you expect to clean these sites up faster than would have been done under the Department of Energy?

Answer. I believe that the increased funding is a result both of the Corps success in executing FUSRAP in BY 1998 and of efforts made by my office and the Corps to justify an increased allocation of funds for this program. While \$150 million is more than the Department of Energy (DOE) ever had available for FUSRAP in a single year, DOE's draft accelerated cleanup plan as well as their 10-year plan were predicated on funding at the \$182 million a year level. Some combination of increased efficiency and additional funding will be necessary to accelerate work.

Question 4. FUSRAP/Thorium.—Can you tell me what progress you plan to make at sites in New Jersey this year—specifically at the Wayne and Maywood sites?

Answer. At both of these sites we will continue remedial activities initiated in fiscal year 1998. In addition, we will develop final cleanup plans for both sites in accordance with the requirements of the Comprehensive Environmental Response, Compensation and Liability Act, which will establish the cleanup criteria at each of the sites. The Corps anticipates finalizing records of decisions for these sites early in fiscal year 2000.

RESPONSES BY ASSISTANT SECRETARY JOSEPH W. WESTPHAL TO ADDITIONAL
QUESTIONS FROM SENATOR BOXER

Question 1. American River Watershed Flood Control Project.—The Sacramento District has issued a preliminary American River Basin Comparison of Flood Risks of the various alternatives for flood control. Please provide the committee a realistic appraisal of this document in terms of the different methodologies used for different alternatives compared, what important costs, such as environmental mitigation, that were not included and the different sources of cost estimates. In other words, what advice and caution should we use in evaluating this document?

Answer. The American River Basin Comparison of Flood Risk dated March 11, 1999 was developed to display the results of the U.S. Army Corps of Engineers most recent hydrological analysis of American River flood frequency. For comparison purposes the data from the Corps previous frequency curves as well as from the National Research Council (NRC) conclusions are displayed in the attached table. Even though detailed cost estimates were not available for all the alternatives listed in the table, a preliminary estimate of the cost of each alternative was presented to give a relative comparison of costs between the alternatives. All 12 alternatives were evaluated for flood risk based on the same flow-frequency curve and using the same risk and uncertainty analysis. Therefore, the annual chance of exceedence and the recurrence interval values shown in the table for each alternative are comparable to the respective values for the other alternatives.

The components of the 12 alternatives are described in enclosure 1 to the table. The description of each alternative includes all appropriate components or provides an explanation of what additional features may be required. The preliminary costs presented in the table reflect a varying degree of certainty. Enclosure 2 describes the basis for and the uncertainty about the cost estimates. As noted in enclosure 2, the costs provided for some of the alternatives are based on much more detailed designs and estimates than others. Detention Dam Plan (ID 5) has the most detailed design because it was the tentatively recommended plan in the 1996 American River Watershed Project, Supplemental Information Report (SIR). Stepped Release Plan (ID 4) and Folsom Modification Plan (ID 6) were evaluated as candidate plans in the SIR and thus have designs on which to base the costs, but in less detail than the Detention Dam Plan. The Stepped Release Plan (ID 7) and Folsom Modification Plan (ID 8), as proposed by SAFCA, are proposed modifications of ID 4 and ID 6 and do not have the same design detail as the original plans. Thus, the estimated costs for ID 7 and ID 8 are not as certain as are those for ID 4 and ID 6. The Raise Folsom Plans (ID 9, ID 10, and ID 11) were evaluated on a limited basis in the SIR and as such have a lesser level of detail than the other alternatives. The 180,000 acre-foot Cofferdam Plan (ID 12) was based on information developed for the flood detention dams in the SIR, but no detailed design was completed. The cost estimates for the three Raise Folsom Plans and the Cofferdam Plan are comparable and of lesser certainty than those for the other alternatives.

The Corps is in the process of developing additional information on alternatives ID 7 through ID 12. This will allow development of more detailed cost estimates for use in evaluating alternatives. Results of these analyses will be presented in an information paper that is scheduled for completion by the end of April 1999. In the interim, the costs included in the table are suitable for comparing the relative difference in cost between the alternatives.

American River Basin—Comparison of Flood Risk using Corps' Risk-Based Analysis Procedure

ID	Flood Control Alternative	Frequency Curve								Preliminary Cost [\$ millions]
		COE 1986		COE 1997		NRC		COE 1999		
		% chance Exceedence in any year	Recurrence Interval (years)	% chance Exceedence in any year	Recurrence Interval (years)	% chance Exceedence in any year	Recurrence Interval (years)	% chance Exceedence in any year	Recurrence Interval (years)	
Alternatives Presented in Supplemental Information Report (SIR) Dated 1966										
1	Existing Conditions w/o Folsom Reoperation	1.28	78	1.61	62	1.27	79	1.49	67	0
2	Folsom Dam Reoperation w/o Common Features	1.02	98	1.32	76	0.99	101	1.19	84	0
3	Folsom Dam Reoperation w/Common Features	0.95	105	1.25	80	0.92	109	1.11	90	67
4	Stepped Release Plan—145,000/180,000 cfs	0.42	238	0.61	164	0.42	238	0.52	192	505–650
5	Detention Dam Plan—115,000 cfs	0.16	625	0.25	400	0.17	588	0.20	500	960–1000
6	Folsom Modification Plan—115,000 cfs	0.54	185	0.74	135	0.53	188	0.65	153	370–430
Modified Sir Alternatives Proposed By SAFCA										
7	Stepped Release Plan—145,000/180,000 cfs	0.48	208	0.66	151	0.47	212	0.58	172	505–600
8	Folsom Modification Plan—115,000 cfs	0.65	154	0.85	117	0.62	161	0.77	130	150–170
Folsom Raise Alternatives										
9	Raise 6.5 feet	0.55	181	0.76	131	0.54	185	0.66	151	300–350
10	Raise 17 feet	0.42	238	0.60	166	0.42	238	0.52	192	600–700
11	Raise 30 feet	0.32	313	0.46	217	0.32	313	0.39	256	800–1000
Coffer Dam										
12	180,000 Acre-Ft Auburn Coffer Dam	0.44	227	0.62	161	0.44	227	0.53	188	420–550

Notes:
¹ See Enclosure 1 for Description of Frequency Curves and Alternatives.
² The costs displayed are preliminary estimates based on available information. They are not based on a detailed Feasibility level study (except for ID 5, Detention Dam Plan which does have a feasibility level detailed estimate). Enclosure 2 provides additional information on the basis of the costs displayed.

AMERICAN RIVER BASIN: COMPARISON OF FLOOD RISK USING CORPS' RISK-BASED ANALYSIS PROCEDURE

DESCRIPTION OF FREQUENCY CURVES AND ALTERNATIVES

1. COE 1986 Frequency Curve represents statistical analyses performed after the February 1986 Flood (Presented in SIR).
2. COE 1997 Frequency Curve represents statistical analyses performed after the January 1997 Flood (June 1998).
3. NRC Frequency Curve represents the February 1999 statistical analyses recommended by the NRC.
4. COE 1999 Frequency Curve reflects analyses based on Bulletin 17B, systematic record, no historic adjustment, and station skew.
5. (goes with ID 2 & 3) Flood control storage varies from 400,000 af to 670,000 af depending on space in upstream reservoirs.
6. (goes with ID 3) Common features includes slurry walls in lower American River levees and modification to Sacramento River levees adjacent to Natomas Basin.
7. (goes with ID 4) Lower the 5 primary spillway bays and enlarge the 8 existing river outlets at Folsom Dam. Raise and modify levees on lower American River and Yolo Bypass. Widen Sacramento Weir and Bypass. Increase Folsom Dam's objective release from 115,000 to 145,000/ 180,000 cfs.
8. (goes with ID 5) 894,000 af single purpose flood control detention dam at the Auburn site. New high bridge to relocate Highway 49.
9. (goes with ID 6) Lower the 5 primary spillway bays, enlarge the 8 existing river outlets, modifications for increased surcharge storage, increase flood storage to 475,000/720,000 af.
10. (goes with ID 7) Enlarge the 8 existing river outlets, construct 5 new river outlets, modifications for increased surcharge storage, flood storage of 400,000/ 600,000 af, raise and modify levees the same as ID 4, increase objective release to 145,000/180,000 cfs.
11. (goes with ID 8) Enlarge the 8 existing river outlets, construct 5 new river outlets, modifications for increased surcharge storage, flood storage of 400,000/ 600,000 af.
12. (goes with ID 9) Raise dam and dikes 6.5 feet, replace spillway gates, construct 5 new river outlets, enlarge the 8 existing river outlets, construct new bridge downstream of dam. Objective release will remain at the existing 115,000 cfs.
13. (goes with ID 10) Raise dam and dikes 17 feet, reconstruct spillway and replace all spillway gates, construct 5 new river outlets, enlarge the 8 existing river outlets, new bridge downstream of dam, and acquire additional real estate. Objective release will remain at the existing 115,000 cfs.
14. (goes with ID 11) Same as ID 11 but raise by 30 feet. Objective release will remain at the existing 115,000 cfs.
15. (goes with ID 12) Construct concrete dam at or near previous Auburn Dam cofferdam site, use existing diversion tunnel with some modifications as main outlet, environmental mitigation, and land acquisition.

AMERICAN RIVER BASIN COMPARISON OF FLOOD RISK USING CORPS' RISK-BASED ANALYSIS PROCEDURE

EXPLANATION OF PRELIMINARY COSTS

ID	First Costs (\$ x millions)	Comments
1	0	
2	0	For these purposes it is assumed that the existing reoperation is a without project condition and has no incremental cost.
3	67	The current estimated cost of the authorized project which is under construction. For the purpose of this table this is a without project condition and other cost estimates do not include these costs.

ID	First Costs [\$ x millions]	Comments
4	505–650	The \$505 million is the cost for the plan as described in the 1996 Supplemental Information Report (SIR) updated to Oct 98 price level. In developing the plan for the SIR, it was believed that Folsom Dam's five primary spillways could be lowered without significantly affecting the large amount of public traffic using the road across the dam. New information became available subsequent to completing the SIR and it is now believed that there would be a significant impact to public traffic using the dam road. The most likely mitigation for the traffic impacts would be to construct a new bridge just downstream of the dam. Various local agencies have also questioned whether the costs included for hydraulic mitigation in the Yolo Bypass is adequate. The \$650 million includes costs for both a new bridge and additional contingency for hydraulic mitigation.
5	960–1000	Reflects estimate cited in the SIR updated by price level to Oct 98 prices. Includes \$88 million in sunk costs that are not included in any other estimate in this table. The range is to account for uncertainty in the cost estimate.
6	370–430	The \$370 million is based on the plan presented in the SIR updated by price level to Oct 98 prices. As with alternative 4 (Stepped Release Plan) it is likely a new bridge downstream of Folsom will be required to mitigate for traffic impacts. The \$430 million estimate includes the potential cost of a new bridge.
7	505–600	The \$505 million is the same cost as presented in the SIR for the stepped release plan. For this estimate it is assumed the costs are the same for the 5 new river outlets which are included in this plan in lieu of the spillway lowering feature included in the stepped release plan described in the SIR. The \$600 million includes additional costs because of the uncertainty in the cost for hydraulic mitigation in the Yolo Bypass. The spillways will not be lowered in this plan therefore, a new downstream bridge is assumed not to be needed.
8	150–170	This plan is similar to number 6 but includes flood control storage of 400,000/600,000 af in lieu of the 475,000/720,000 af, and includes 5 new river outlets in lieu of lowering the 5 primary spillway bays. It is expected that the 5 new river outlets will be somewhat less costly than lowering the spillways. However, a specific estimate of the new river outlets has not been made therefore the cost listed is the costs of the Folsom modifications in the SIR updated by price level to Oct 98 prices. The range is for uncertainty in the overall estimate. The spillway will not be lowered in this plan, therefore, a new downstream bridge is assumed not to be needed.
9	300–350	This is based on an estimate made by the Sacramento Area Flood Control Agency. Range is for uncertainty in the overall estimate. The Corps is in the process of developing an estimate.
10	600–700	This was evaluated as a preliminary measure in the development of the SIR. The cost range is because there are potentially significant additional costs for real estate, recreation modifications, costs for lost water during construction, and construction uncertainties due to seasonal conditions.
11	800–1000	This was evaluated as a preliminary measure in the development of the SIR. The cost range is because there are potentially significant additional costs for real estate, recreation modifications, costs for lost water during construction, and construction uncertainties due to seasonal availability.
12	420–550	The \$420 million does not include any costs for potential mitigation for impacts to Highway 49 bridge. If mitigation is required, there are various options to mitigate impacts to include a full bridge replacement estimated to cost about \$110 million. (Note: This plan includes modifications to Folsom outlet works (id 8) and does not include any sunk cost as were included in ID 5.)

Question 2. American River Watershed Flood Control Project.—What is your estimate of the length of time it would take for the Corps to produce a Chief of Engineers Report for the so-called “Folsom Raise” alternatives identified as nos. 9, 10 and 11 in this report?

Answer. It would take 18–24 months to complete a Chief of Engineers report that focuses only on an alternative that raises Folsom Dam for the sole purpose of flood control, it would take 18–24 months to complete. This would include, among other items of work, determining the optimum height of the raise of Folsom Dam and completion of a joint Environmental Impact Statement-Environmental Impact Report, which would specifically address this alternative and generally address all other alternatives previously considered. Included in the 18–24 months of effort would be a Feasibility-type report that would recommend a plan based on the outcome of optimization and environmental analysis.

RESPONSES BY ASSISTANT SECRETARY JOSEPH W. WESTPHAL TO ADDITIONAL
QUESTIONS FROM SENATOR GRAHAM

Question 1. Kissimmee River Restoration.—Of the funds provided to the Army Corps for Kissimmee River restoration since the inception of the project, how much will be obligated by the end of fiscal year 1999?

Answer. 100 percent of the funds received by the Corps of Engineers for Kissimmee River restoration will be obligated by the end of fiscal year 1999. A small amount of the obligated funds will not be expended because the ongoing contracts will have some undelivered orders.

Question 2. Kissimmee River Restoration.—In fiscal year 1999, the original request for the Kissimmee River project was \$27.3 million. The enacted amount was \$8 million. What effect has this had on the Army Corps schedule for the Kissimmee River project?

Answer. None. Modifications to contract 14, which was intended for spoil removal in the Lower Kissimmee Basin resulted in a total cost reduction of \$12 million and fiscal year 1999 cost reduction of 48 million. Lower Basin contract 6, which focused on the Istokpoga levee was delayed, resulting in a reduction of \$2 million in fiscal year 1999 costs. We are in the process of notifying OMB and the Appropriations Committees of our intent to reprogram \$5 million. Therefore, the reduction in fiscal year 1999 funds resulted in no change to the Corps construction on the Kissimmee project.

Question 3. Kissimmee River Restoration.—Given the changes that occurred in the fiscal year 1999 request, can we anticipate similar changes in the fiscal year 2000 request?

Answer. No. The circumstances leading to the cost reductions for fiscal year 1999 were a one-time event. The cost changes stemming from contract 14 modifications were incorporated into last year's budget. The delays in contract 6 are over and forward progress is anticipated this fiscal year. In addition, as I indicated earlier, by the end of fiscal year 1999, all funds received by the Corps will be obligated, making full funding of the fiscal year 2000 request a priority.

Question 4. Everglades Restoration.—Secretary Babbitt recently announced his intent to create an independent panel of scientists to review the development and implementation of the Corps of Engineers Everglades restoration plans. What role will the Army Corps play in selecting the panel of scientists?

Answer. First, let me emphasize that sound science has formed the foundation of all of our efforts to develop a plan to restore the Everglades. In fact the plan was developed by scores of scientists and engineers from many different agencies. In regard to the independent panel of scientists, we have always considered outside peer review to be an important component of the implementation of the restoration plan. We are working closely with the Department of the Interior and other agencies to select and convene this group as soon as possible.

Question 5. Shore Protection Cost Sharing.—Included in the WRDA 1999 legislation is a proposal to modify the cost-share requirements for shore protection projects to 50–50. This differs slightly from the Administration's original proposal. If WRDA 1999 is enacted into law with a 50–50 cost share provision for shore protection projects, will the Army Corps begin requesting funds to support these projects in fiscal year 2001?

Answer. Yes, if WRDA 1999 is enacted with cost sharing acceptable to the Administration, we will pursue funding to the extent feasible within budget constraints.

Question 6. Brevard County Issue No. 1.—BACKGROUND. The Army Corps initially agreed that as part of the settlement of this lawsuit, they would conduct the shore protection project as laid out in the feasibility study. In the summer of 1998, the Corps indicated that they wanted the right to make modifications to the project. These changes would be governed by regulations ER 1105–2–100.

The lawyers for Brevard County reviewed the regulations in December 1998 and took exception to 2–17b, which allows the Chief of Engineers the discretionary authority to make changes that do not meet criteria.

Because the Corps took the position that such decisions were non-reviewable, the Brevard County lawyers proposed that they add the following language to the settlement agreement: "No change may arbitrarily or capriciously reduce the scope of the Shore Protection Project".

During mediation on February 18, 1999, I understand that the Corps rejected the proposed sentence.

Can you explain why the Corps would disagree with a statement that it would not arbitrarily or capriciously reduce the scope of the Shore Protection Project that is part of the settlement agreement with Brevard County?

Answer. My response is to both issues you raised concerning Brevard County. The issues indicate that the Army Corps of Engineers has had dealings with lawyers for Brevard County, Florida regarding a settlement agreement and this implies that there is a lawsuit involving Brevard County. This is incorrect. There is no lawsuit involving Brevard County and there have been no such settlement discussions with lawyers for Brevard County. Nonetheless, it is clear the questions relate to ongoing settlement discussions between the U.S. Department of Justice/Army Corps of Engineers and private lawyers representing approximately 350 private beach front property owners located south of the Corps' Canaveral Harbor Project (*Applegate, et al. v. United States*, No. 92-832L, U.S. Ct. Fed. Cls.).

As such, the issues pertain to settlement discussions in a presently pending lawsuit, in which the United States Army is represented by the Department of Justice. You have asked me to explain why the Corps took particular positions in connection with the negotiations to attempt to develop an agreement under which this lawsuit might be settled. It is my understanding that settlement discussions are considered confidential, and that the Settlement Judge in this matter has specifically confirmed that these ongoing settlement discussions are considered confidential and are not to be divulged to outside parties. Accordingly, I respectfully decline to provide answers to the questions posed relative to this matter.

Question 7. Brevard County Issue No. 2.—BACKGROUND. Since the Feasibility study was completed in 1996, the Corps has refused to submit a budget request for this project. During mediation in June 1998, the County's lawyers asked the Corps to take a favorable position with respect to appropriation of the project and any increase in the Federal cost share.

The Corps refused, citing the President's policy against such projects. The Corps did agree to remain neutral at the mediation (and a sentence to this effect was added to the agreement).

On February 18, 1999, during the last mediation session, the County's lawyers requested that the Corps add two sentences to the agreement which stated that the Corps would not be prohibited from rendering answers or opinions in response to questions by the President, but would not advocate against the appropriation of funds for the Project. The Corps rejected this language.

The County's lawyers agreed to strike these two sentences and just stick with the neutrality sentence as previously agreed to in June 1998. The Corps rejected the offer, and by doing so, reneged on an agreement made in June 1998.

Can you explain why the Corps would reverse its position in the middle of a settlement agreement on a deal that was negotiated in good faith with Brevard County, Florida?

Answer. My response is to both issues you raised concerning Brevard County. The issues indicate that the Army Corps of Engineers has had dealings with lawyers for Brevard County, Florida regarding a settlement agreement and this implies that there is a lawsuit involving Brevard County. This is incorrect. There is no lawsuit involving Brevard County and there have been no such settlement discussions with lawyers for Brevard County. Nonetheless, it is clear the questions relate to ongoing settlement discussions between the U.S. Department of Justice/Army Corps of Engineers and private lawyers representing approximately 350 private beach front property owners located south of the Corps' Canaveral Harbor Project (*Applegate, et al. v. United States*, No. 92-832L, U.S. Ct. Fed. Cls.).

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