



**Ecological Restoration Business Association**  
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## FISCAL YEAR 2022 ENERGY AND WATER APPROPRIATIONS

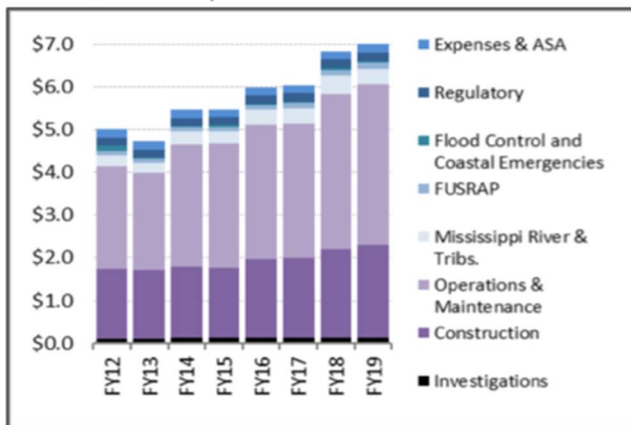
The Ecological Restoration Business Association (ERBA) represents businesses across the country that provide innovative solutions to offset the environmental impacts of development. Our members work closely with the U.S. Army Corps of Engineers (Corps) to establish wetland and stream mitigation projects and responsibly relieve permittees of environmental liabilities.

When all players are able to operate efficiently, the public benefits from environmental protection, permittees receive a green light to move forward with their project, and the private sector delivers timely and cost sensitive restoration solutions. However, stakeholders in this process are often negatively impacted by the simple reality that Corps Districts’ Regulatory Programs do not have enough dedicated staff and funding resources to timely perform their role and process permit and application reviews. To address this resource constraint, ERBA requests that Congress increase funding for the Army Corps’ Regulatory Program to \$250 Million annually.

### Historically Stagnant Budget Despite Increasing Program Demands

Over the past fifteen years, annual Congressional appropriations for the Corps have fluctuated from approximately \$5 billion to \$7 billion, yet funding for the Regulatory Program has flat-lined at around \$200 million (see the chart below).<sup>1</sup> Among many responsibilities critical to the nation’s infrastructure, the Corps Regulatory Program

(nominal \$ in billions)



Source: CRS.

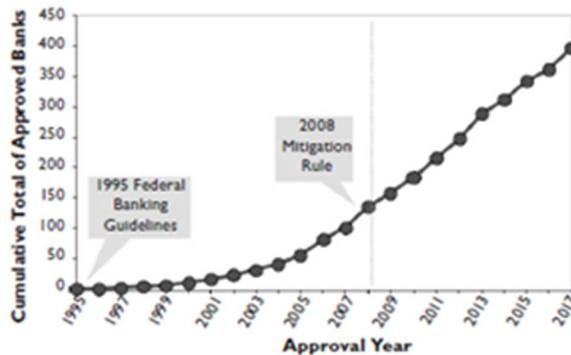
### **USACE Account Funding, FY2012-FY2019**

oversees permit approvals for activities affecting regulated waters. This includes nationwide administration of the Clean Water Act Section 404 dredge and fill program – a major program with significant demands on Corps Districts.

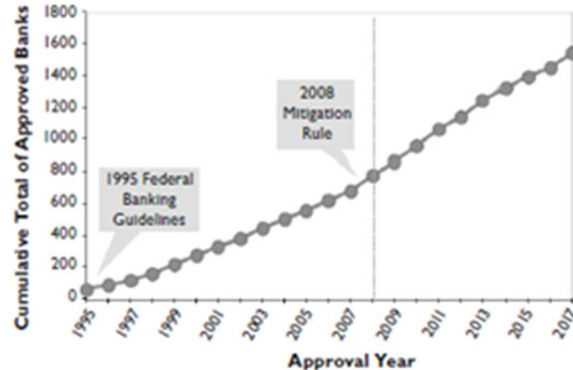
During this same time period, the mitigation program has seen exponential growth in the number of mitigation projects submitted for District review and ongoing oversight (see graphs on next page). To cope, the Corps has had to shrink staffing levels and reduce training for existing staff. Consequently, the time it takes for mitigation to be reviewed, approved and utilized has increased dramatically, which negatively delays delivery of the environmental benefits that mitigation provides and hinders the economic benefits of timely infrastructure development. In some instances, Corps Districts that previously processed mitigation bank approvals in two to three years are now so staffing challenged that bank approvals are taking an average of six years and counting. Delay trends like this are debilitating for investment, limit mitigation options for permittees, and deter growth in the green economic sector of ecological restoration.

<sup>1</sup> Congressional Research Service, “Corps of Engineers: FY2019 Appropriations,” November 16, 2018.

**Figure 2. Cumulative total of the subset of mitigation banks with stream credits, approved over time (from 1995 through 2017)**



**Figure 1. Cumulative total of all mitigation banks with 404 credits, approved over time (from 1995 through 2017)**



Graphs from: Hough and Harrington, “Ten Years of the Compensatory Mitigation Rule: Reflections on Progress and Opportunities” 49 *ELR* 10018, 10023 January 2019.

### **Inadequate Resources Decreases Corps Regulatory Performance**

Recognizing the significance of the mitigation program, in Spring 2020 the Corps established a Mission Success Criteria specific to mitigation bank reviews: complete agency review and approval of Mitigation Banking Instruments (MBI) in 550 regulatory review days (double the 225-day timeline stipulated in the Corps’ 2008 Mitigation Rule). For 2020, the first year of tracking the Mitigation Performance Metric, the Corps set a target goal for 70% of MBI approvals nationally to comply with the 550-day timeline. Initial data shared by the Corps with ERBA reveals that only 35% of MBI approvals met this timeline.

Additionally, and not captured by the Mitigation Performance Metric, there are multiple other mitigation decisions that the Corps must make after an MBI is approved (e.g., monitoring reports, bank credit releases, financial assurance releases). ERBA members’ experiences indicate that the Corps does not have sufficient staffing or training resources to fulfill these ongoing oversight obligations in a timely manner, which further complicates mitigation delivery and the progress of development.

### **Major Investment in Corps Regulatory = Faster Permitting, Reduced Costs, and Improved Ecological Outcomes**

When the Corps has the staffing and resource capacity to prioritize project and permit applications, they are empowered to improve permit processing and related requests. In turn, these efficiencies and predictability in permitting timelines attracts positive business and infrastructure investments and increases economic and ecological benefits. From our experience, this prioritization can only occur when the Corps has the funding and dedicated, knowledgeable resources necessary to implement their mission. Essentially, Corps’ Districts with trained permitting staff and resources for their Regulatory Programs will best facilitate “shovel ready” infrastructure. Considering our national infrastructure and resiliency goals, it makes sense to substantially increase the Corps’ Regulatory budget for more efficient project and permit approvals. ***We strongly support \$250 million annual funding for the Corps Regulatory Budget in the President’s fiscal year 2022 budget.***

### **Thank You! Questions?**

We appreciate your consideration of our recommendations. Please contact Sara Johnson, Executive Director at [sjohnson@ecologicalrestoration.org](mailto:sjohnson@ecologicalrestoration.org) with questions or comments.