Non-federal Perspectives on PPAs

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UMRBA

- Regional interstate organization formed by the 5 Governor states: Minnesota, Wisconsin, Illinois, Iowa, and Missouri
- Facilitate dialogue, cooperative action, and coordination of the states' river-related programs and policies
- Work with federal agencies that have river responsibilities.
Project Partnership Agreements (PPAs)

Legally binding documents used by the Corps to enter into contractual cost-share projects with non-federal sponsors.
UMRBA’s message

UMRBA member states **want** to partner with the Corps on water resource projects that the states find valuable. And, we want nonprofit partners to seamlessly serve as cost-share partners.
The major challenges that UMRBA is seeking resolution:

- Indemnification
- OMRR&R
- Donated goods
The major challenges:

- Indemnification
- OMRR&R
- Donated goods
Indemnification

Section 101(j) and 103(j)(1) of WRDA 1986 –

“Requirement for agreement. – Any project to which this section applies (other than a project for hydroelectric power) shall be initiated only after non-Federal interests have entered into binding agreements with the Secretary to pay 100 percent of the operation, maintenance, and replacement and rehabilitation costs of the project, to pay the non-Federal share the costs of construction required by this section, and to hold and save the United States free from damages to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors.”
The major challenges:

- Indemnification
- OMRR&R
- Donated goods
OMRR&R

Section 103 (j)(1) of WRDA 1986 – “Any project to which this section applies (other than a project for hydroelectric power) shall be initiated only after non-Federal interests have entered into binding agreements with the Secretary to pay 100 percent of the operation, maintenance, and replacement and rehabilitation costs of the project, to pay the non-Federal share the costs of construction required by this section.”

- The law does not place a time limit, historically Administration decision of 50 years
- Applies to flood risk management, ecosystem restoration, navigation and other [water resource projects]
- The PPAs can include language that OMRR&R needs may change over time [however, counsel is not able to evaluate future obligations with such a statement]
The major challenges:

- Indemnification
- OMRR&R
- Donated goods
Donated goods

Section 2003 of WRDA 2007

“(D) LIMITATIONS.—Credit authorized under this paragraph for a project— (iv) shall not exceed the actual and reasonable costs of the materials, services, or other things provided by the non-Federal interest, as determined by the Secretary.”

• In 2007, the definition of non-federal sponsors expanded to include nonprofit organizations

• Corps argument: Reduction of total project costs still reduces cost-share contribution need
WRDA language and current efforts

Section 1013 of WRRDA 2014 –

IN GENERAL.—“The Secretary shall contract with the National Academy of Public Administration to carry out a comprehensive review of the process for preparing, negotiating, and approving Project Partnership Agreements and the Project Partnership Agreement template, which shall include—”

Section 114 of House T&I Committee’s WRDA 2016 Measure
UMRBA recommended language

- Modify the hold and save clause to a more equitable, shared approach to liability that does not extend beyond the liabilities that already exist under applicable constitutions and laws.
UMRBA recommended language (cont.)

• Include language providing that *unanticipated costs* for project construction are subject to a) the state’s future appropriations for the project or b) the nonprofit’s availability of funds for the project.
  • In addition, construct projects in phases where appropriate to limit cost overruns.

• Provide greater *specificity regarding OMRR&R costs and requirements* in the PPAs rather than providing those requirements post-construction.
Concluding remarks

- We extend our hand to **work with other non-federal sponsors** across the country to get these issues resolved.

- We understand that these agreements are **in opposition to most states’ constitutions and tort laws, tribal law, as well as nonprofit organizations abilities to execute.**
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