



**Upper Mississippi River
Basin Association**

Non-federal Perspectives on PPAs

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NATIONAL WATERWAYS CONFERENCE, LA

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.

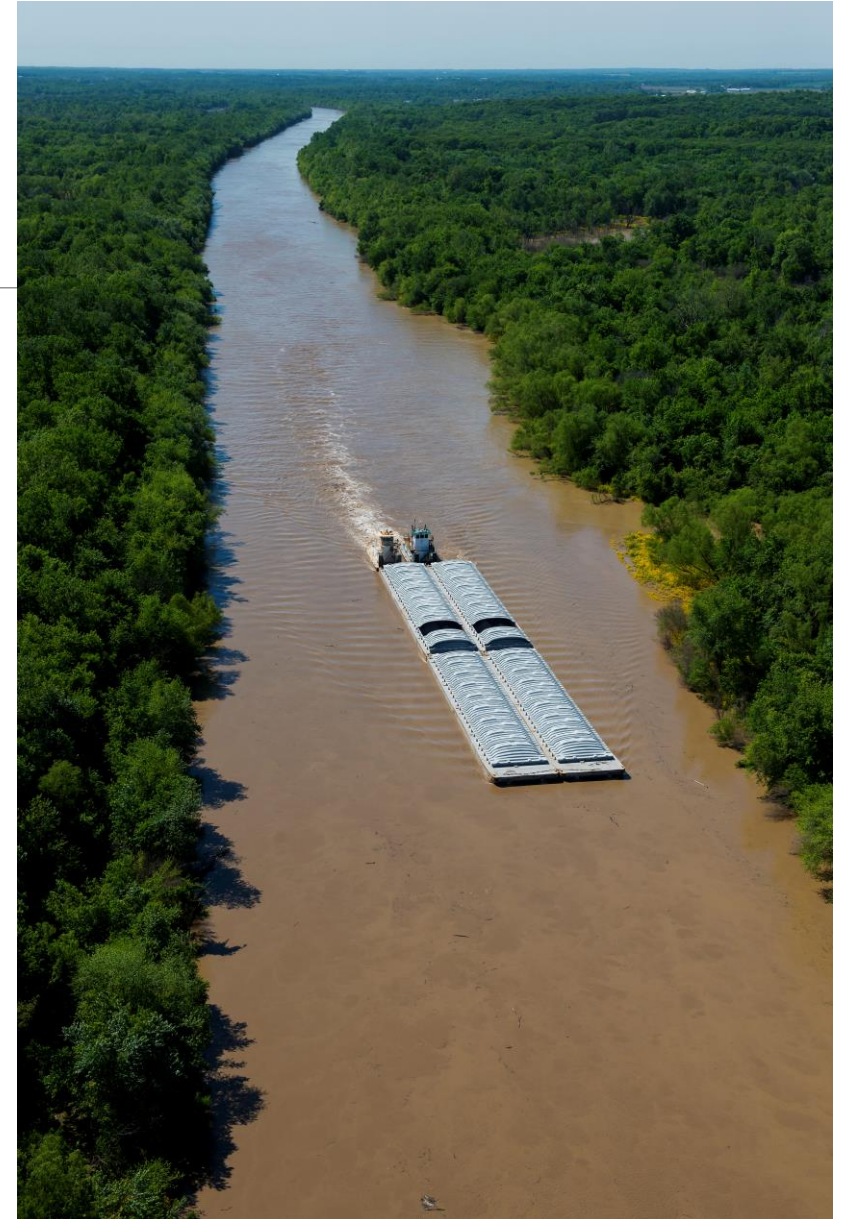
Project Partnership Agreements (PPAs)

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**, expect 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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