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The Honorable Mike Collins, Chair
The Honorable Federica Wilson, Ranking Member
U.S. House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Water Resources and Environment
2251 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Collins and Ranking Member Wilson:

The Interstate Council on Water Policy (ICWP) expresses our appreciation to Congress for the successful completion of the Water Resources Development Act (WRDA) of 2024 (Public Law No. 118-272). Among its many beneficial provisions, Congressional efforts to address the challenges faced by non-Federal sponsors in US Army Corps of Engineers (USACE) Project Partnership Agreements (PPAs) in WRDA 2024 represent important progress toward more equitable and effective collaborations with non-Federal partners.

Looking ahead, ICWP is eager to continue working with Congress to build on these achievements and further advance equitable solutions for non-Federal partners in WRDA 2026.

Request for PPA Reforms in WRDA 2026

ICWP urges Congress to finalize and enact PPA reforms during WRDA 2026 development. As stipulated by WRDA 2024, ICWP and our members have worked collaboratively since its passage with the Government Accountability Office (GAO) to inform its analysis regarding potential reforms to USACE PPA requirements, specifically those related to indemnification and operation, maintenance, repair, replacement and rehabilitation (OMRR&R).

ICWP expects that GAO's recommendations for any necessary changes to existing law or policy will be incorporated into statute. Through such codification, Congress can provide the clarity and certainty that non-Federal partners need to participate fully and confidently in USACE projects. Enshrining these reforms will ensure their continuity and empower non-

Federal organizations to advance water resource objectives in alignment with their respective laws, policies, and long-term interests.

Indemnification reform

ICWP requests that the Committee include language in WRDA 2026 that replaces the current blanket indemnification requirement with a more balanced approach to liability.

- Section 103(j) of WRDA 1986 requires non-Federal interests to hold the United States harmless from damages. This stipulation is often at odds with the constitutions and laws of many states as well as the policies of nonprofit organizations.
- Our previous commentary on WRDA 2024 highlighted that 22 states currently face direct conflicts between PPA requirements and their state laws. Many state constitutions prohibit agencies from obligating funds without an appropriation or incurring indebtedness on behalf of the state before such appropriation is made.
- The current indemnification requirement forces non-Federal parties to assume indeterminate liabilities, which may arise at unpredictable times and costs for uncertain reasons. This broad assumption of liability often exceeds limits set by state tort law and creates a significant barrier to beneficial water resource projects.

ICWP urges Congress to eliminate or replace blanket indemnification with a more equitable, shared liability model, allowing non-Federal partners to participate equally in USACE-partnered projects.

Define an endpoint for OMRR&R obligations

ICWP also calls for the establishment of a clearly defined endpoint for OMRR&R obligations.

- Section 103(j) of WRDA 1986 requires non-Federal sponsors to bear 100 percent of these costs. Historically, USACE limited this obligation to the standard 50-year design life of a project. However, a policy change in 2012 now requires perpetual non-Federal responsibility.
- This open-ended commitment places an undue burden on non-Federal entities and discourages future participation. Setting a defined endpoint for these obligations would provide a more equitable and sustainable partnership framework.

Address Beneficial Use of Dredge Material in WRDA 2026

Additionally, ICWP requests that WRDA 2026 address the beneficial use of dredge material.

- While beneficial reuse for flood control and ecosystem restoration is a priority, it can increase project costs due to greater transportation distances.
- USACE has set an ambitious goal of 70 percent beneficial use by 2030, but progress toward this target has been hindered by delays in completing internal guidance. For example, in the Great Lakes region, USACE's requirement to select the least cost

alternative for dredge disposal may conflict with beneficial use objectives and limit opportunities for local community benefits.

ICWP encourages Congress to consider requiring that USACE allow greater flexibility and enable pursuit of beneficial use of dredge material to allow for more local community benefits.

Conclusion

ICWP remains committed to collaborating with Congress to develop a WRDA 2026 solution that supports equitable engagement by project partners and ensures USACE fulfills its Federal obligations on PPAs. By implementing a fair approach to PPA liability, clearly defining OMRR&R endpoints, and prioritizing flexible, beneficial use of dredge material, Congress can advance water resource initiatives that best serve the nation's water resource needs.

For further questions or clarification, please contact ICWP Executive Director Beth Callaway at: beth@icwp.org.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Beth Callaway', with a stylized, flowing script.

Beth Callaway