

**Testimony of
Bren Haase
Executive Assistant to the Governor of Louisiana for Coastal Activities
Chairman of the Coastal Protection and Restoration Authority Board**

**Before the
Senate Environment and Public Works Committee
Hearing titled
*“WRDA 2024: Stakeholder Feedback on USACE Project Partnership Agreements”***

November 29, 2023

Chairman Carper, Ranking Member Capito, and Members of the Committee, thank you for the invitation to testify today to provide feedback on the U.S. Army Corps of Engineers' (Corps) Project Partnership Agreements (PPAs).

My name is Bren Haase, and I have the honor of serving as Executive Assistant to Louisiana Governor John Bel Edwards for Coastal Activities, as well as the Chairman of the Board for the state's Coastal Protection and Restoration Authority (CPRA).

In many ways, CPRA was explicitly created by the Louisiana Legislature to partner with the Corps in expediting improvements to hurricane protection infrastructure following Hurricanes Katrina and Rita and to assist in the recovery and sustainability of our state's coastal communities. CPRA's larger mission is to provide hurricane protection for our coastal communities and ecosystem restoration to counteract the widespread wetland loss that threatens our homes and businesses, natural resources, and a way of life. To achieve these objectives, CPRA provides a comprehensive response to our coastal crisis by developing, updating, and implementing a 50-year, \$50 billion Coastal Master Plan to address these risks and challenges in an integrated fashion.

A strong partnership with the Corps is essential for coastal Louisiana to thrive into the future. Our ambitious coastal master plan calls for large scale investments in ecosystem restoration and hurricane protection infrastructure that can only be accomplished in partnership with the federal government. We have proudly and successfully partnered with the Corps through the New Orleans District to deliver some of the largest and most significant hurricane risk reduction projects in the nation and continue to work side by side on new projects to restore essential landscapes and reduce economic risk to communities across south Louisiana. Our Coastal Master Plan envisions a strong and effective collaboration with the Corps, which is our most prominent federal partner. Two of the Corps' primary missions, flood control and ecosystem restoration, align directly with the mandate of CPRA in coastal Louisiana. Without the Corps, the State of Louisiana will not be able meet its coastal protection and restoration goals. Simply put, the Corps is a partner that the coastal program cannot do without.

Before CPRA was established, local levee boards in the state were the primary signatories for risk reduction projects in South Louisiana, signing at least 40 cooperative agreements of some type dating back to 1965. Typically, these levee boards felt compelled to either go along with the standard Corps PPA, or forego the opportunity to leverage federal funding for their communities. However, when CPRA was established, the State of Louisiana began negotiating agreements with the Corps that would result in effectively built projects that could be managed in a sustained way. As the primary non-federal sponsor (NFS) for such projects in coastal Louisiana, CPRA was positioned to negotiate directly with the Corps on many projects. We have also provided assistance on PPAs to localities such as Amite River Basin Commission with the Amite Rivers and Tributaries project and to other states that are pursuing their own ecosystem restoration programs with the Corps.

Since the inception of the agency in 2007, CPRA has signed approximately 15 PPAs or amendments thereto, and 25 Feasibility Cost Sharing Agreements, Design Agreements, and

Memoranda of Understanding (MOU) and Agreement. These arrangements have spanned a variety of project types, including structural risk reduction to counter storm surge, coastal ecosystem restoration projects to rejuvenate eroding marsh or barrier islands, and even the first-of-its-kind major effort to facilitate nonstructural resilience measures such as home elevation and flood proofing of businesses. While this experience has allowed us to accomplish many critical projects together, it has also provided us with a perspective that the Committee may find valuable about where positive progress has been made and where additional improvements may be warranted when it comes to Corps policy. Just as CPRA and the Corps' missions align, so do our sense of urgency, our shared sense of stewardship for limited financial resources, and our lasting commitment to community preservation in the face on increasing risk. In that spirit I offer these constructive recommendations and reflections.

Today's hearing focuses on PPAs. PPAs are an important tool the Corps uses to set the terms and conditions for the construction of a project or a separable element of a project. Over the years Congress has provided, by law, certain flexibilities in PPAs recognizing the unique set of circumstances project sponsors, such as CPRA, can face. However, these are underutilized by the Corps. I believe in order for our coastal program to maximize its successful partnerships with the Corps, the Corps must more consistently deploy these flexibilities to the benefit of our common goals.

The Corps can increase the effectiveness and success of its partnerships with states by fully employing the policy flexibilities that Congress has provided by law to tailor PPAs, and other agreements, to fit the particular situations of projects and the specific strengths and limitations of the NFS. Local sponsors have their own legal or policy considerations when committing to multi-million and multi-billion dollar project partnerships. It is imperative that the Corps allow for agreements to reflect the realities and needs of the NFS. The Louisiana coast is a completely different landscape than the beaches of Delaware or the mountains in West Virginia. It is not prudent for the Corps agreements to be rigidly designed as "one-size-fits-all," particularly given the increasing diversity of the Corps missions and suite of projects it executes across the entire country. Furthermore, the Corps can ensure these partnerships are strong by increasing transparency related to such agreements.

In order to provide the Committee with our perspective on the NFS experience with PPAs, I will discuss the challenges CPRA has encountered over the last sixteen years, identify areas where progress has been made, point out opportunities for facilitating greater involvement from NFSs, and suggest recommendations for the Committee to consider.

The primary challenge a NFS faces is that while the Corps is a partner in a project, the Corps can seem inflexible and overly committed to the status quo. While a default policy may be appropriate most of the time, exercising discretion to deviate from the default can sometimes improve the whole project. However, it often seems as if the NFS is forced to go along with the default, or forego the partnering opportunity.

One example is the \$6.5 billion Southwest Coastal, Louisiana project for which a PPA was signed by the CPRA Board on June 21, 2023. As this PPA process began, CPRA was

informed that any “substantial deviation” from the model PPA language would require approval from Corps Headquarters. Despite there being good reason for the PPA to reflect the distinctive needs of the project, elevating multiple issues to that level would have been time consuming, cumbersome, and perhaps even counter-productive. CPRA had multiple issues with the model language, particularly with one clause that forced us to waive reimbursement for the value of real property interests and relocations that exceeds thirty-five percent of construction costs for the National Ecosystem Restoration component features. We do not agree with that waiver, but with the model language in place we were unable to change it. CPRA faced the threat of project delay or lost credit, so we had to get the PPA executed. CPRA had to move forward under protest on an issue that could have been resolvable. All in all, the concept that PPAs cannot reflect unique circumstances and must instead adhere to “model language” that the NFS has minimal input on is a problematic way of conducting business, particularly on major projects costing in the billions. These are extremely important and time sensitive issues that we are working on to save our communities and coastal lands. We should be a true partner with the ability to provide meaningful input on the terms of the partnership. After all, the NFS contributes in a major way by bringing the thirty-five percent cost share to the table for a typical Corps project.

It is important to get the terms of a PPA right on the front end because it is very difficult to change a signed PPA. Signing a PPA is, of course, an indication of a long-term commitment. The good news is that the Corps can be willing to change a PPA, in certain rare circumstances. However, the updates to the PPA generally go in one direction – the Corps’. If the Corps needs to insert new guidance or resolve an issue that has been unfavorable to it, the Corps will strongly encourage the NFS to agree to the necessary updates. For example, the Corps asked CPRA to make changes to the PPA for the Morganza to the Gulf of Mexico Project relative to Hazardous, Toxic, and Radioactive Waste (HTRW) issues. These changes were accommodated to advance the project in a timely manner. This request for change was in response to CPRA successfully pointing out that prior model PPA language did not make the NFS responsible for cleanup of certain substances. The Corps, relying solely on unwritten Corps policy, originally required that the NFS conduct and fully pay for HTRW cleanup activities for which it was not contractually obligated. In response, the Corps modified the model PPA language to make HTRW responsibilities more onerous on the NFS. Referencing unwritten Corps policy, the Corps contended it was only correcting the language to reflect the actual policy. On the other hand, if the NFS encounters an issue with a PPA, even one long predicted, it can be dissuaded from re-negotiating a PPA for fears that it will result in negative outcomes. To improve this dynamic, the Corps should either be more receptive to NFS requests at the front end, or allow for an easier path to PPA updates that can be favorable to the project.

The stakes for signing PPAs continue to rise, particularly given the relatively recent policy change of the Corps to require into perpetuity the Operation, Maintenance, Repair, Replacement, and Rehabilitation, known as OMRR&R, which is usually well beyond the designed life of a project. While ensuring that NFSs are capable of operating and maintaining a project is important, the indefinite commitment is excessive, particularly for ecosystem restoration projects. Certain project types, such as natural infrastructure or ecosystem restoration, have to evolve with the changing conditions over time. It is not always prudent to

maintain the same status that a project had upon the completion of construction, because the environment is a dynamic place. Instead, it would be better if the Corps returned to the policy of requiring OMRR&R for the duration of the project life. That way, NFSs could have greater confidence in the scale of the commitments, as well as the wisdom of such efforts. Greater certainty will allow the implementation of more projects to the benefit of our nation's communities and environment.

Additionally through PPAs, the Corps puts the NFS in a difficult position when there are design or construction deficiencies that were derived from Corps or Corps contractor actions. The Corps requires OMRR&R for a project with no exit clause in the PPA for the NFS to avoid being required to pay for solving the problems resulting from such deficiencies. The Corps should not be able to transfer a project with unreasonable problems to a NFS, particularly when those design or construction problems have been identified prior to the transfer and have been proven valid. CPRA has experienced that challenge with respect to certain elements of the Hurricane Storm Damage Risk Reduction System (HSDRRS) environmental mitigation efforts, for example. PPAs should include criteria that ensure that OMRR&R is not a method to transfer the cost of project problems to the NFS.

In a similar way, the Corps indemnification clauses within PPAs are challenging as the provisions shift liability to the NFS even for projects that were fully designed and constructed by the Corps. This issue applies to every project. While the NFS should be willing to assume a degree of liability, the Corps should not be absolved for situations where its design or construction was deficient.

A top issue for CPRA is ensuring that our limited financial resources are leveraged to full effect. Cost sharing is a challenge with the Corps for a variety of reasons. One difficulty is that the transparency provided through the PPA process is one-way. The Corps can examine the books of a NFS in great detail; the NFS has no such ability to peer into the Corps' financial statements to evaluate their expenditures. As a result, the NFS is beholden to cost sharing at whatever level of efficiency the Corps can execute. If the Corps' cost rise, so too must the cost to the NFS. With construction costs dramatically increasing as a result of inflation and other factors, CPRA's ability to meet the cost share for our suite of projects, particularly as they enter the major construction phases, is a top concern. We should be able to have greater confidence that the Corps' expenditures are reasonable. After all, CPRA has found it beneficial to vet our project expenses with the Corps in order to gain assurance that the Corps will give due credit for such work. This exchange is helpful and provides confidence in the partnership. In the same way, we should have the ability to examine expenses and identify areas where the NFS is best positioned to deliver effectively, and vice versa. This should not be an impossible request. The State of Louisiana has been able to get reciprocal audit rights with other federal agencies for similar projects through the Coastal Wetlands Planning Protection and Restoration Act (CWPPRA) program – though the Corps has resisted this despite being a key federal agency within CWPPRA. This ability allows the NFS to review, in the same way as the federal entity can, what the Corps calls the “reasonableness, allocability, and allowability” of costs incurred when it evaluates a NFS' Work-In-Kind (WIK) efforts. It is common sense to give the NFS the

reciprocal ability given that the NFS will be accountable for coming up with extra funding per the cost sharing agreement if the project costs escalate. As such, additional transparency into costs is an important area for improvement with Corps PPAs.

Despite these challenges, CPRA has been successful in securing positive changes related to PPAs. The Corps' recent publication of the PPAs signed across all districts was a beneficial shift for empowering NFSs to negotiate PPAs on better terms. That transparency provided models for projects to look to, as well as allowed accommodations given in previous negotiations to be used in other similar cases (for example, PPAs for Florida Everglades could be instructive to Louisiana's coastal efforts). However, for years the Corps was reluctant to provide such disclosures even though it was specifically required by Congress to do so by the Spring of 2008 through enactment of the provisions in 42 U.S.C. §1962d-5b(g) by the Water Resources Development Act (WRDA) of 2007. Only after CPRA filed multiple Freedom of Information Act requests and threatened to sue in 2011 to enforce the WRDA 2007 provisions did the Corps finally release the PPAs and publish them on the internet. Now, NFSs have the ability to draw from the experience of NFSs working with other Corps Districts and Divisions, instead of operating in isolation. Further information sharing related to agreements should serve future and prospective NFSs well.

CPRA has also advocated for changes related to PPAs that have been adopted for other Corps projects nationwide. When Congress passed the Bipartisan Budget Act of 2018 (Public Law 115-123), CPRA requested a modification to the deferred payback interest provisions for the West Shore Lake Pontchartrain Risk Reduction Project, which was agreed to by the Corps and resulted in a nationwide change to the model agreements. We credit the Corps for recognizing the merit of these changes and applying them to other projects. This example shows how open dialogue between the NFS and Corps can have benefits across the board.

Congress has also provided valuable authorities to assist the NFS in engaging on PPAs. A longstanding, fundamental challenge related to signing PPAs is the financial commitment they represent. Fortunately, Congress has been working to give NFSs a greater ability to leverage funding sources to execute projects. A significant example was Section 8149, Use of Other Federal Funds, authorities in WRDA 2022. While guidance from Corps Headquarters is pending, the plain reading of the section shows that the paradigm has changed. Previously, the Corps would look to statute or other agencies for explicit permission that a funding sources with a federal imprint could be used by the NFS for cost sharing. Now, Congress has directed the Corps to allow such funds to be used by the NFS, as long as the funds are directed to similar purposes, unless federal law clearly prohibits the funds from being match eligible. For CPRA, this change in perspective means that funding streams like the Council-Selected Restoration Component of the RESTORE Act and energy revenue sharing such as the Gulf of Mexico Energy Security Act funds clearly can be used to meet our cost share requirements. While those funding sources had not been deemed ineligible by the Corps to date, CPRA believes it is beneficial to prevent that issue from ever arising. CPRA could envision a scenario whereby a project's funding source could be ruled ineligible, resulting in the NFS having to withdraw from the partnership even with the necessary funding in place as a result of such a technicality.

CPRA encourages the Committee to explore additional opportunities to improve the outcome of PPAs. Right sizing land rights requirements is a priority for CPRA that would resolve an impasse that has halted projects in coastal Louisiana. Over eighty percent of our coastal wetlands are privately held. To achieve widespread conservation and restoration, we must partner with landowners who are committed to maintaining their investment in these lands long term. While these entities have property rights that they are reluctant to give up, many of them are more than willing to allow for conservation and restoration to occur. In fact, some landowners would give the necessary property rights to complete a restoration project to the state for free. But these landowners are not willing to sell their land, so the Corps' standard requirement for acquiring all project lands in full fee title is impracticable. This impasse has resulted in the underutilization of the Louisiana Coastal Area program established in WRDA 2007 (Public Law 110-114). For ecosystem restoration projects in such settings, we encourage the Corps to use the flexibilities Congress has provided them to only require the minimum property rights necessary to conduct a project.

Another related issue the Committee should consider addressing through statutory changes would be to allow NFSs to accept donations. For the North Lake Boudreaux CWPPRA project, the local parish wanted to provide funds because it would help with a levee project on a similar footprint. However, given the problem of "augmentation of appropriations," the Corps was unable to accept those contributions. This limits our ability as the NFS to partner and leverage resources, which would be particularly helpful with the Louisiana Coastal Area program, for example.

It would be helpful for the Committee to provide greater clarity on the ability of the NFS to negotiate a cost sharing plan for the LERRDS, WIK, and other creditable work performed by the NFS. In many instances, the NFS has advanced the project in recognition of the project's importance and the anticipation of Congressional authorization. Yet it is very difficult to receive the due credit for these expenditures, as it is typical Corps policy to recognize credit for work conducted only after a PPA is signed. Time is a scarce resource impeding the success of our coastal mission, so CPRA cannot wait to get to work on these critical projects. As a means to overcome the time-intensive process, CPRA has worked to broker crediting MOUs with the Corps in advance of PPA execution. Getting these additional agreements in place has proven to be worthwhile – versus letting creditable work go unaccounted for – but there is a cost in time, effort, and funding to broker these agreements. Therefore, it would be helpful if there were better guidance for implementing such efforts into the PPA so that there would be confidence that credit could be realized. Additionally, we need the ability accomplish cross-crediting as allowed by Section 1020 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) at the onset, so that relevant additional work a NFS provides through the project delivery process could be leveraged to other projects, without an indefinite negotiation after the fact. The result of these abilities would be expedited projects, that could conceivably cost less given the reduced inflationary risk, for example.

Congress has authorized the Corps to respond to a natural disaster by implementing, repairing, or rehabilitating certain projects at full federal expense. The State of Louisiana,

having suffered from some of the nation's worst examples of natural disasters, greatly appreciates how Congress has assisted our state in such instances. As the NFS for such work, CPRA is proud to partner on these recovery and other full federal efforts, such as the required mitigation for the Mississippi River Gulf Outlet. However, it is unclear how the Corps will compensate the NFS in such situations where the LERRDs or WIK are provided by the NFS. Reimbursement was difficult to receive and required extensive negotiation all the way through Corps Headquarters to implement on the New Orleans to Venice Hurricane Risk Reduction and New Orleans to Venice Non Federal Levee projects. Congress should better establish other helpful paths to positive resolutions, such as the ability to cross credit efforts to other projects, which would be particularly helpful for NFSs such as CPRA that lead on multiple Corps endeavors. For example, a similar use of such policy would be beneficial to initiating the critically important Mississippi River Gulf Outlet (MRGO) ecosystem restoration project that Congress supported in WRDA 2022. Even though MRGO ecosystem restoration is at full federal expense, state-led projects can still directly benefit the federal project and should be given due credit. Implementing clarity for such efforts could inspire greater efforts and stronger contributions from the NFS to improve these types of projects.

Additionally, it would be productive for Congress to also consider the situation where the NFS provides operations and maintenance (O&M) for fully federally funded projects at its own expense. When the Corps does not receive adequate funding for O&M, whether through its budgeting or through the Congressional appropriations process, it turns to the NFS to conduct its required O&M. Unfortunately, the PPA can be silent on how to treat these O&M expenditures. This is the case for CPRA with the HSDRRS project, which has required predictable, but unfunded, O&M on components such as the Western Closure Complex. While the NFS certainly wants to keep these sizeable federal infrastructure investments functioning at a high level, it would be helpful to have a provision to allow the NFS to receive credit for such work. After all, those dollars could have been put to use on other beneficial projects.

Another opportunity the Committee should consider is better establishing the timeline for when interest is initiated for Deferred Payment Agreements. There is often uncertainty on how long a project will take to be completed given the Corps' reliance on annual and supplemental appropriations, which are affected by many factors beyond the Corps control. Thus, some projects can be started but remain incomplete for years, exposing the NFS to the challenge of compounding interest. Having a clear start date for such interest would be helpful, and it has been extremely beneficial for Congress to provide the ability to renegotiate these costs in certain instances.

In conclusion, in an effort to improve the ability of NFSs to reach durable, beneficial agreements with the Corps, CPRA recommends that Congress support policies that align with the following two principles: giving greater voice to local project sponsors and increasing transparency. Projects in Louisiana's coast operate in a unique social and ecological environment that does not fit neatly with a "one-size-fits-all" approach. Our coastal wetlands are very different from other landscapes such as the prairie pothole region, for example. The needs of flood control projects may differ greatly from those of ecosystem restoration, so the

Corps should be open to modifying PPAs accordingly. At the same time with greater Corps transparency, a NFS – and Corps Districts – could learn from other projects that dealt with a similar dynamic in a creative way. Cross-pollination of ideas would be fruitful for NFSs.

To achieve these aspirations, CPRA recommends policies that empower the District Commanders, while allowing for appeals to higher levels of the Corps when appropriate as a recourse. Congress should encourage the Corps to delegate authority to the District to make language changes to the model PPAs. The District is closest to the action, and the District Commander is authorized to make the appropriate calls for the benefit of the District and projects within its bounds. In order to get the flexibilities we need, District Commanders need to be able to get to yes. If something must be elevated to the Headquarters level, then there should be a streamlined process.

To conclude, CPRA would like to express its sincere appreciation to the Corps for being the most prominent federal partner with our mission to protect and restore Louisiana's coast. We have been tremendously fortunate to be able to work with the New Orleans District (MVN) of the Corps. MVN has put on the ground some of the most ambitious and impactful Corps projects across the entire nation. CPRA is confident that MVN will continue to work with us to deploy additional transformational projects that will allow our coastal communities and ecosystems to withstand significant risks. CPRA knows that we will not be able to maximize the sustainability of our coast without continuing to work closely with the Corps. We recognize that the Corps does operate under constraints with regards to PPAs. After all, the Corps can change its policies, but it relies on Congress to change the requisite laws. Therefore, we encourage the Committee to improve the Corps' ability to be transparent and flexible. Those improvements will serve to facilitate even greater partnerships and ultimately positive results for the nation.