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Committee on Environment
 and Public Works

Washington, D.C.

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WRDA 2024: STAKEHOLDER FEEDBACK ON USACE PROJECT PARTNERSHIP
AGREEMENTS

Wednesday, November 29, 2023

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 10:03 a.m. in room 406, Dirksen Senate Office Building, the Honorable Thomas R. Carper [chairman of the committee] presiding.

Present: Senators Carper, Capito, Cardin, Whitehouse, Kelly, Fetterman, Ricketts, Boozman, Sullivan.

STATEMENT OF THE HONORABLE THOMAS R. CARPER, A UNITED STATES
SENATOR FROM THE STATE OF DELAWARE

Senator Carper. Good morning, everyone. Welcome to the Committee on Environment and Public Works. I am happy to be here with all of you. We warmly welcome our witnesses and others in the audience.

Senator Capito, good morning to you and other members of our committee.

There is a lot going on in the Senate today. You probably don't believe that, but there is. We are getting stuff done. I think just about every committee is meeting now. So we will have people coming and going. But there is a lot of interest in the issues we are going to be discussing here today.

We appreciate each of you for making the time to join us after a grueling Thanksgiving holiday. I hope you had as much fun on your holiday as my family did.

Today, we are here to discuss the U.S. Army Corps of Engineers' Project Partnership Agreements. What exactly are Project Partnership Agreements? I don't like acronyms a lot. EPA is okay, but sometimes people get carried away with acronyms. So I am going to ask you to refrain from the use of acronyms for the most part, so I can understand what you are saying. Sometimes people get carried away. Sometimes we get carried away.

PPAs are documents signed by the Army Corps of Engineers and non-Federal project sponsors that guide work that is authorized under the

Water Resources Development Act, affectionately known around here as WRDA. These projects are critical to coastal and inland flood risk mitigation, navigation, and ecosystem restoration, among other purposes.

I will also say they are critical, because one of the major roles of the Federal Government, and State governments as well, and I say that as a recovering governor, one of the major roles of government is creating a nurturing environment for job creation, job preservation. What we are going to be talking about here today is one of the major ingredients for creating that nurturing environment.

I like to help people, and I think one of the best ways you can help folks is certainly making sure they have clean water to drink and clean air to breathe, but also make sure that they have a job, so they can support themselves and their family.

As many of us know, despite the Army Corps' exceptionally important and challenging mission, the agency's funding needs far outweigh its available resources. Why does this matter? Well, the projects carried out by the Corps provide the backbone of America's water infrastructure. That work includes protecting communities from damaging floods, enabling billions in commerce through our ports and through our waterways, and restoring hundreds of thousands of acres of aquatic ecosystems. Corps projects also help prepare communities for extreme weather events, which we know are getting worse due to climate change.

The importance of that work cannot be overstated. For

example, the National Oceanic and Atmospheric Administration estimates that the threat of sea level rise is going to accelerate in the next 30 years if we don't do more about it. That is certainly going to impact many of the roughly 40 percent of Americans who live in coastal counties, including my own.

In addition, the seven most destructive storms since 2000 have cost American taxpayers over \$1.3 trillion. Let me say that again. I didn't believe it when I first saw this. I said to my staff, go check that out. The seven most destructive storms since 2000 have cost American taxpayers over \$1.3 trillion.

These storms destroy homes and cars, and grind travel and tourism to a halt, and oftentimes uproot people's lives and not infrequently, take people's lives. Corps projects are there to defend against these disasters.

Corps projects also help keep our economy moving, as I was saying earlier. The Corps is directly responsible for operating America's water highway, a 12,000-mile-long system of inland waterways that are vital to domestic and international commerce. Most of the markets for the products that we create in this Country are not in this Country, they are outside of this Country. And the way we get, for the most part, our products to other places, we send a lot of stuff by air, but mostly it is on the water, and waterways that the Army Corps helps to make

available and of course that they help enable are critically important.

Each year, that expansive system, that 12,000-mile system of inland waterways, moves more than 500 million tons of commodities, 500 million tons of commodities, including 60 percent of our Nation's agricultural exports. The Corps' work to help operate and maintain that system results in an economic benefit of nearly \$14 billion each year.

Given the range of benefits of Corps projects, it should come as no surprise that WRDA, the reauthorization of WRDA, continues to enjoy broad bipartisan support. We do a lot here in this room in a bipartisan way. Senator Capito and I subscribe to an aphorism, and I think I heard from our guy from Wyoming, it was right there where you are, Mr. Hague, and he said in testimony, at his confirmation hearing, he said, Bipartisan solutions are lasting solutions. Bipartisan solutions, I believe that with every fiber of my being.

Our most recent WRDA passed the Senate in 2022 by a vote of 93 to 1. That doesn't happen every day in the Senate. It happens almost never in the Senate, in a roll call vote, at least. But 93 to 1, and that piece of legislation, that WORDA legislation two years ago, ended up carrying with it to the President's desk the National Defense Authorization Act which the President signed into law. It is like WRDA was a

locomotive, and one of the cars that it was pulling was the National Defense Authorization Act, which is a huge piece of legislation.

Ranking Member Capito and I intend to continue this bipartisan track record with WRDA 2024. We solicit input from literally every single Senator, every State that is represented in the United States Senate. Our colleagues have been great to provide us with plenty of input, plenty of input. But as many of you know, the bill is currently under development, thanks in no small part to robust input from many of our colleagues. Senator Capito and I intend to move it through our committee before next summer.

That brings us to today's discussion on the Corps Project Partnership Agreements. Since kicking off the WRDA 2024 process in July, Senator Capito and I and our staffs have heard concerns that these agreements could be stalling critical construction projects. We need to understand what is causing these delays and what can be done about them.

As I stated earlier, a Project Partnership Agreement is a guiding document between the Corps and a local project sponsor that outlines both the Federal and non-Federal stakeholder's roles and responsibilities for the construction and long-term care of the project.

Since 2012, the Corps has dramatically changed the project

agreement process, developing templates and streamlining requirements to provide consistency and fair treatment to stakeholders. Having said that, not every Corps project is the same. Stakeholders have raised with us, probably every member of this committee has raised with us that these agreements need to be made more flexible and that many of the requirements are cumbersome.

Yet, given the importance of Corps projects for the safety and well-being of communities, non-Federal sponsors feel pressured to sign unfavorable Project Partnership Agreements. Ultimately, it is our job in Congress to ensure that Federal investments are protected. At the same time, we must also ensure that non-Federal stakeholders can support the projects and are not made to assume an unreasonable amount of risk.

Having said that, we look forward to hearing from each of you, some of you have come a long way and we are grateful that you have done that, and we are looking forward to hearing about your experiences in working with the Corps to develop and implement Project Partnership Agreements.

We also look forward to hearing your perspectives on what is going well as well as finding what we can do better. I say almost every day, everything I do I know I can do better. I think that is true of all of us. The idea here is to improve on what we have done before for many years.

Before we do that, I want to yield to Senator Capito for whatever she might like to say. Senator Capito, we appreciate the opportunity to work with you and your team on this project again. This is a great one. I wish people around the Country who think we can never work together, I wish they could see how this committee works, especially on this issue. Thank you.

[The prepared statement of Senator Carper follows:]

STATEMENT OF THE HONORABLE SHELLEY MOORE CAPITO, A UNITED STATES
SENATOR FROM THE STATE OF WEST VIRGINIA

Senator Capito. Thank you, Mr. Chairman. You are right; we do have a great track record of working together on WRDA, and we are going to continue that as we move into the next year.

I welcome our witnesses. In my short conversation with Mr. Hague, I particularly welcome my fellow West Virginian. You need to hear this, he is from Charleston, West Virginia and is a proud graduate of Capital High School. Thank you for coming and being a part of this, all of you, but a special shout-out to my West Virginian.

If you didn't see it last night, and I know Senator Ricketts was there, we lit the Christmas tree, the Capitol Christmas Tree, the people's Christmas tree, which came from the Mon Forest in West Virginia. I have just now thawed out from watching that, because it was so cold out there.

[Laughter.]

Senator Capito. Anyway, since 2014, we have kept to the biennial schedule of passing bipartisan legislation that authorizes water resources studies and projects. WRDA also sets national policies for the civil works program of the U.S. Army Corps of Engineers, and I look forward to continuing that track record, as I said.

This summer, Chairman Carper and I, he mentioned this in his

opening remarks, sent a letter to our Senate colleagues soliciting their requests for WRDA 2024. I appreciate the efforts of our Senate colleagues to submit their proposals for our consideration. I am pleased to say we received a significant number of requests, more than the last time, which demonstrates the strong interest in and necessity of this legislation.

I have said previously it is important any WRDA bill supports the timely and efficient delivery of water resources projects, while continuing to meet national priorities. Flexibility is key to ensuring that the Corps can identify and carry out solutions that are tailored to address the needs and individual needs of our communities. Our Nation's water resources challenges are diverse, and communities know more about their unique needs than the policymakers here in Washington.

We must also continue to preserve the role of non-Federal sponsors in the project delivery process and maintain the Corps' focus on its primary mission areas: navigation, flood and coastal storm risk management, and ecosystem restoration. Insight from our non-Federal sponsors on their experiences with completed and ongoing projects helps inform what, if any, modifications are needed to the Corps' authorities.

Today, we will discuss, as the Chairman said, project partnership agreements, PPAs. In general, PPAs are legal

documents between the Corps and a non-Federal sponsor for construction of an authorized water resources project. These agreements describe the project and the responsibilities of each party.

The Corps has undertaken efforts to simplify this process for executing PPAs by standardizing model agreements and issuing guidance for certain types of projects. The Corps also considers deviations from the model agreements on a case-by-case basis.

However, Federal law requires certain provisions to be included in the PPAs, limiting what modifications the Corps is able to consider in some instances. One of those statutorily required provisions is known as the hold and save clause. This provision, mandated by WRDA 1986, requires non-Federal sponsors to hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to fault or negligence.

PPAs also describe the operation, maintenance, repair, replacement and rehabilitation, or O&M, responsibility of the Federal Government and non-Federal sponsors. O&M responsibilities vary with project purpose. For certain projects, the non-Federal sponsor will be responsible for O&M activities in perpetuity, regardless of the useful life of the project.

Some stakeholders have indicated that certain required language in PPAs can delay the execution of these agreements. A delay can extend the construction timeline for a project, and potentially and probably would lead to increased costs.

This hearing will provide us an opportunity to learn more about these concerns and listen to proposed solutions. It will also highlight how non-Federal sponsors have successfully negotiated PPAs with the Corps.

As we have this discussion today, it is important to remember that these projects require significant Federal investment in order to be realized. Ultimately, we must ensure that any changes to PPAs appropriately balance each parties' risks.

I want to thank our witnesses today for sharing their perspectives on this topic. I would say anecdotally, in discussing the topic of our hearing today, somebody said it is in the weeds. You know, it is very wonkish as to what we are talking about and how this is going to finally shake out in our WRDA bill.

But I would say as we look at the map of the United States, every project that is done, whether it is done through a PPA or not, is absolutely essential to the safety and the environmental prosperity of every part of our Country. So if the weeds aren't right, the projects aren't going to be right and the results are

not going to be right.

So I think that highlights how important a hearing like this is today, and I thank the witnesses for coming.

Thank you.

[The prepared statement of Senator Capito follows:]

Senator Carper. Thank you for those words, and thanks for the greater partnership we have forged over the last several years.

I want to say, we are only as good as the people around us. We have great staff behind us, Democrat and Republican. We are grateful for their work in bringing us all together today as well.

I am going to introduce our three witnesses. We need a lead-off hitter. I see somewhat of a famous name, like The Hague.

[Laughter.]

Senator Carper. Has anyone ever called you The Hague?

Mr. Hague. Yes, Senator, that has been a nickname at different points in my life.

Senator Carper. I can only imagine. I can't tell you some of the ones I have been called.

Jimmy Hague, Senior Water Policy Advisor for the Nature Conservancy since, what, 2016? Is that right? Mr. Hague leads the development of the Nature Conservancy's Federal Freshwater Conservation Policy Priorities and coordinates advocacy across the organization's chapters. You have chapters in all 50 States?

Mr. Hague. Yes, Senator.

Senator Carper. I thought so. We are glad you are here

with us today, and appreciate all that the Nature Conservancy does. Please feel free to go ahead with your statement.

Welcome.

STATEMENT OF JIMMY HAGUE, SENIOR WATER POLICY ADVISOR, THE
NATURE CONSERVANCY

Mr. Hague. Chair Carper, Ranking Member Capito and members of this Committee, thank you for the opportunity to testify today. I am honored to present to you the views of The Nature Conservancy concerning the U.S. Army Corps of Engineers Project Partnership Agreements. And as Senator Capito noted, I was born and raised in West Virginia, so it is an extra honor to be here in front of my fellow West Virginians.

Senator Carper. Where were you born?

Mr. Hague. In Charleston, sir.

Senator Carper. Okay.

Mr. Hague. And I know you have great West Virginia roots yourself.

Senator Carper. Yes. Her dad was governor of my State when I was born, when my sister and I were born.

Mr. Hague. The Nature Conservancy is a global conservation organization dedicated to conserving the lands and waters on which all life depends. Guided by science, we create innovative, on-the-ground solutions to the world's toughest challenges so that nature and people can thrive together.

In the United States, the Corps is critical to achieving our goals for healthy and resilient rivers, lakes, and coasts. The Conservancy has worked with the Corps on that mission through

dozens of projects and programs across the Country. We contribute scientific expertise on the use, design and evaluation of nature-based solutions, assist with program implementation, and advocate for changes to modernize Corps procedures.

The decades-long collaboration the Conservancy has built with the Corps has supported our conservation goals. The work we do together in communities across the Country has improved flood risk resilience, economic development and environmental protection. My written statement includes specific examples of our work together with the Corps.

On a personal level, my work with the Corps has been some of the most fulfilling and rewarding of my career. I am always impressed by the dedication and skill of its staff at all levels of the organization, both those in uniform and their civilian employees.

The Conservancy appreciates this committee's efforts to keep the Water Resources Development Act on a two-year cycle every Congress since 2014, as well as your efforts in recent bills to emphasize nature-based solutions in the Corps' work. Your commitment to investing in and modernizing our Nation's water resources infrastructure in a bipartisan manner has been critical to the success of our collaboration with the Corps.

The topic of today's hearing is an important one, since the

regular WRDA cycle you have established is authorizing new projects for study and construction and is guiding the Corps to build projects which deliver multiple benefits, enabling more resilient communities. To achieve this goal, we should minimize the barriers to non-Federal project sponsors who agree to share the costs of building water resources projects with the Corps.

Unfortunately, we know many project sponsors who feel the terms of the cost-sharing agreements are difficult to accept. Most Corps projects cost tens of millions to hundreds of millions of dollars, and at a 35 percent construction cost share, non-Federal sponsors must take on significant financial responsibility for a project, even though the Corps retains ultimate control over many project design and implementation decisions.

On top of that, some of the requirements of the cost-sharing agreement all non-Federal sponsors must sign with the Corps create open-ended obligations for the non-Federal sponsor. First, the cost-share requirement remains the same, even if projects go over budget for any reason, including reasons beyond the non-Federal sponsor's control. Sponsors must cost share any and all project cost overruns.

Second, project costs become the sole responsibility of the non-Federal sponsor after construction is complete, and the sponsor must operate and maintain the project in perpetuity.

The uncertain nature of total construction costs and the unbounded commitment to operations and maintenance costs make it difficult, if not impossible, for the sponsor to estimate the true cost of a project and manage financial risks. Third, the requirement in the cost-sharing agreement to hold and save the Federal Government free from harm creates unbounded and unquantifiable legal risks for project sponsors, and can discourage them from sponsoring or agreeing to participate.

Some of these requirements are rooted in statute, and they will need your leadership to change. This committee has taken steps to address some of those barriers, including in last year's WRDA bill, and I urge you to continue with that effort.

Given the variety of projects the Corps builds, and unique local conditions and stakeholder needs, I urge you to consider a variety of solutions that will help sponsors contain their legal and financial risks. Non-Federal sponsors need your help to rebalance how risks are shared between the Army Corps and the non-Federal project sponsor of a water resources project. Doing so will unleash the power of potential local sponsors across the Country to partner with the Army Corps to deliver more and better projects.

Thank you for the opportunity to testify today. I look forward to your questions.

[The prepared statement of Mr. Hague follows:]

Senator Carper. Thank you for leading off for us.

Next, we are going to hear from Kirsten Wallace. Ms. Wallace is on the board of the Interstate Council on Water Policy, which is committed to stewardship of our Nation's water resources. In addition to this role, Ms. Wallace is the executive director for the Upper Mississippi River Basin Association. We look forward to hearing about your experiences and those of the Association with the Army Corps.

Before you give us your statement, tell us, where are you from originally? Where did you start your life?

Ms. Wallace. I am from Minnesota.

Senator Carper. And now?

Ms. Wallace. Minnesota.

[Laughter.]

Senator Carper. Got it right the first time. Good. Well, welcome from Minnesota.

Your whole statement will be made part of the record. Go ahead.

STATEMENT OF KIRSTEN WALLACE, BOARD MEMBER, INTERSTATE COUNCIL
ON WATER POLICY

Ms. Wallace. Thank you, and good morning, Chair Carper, Ranking Member Capito, and distinguished members of the committee.

My colleagues and I are here to urge Congress to remove or modify unreasonable requirements that currently restrict or deter non-Federal entities from participating as cost-share partners in implementing important water resource projects with the Army Corps of Engineers.

We are grateful for today's opportunity to underscore the need to reform the Corps of Engineers' Project Partnership Agreements, which govern the cost-share relationship between the non-Federal sponsor and the Federal Government. We believe that a more equitable approach to these relationships will improve efficiencies in project delivery, improve partnership relationships, and stimulate the Nation's ability to leverage non-Federal resources.

My name is Kirsten Wallace. I am the Executive Director of the Upper Mississippi River Basin Association, commonly referred to by its acronym, UMRBA, which supports the states of Illinois, Iowa, Minnesota, Missouri, and Wisconsin in their interstate water resources planning and management of the Upper Mississippi River basin. UMRBA is a long-standing member of the Interstate

Council on Water Policy, and today, I am speaking on behalf of the Interstate Council on Water Policy and its members.

The Interstate Council on Water Policy was established in 1959, convening State and interstate water resource managers and planners from across the Country. The Council evaluates policies affecting water resource management, develops solutions to commonly held challenges, and works collaboratively with Congress and federal agencies to advance those solutions.

Many of the Council's members and partners, States, interstate organizations, local entities, nonprofit and private organizations, collaborate with the Federal Government through the Army Corps of Engineers. As our Nation faces enormous challenges to our water resources, we are even more compelled to lean into our partnerships with the Corps to optimize our resources, our networks, our knowledge, and our ability to shape a future of prosperity.

Our ability to partner with the Corps through cost-shared projects is challenged by the liability provisions that govern the partnership between the Corps and the non-Federal sponsor. Project Partnership Agreements are legally binding documents that outline the responsibilities of non-Federal cost-share partners and the Federal Government for water resource projects.

The key impediments include requiring the non-Federal sponsor to assume complete liability for constructed projects

and operations, maintenance, repair, replacement, and rehabilitation in perpetuity. This results in a completely one-sided approach to the assumption of risk that is unsustainable for the non-Federal sponsors to shoulder.

As a spokesperson for the Interstate Council on Water Policy, our members want to share with you our conclusions that these issues of liability affect cost-shared projects nationwide and all of the Corps' mission areas, and that reforming project partnership agreements is in the national interest.

The Association of Fish and Wildlife Agencies has created a map, shown on the screen, depicting the States for which their laws directly conflict with the liability provisions in the Corps' agreements, the dark orange, or whether they have indirect legal barriers, the light orange. As I had discussions yesterday, I believe West Virginia should be dark orange.

As many as 22 States across the Country reported having laws against assuming the legal obligations required by the Corps. The Interstate Council of Water Policy is joined by several interstate organizations who are also actively working with members of Congress and the committee to explain the need for reforming the Corps' project partnership agreements given the regional and local implications in their respective areas.

These groups include the Association of Fish and Wildlife Agencies, National Association of Flood and Stormwater

Management Agencies, Coastal States Organization, Delaware River Basin Commission, the Great Lakes Commission, the Interstate Commission on the Potomac River Basin, the Susquehanna River Basin Commission, the Upper Mississippi River Basin Association, the National Audubon Society, Ducks Unlimited, the Nature Conservancy, the Theodore Roosevelt Conservation Partnership, and others.

My colleague Jimmy Hague with The Nature Conservancy spoke to these issues from a nonprofit entity's perspective. My colleague, Bren Haase with the Louisiana Coastal Restoration and Protection Authority, will speak to these experiences in implementing PPAs. I will speak generally to the issues affecting the States nationally.

Indemnifying a third party, including the Federal Government, is in direct conflict with many States' constitutions and laws. It requires the non-Federal party to promise financial resources for an indeterminate liability that may occur at an unknown time, at an unknown cost, for an unknown reason. Many State constitutions preclude agencies from obligating funds without an encumbrance against an appropriation and do not allow for incurring any indebtedness of any nature on behalf of the State until an appropriation for it has been made by the legislature.

In addition, indemnification requires a State to assume

liability beyond the extent to which many States' tort law allows.

The current PPA terms legally obligate non-Federal sponsors to undefined and unbounded operations, maintenance, repair, rehabilitation, and replacement for water resource projects. This is challenging for non-Federal sponsors legally to assume because the obligation extends well beyond the period of analysis and project life. This policy essentially creates a permanent Federal hold on non-Federal property.

The liability terms are problematic for cost-share sponsors in all Corps mission areas, water supply, flood damage reduction, disaster recovery, and ecosystem restoration. Although agreements have been executed and signed in many areas, that does not mean they are not problematic for the non-Federal sponsors. Sometimes non-Federal entities, States, interstate organizations, local entities, or private organizations, will make the tough choice between securing financial resources to resolve a very important water resource problem over their own challenges in accepting the complete and total liability and assuming requirements in perpetuity.

Sponsors for flood management projects and water supply projects often use their revenue source to partially offset the one-sided liability of the project terms and have to accept the consequences of being perpetually beholden to the Federal

Government for the project structures. We must ask whether this is appropriate; is shifting the liability from the national tax base solely and completely to a smaller tax base appropriate, especially if the project is found to be in the national interest?

And who is that tax base? Is it equitable for the Federal government to push the complete risk to the non-Federal sponsor, whether a State, local government entity, or private organization? Non-Federal sponsors for ecosystem restoration projects often do not have an associated revenue source for the projects, so executing the agreements is much more problematic.

In 1986, Congress recognized the need for local sponsors to have greater financial and decision-making roles and established a new cost-share formula. My understanding is the Federal Government was risk adverse to implementing flood projects on non-Federal lands, and Congress added a requirement that non-Federal sponsors fully indemnify the Corps.

Since then, we have gained substantial experience in these non-Federal cost-sharing partnerships, and we better understand the implications to non-Federal sponsors. We are now asking Congress to reform this provision to create a more equitable approach to sharing risk. This request is not to free non-Federal entities from liability but rather to have the Corps share in that liability.

We acknowledge and underscore the value of our relationships with our partners within the Corps who are working earnestly to advance important projects. These policies tear at the fabric of our partnership by creating unnecessary conflict and inefficient use of staff and other resources, ultimately delaying, and in many cases preventing, critically important benefits to the public.

In closing, my colleagues and I are here today to urge you to remove or modify unreasonable requirements that currently restrict or deter non-Federal entities from participating as cost-share partners. We believe that reasonable and equitable partnerships will increase opportunities to leverage non-Federal investments to achieve local, regional, and national water resource goals.

We call upon Congress to revise the statutes for which the Corps is using to justify these provisions, and we offer our assistance to work with you in resolving the impasse.

As Congress and the Federal Government continue to prioritize non-Federal cost-share projects, we believe that these challenges to PPA execution must be resolved so that existing and newly authorized projects can be successfully and efficiently implemented.

[The prepared statement of Ms. Wallace follows:]

Senator Carper. Thank you very much.

Last but not least, we are going to hear from Bren Haase. I understand you are the Executive Assistant to the Governor of Louisiana. Who is the Governor of Louisiana?

Mr. Haase. Governor John Bel Edwards.

Senator Carper. Okay. I spoke to you earlier about him. Give him our best. He testified, if I am not mistaken, before this committee about a year ago. I think he sat in that very seat. So that is the Louisiana seat.

He is one of our favorites. Love it when our recovering governors come to the Senate.

I understand you are the Executive Assistant to the Governor of Louisiana for Coastal Activities, is that right?

Mr. Haase. That is right.

Senator Carper. And the chairman of the Coastal Protection and Restoration Authority Board. Prior to this role, you served as the Deputy Executive Director and Division Chief of Planning and Research for the Coastal Protection and Restoration Authority. I understand that you are the lead author of the Constitution of Louisiana.

[Laughter.]

Senator Carper. No, that is a typo, I am sure. The lead author of the 2017 Louisiana Conference Master Plan for a Sustainable Coast. That is a mouthful. We thank you for that,

and we thank you for being here today and participating in this hearing. We will learn from you and other witnesses in the next hour or two.

Welcome. Your entire statement will be made part of the record. Go ahead.

STATEMENT OF BREN HAASE, EXECUTIVE ASSISTANT TO THE GOVERNOR FOR
COASTAL ACTIVITIES, CHAIRMAN OF THE COASTAL PROTECTION AND
RESTORATION AUTHORITY BOARD

Mr. Haase. Thank you for that, Chairman Carper. I will be happy to relay those pleasantries to the Governor. I am sure he would extend the same to you as well.

Ranking Member Capito, members of the committee, thank you for the invitation to testify today to provide feedback on the U.S. Army Corps of Engineers' Project Partnership Agreements. As you mentioned, 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 Chairman of the Board for the State's Coastal Protection and Restoration Authority, or CPRA.

CPRA was created by the Louisiana legislature specifically to partner with the Corps of Engineers on coastal protection and restoration projects. Our mission is to provide both hurricane protection and ecosystem restoration for South Louisiana. A strong partnership with the Corps is essential for coastal Louisiana to meet its coastal protection and restoration goals. We successfully partner with the New Orleans District of the Corps to deliver some of the most transformative coastal infrastructure projects in the Nation.

Since its establishment in 2007, CPRA has signed

approximately 15 PPA-related agreements and 25 feasibility cost-share agreements, design agreements or memoranda of understanding or agreements with the Corps of Engineers. These cover a variety of project types, and our experiences with them inform my testimony today.

To that end, I would like to emphasize five key points. The first of those is the inertia of the status quo. This is often experienced by CPRA when negotiating PPAs with the Corp. We are generally presented with a take-it-or-leave-it scenario, a model agreements that may not be best for either partner or most efficient to advance a project. The alternative generally is to negotiate changes to the model PPA through the district up through the division and all the way to the headquarters, a prospect that can be difficult, confusing, and of course, cost precious time and money that none of us can afford.

Non-Federal sponsors should be true partners, able to provide meaningful input on the terms of the partnership. More flexibility should be delegated to district managers to negotiate provisions that make the most sense for delivering projects as efficiently as possible.

Second, land rights. Acquiring real estate rights and full fee title is impractical and not reasonably needed for many projects. Over 80 percent of coastal Louisiana's wetlands are privately owned. To achieve widespread coastal protection and

restoration, we must partner with those landowners, most of whom will give the necessary land rights to complete coastal protection and restoration at no cost. We have been doing such projects in Louisiana for decades without acquiring property in fee title, and it has worked. There is no reason we can't do the same in partnership with the Corps of Engineers.

Third, I will hit on O&M. There are several acronyms that have been used. In deference to the Chair, I will not go through that again.

Senator Carper. The Chair wants to thank you for that.

[Laughter.]

Mr. Haase. We certainly share the concerns expressed by my colleagues here. There are other problems that sometimes arise related to O&M in project design or construction, which are generally led by the Corps of Engineers, that can carry over into a finished project. Because of the terms in most PPAs, the Corps can require the non-Federal sponsor to conduct operations and maintenance for such deficient projects.

The Corps shouldn't be able to transfer a project with problems to a non-Federal sponsor, particularly when those problems have been identified previously during design or construction of that project.

We also at times have paid for and conducted operation and maintenance on projects that are fully funded by the Corps,

because they lack the necessary funding at the time to complete those activities. PPAs are generally silent on how to treat those expenditures. It would be helpful to have provisions to allow the non-Federal sponsor to receive credit against those expenditures for such works.

Fourth, indemnification. This has been discussed a great deal, and I will just reiterate that we certainly agree with my colleagues here at the table today, and would reiterate that there needs to be a more equitable sharing of potential risk among project partners.

Fifth, I will hit on cost-sharing. CPRA, like other non-Federal sponsors across the Country, must ensure that our limited financial resources are leveraged to the full extent. The use of deferred payment agreements crediting MOUs and the ability to perform work in kind have been extremely helpful in partnering with the Corp in the recent past.

That said, some aspects of cost-sharing can be a challenge. Financial transparency provided through PPAs is essentially a one-way street. The Corps can examine the books of the non-Federal sponsor in detail, while the non-Federal sponsors has no such reciprocal ability. As a result, the non-Federal sponsor has to meet an unknown cost-share requirement. This has already been discussed. It just makes common sense for this arrangement to be reciprocal, since both partners are bearing the cost of

implementing these projects.

In conclusion, CPRA recommends this committee encourage the Corps to advance policies that align with the following two general principles: giving greater voices to the non-Federal sponsors, and increasing transparency. To do so, we suggest greater delegation of authority to district commanders to negotiate PPAs while allowing for streamlined appeals to higher levels of the Corps when needed.

We certainly appreciate the Corps for being one of CPRA's most important project partners in our mission to protect and restore Louisiana's coast. We have been tremendously fortunate to be able to work with the New Orleans District, which has put on the ground some of the most transformative Corps projects across the entire Nation through these agreements.

CPRA is confident we can work even more productively with the Corps to deliver projects for our State and Nation with improved PPAs.

Thank you for your time and attention. I look forward to answering your questions.

[The prepared statement of Mr. Haase follows:]

Senator Carper. Thank you for your testimony. It is great to see you, and to welcome all of you today.

The first question I am going to ask is for all the witnesses. This is a question I am going to come back and ask you to answer for the record, not today, but for the record. Because I think in your testimony you had already begun to answer it fairly well.

The question I am going to ask you to answer for the record is, would each witness briefly elaborate on the challenges and opportunities you see in partnering with the Corps? Your views are particularly relevant as we are beginning to develop WRDA 2024. If you will do that for the record. We will have some other questions for the record, and will talk about that at the end of the hearing.

As my colleagues know, we are always looking for, when we have a diverse panel, we are looking for consensus, like where you agree. Sometimes people think, well, repetition is a bad thing. Not necessarily. You have been pretty consistent talking about cost-shares, and cost overruns, who bears the responsibility. I think there is a lot of agreement on some of the indemnification issues.

But let's just start off, Mr. Hague, with you. Just pick maybe three areas that you think are important areas where you think there is consensus amongst the three of you that is

critically important and that we should take seriously those points? Go ahead. Give us three good ones.

Mr. Hague. Absolutely.

Senator Carper. And again, repetition is not a bad thing.

Mr. Hague. Absolutely. I will repeat a lot of the things I think you have heard from the witnesses today, plus were included in my statement. I think the hold and save clause, as you have heard, is particularly problematic for all the sponsors to agree to that really does seem to be an unfair balance of a legal liability that we are forced to take on as sponsors of these projects.

Two, that unbounded nature of the operations and maintenance commitment, which I should also point out, you don't always fully know the extent of that commitment until the project is fully constructed and the Corps presents you with the operations and maintenance manual. So you have to agree, when you are signing the agreement, before construction even starts to those open-ended O&M obligations.

Those would be the two high points that I would emphasize, and would love for you to focus on in this next WRDA bill.

Senator Carper. I want one more. You can think about it. And while you are thinking, we will turn to Ms. Wallace.

Ms. Wallace. I agree with Mr. Hague, the indemnification hold and save clause is critical to reforming as well as

unbounded operations and maintenance. To echo Jimmy's point, you sign onto those agreements when planning is 35 percent done, and the Corps remains in control of the rest of the project and who the construction contractor is, et cetera.

So those two issues are really necessary for Congress to act on.

Senator Carper. You have one more. Think about it and we will come back to you. You don't get out of here without it.

Mr. Haase?

Mr. Haase. Yes, sir, thank you, Senator. Yes, I want to add to those the point that I brought up in my oral testimony related to the transparency and what a final bill might actually be. We talked about cost overruns, increasing costs associated with negotiating PPAs, but also in project implementation. It is often difficult for the non-Federal sponsor to get a very clear picture of what essentially the bill due will be.

There is a theme, I think, related to all these three issues, and that is certainty and predictability. All three of these things relate to uncertainty, which increases risks, obviously, on a non-Federal sponsor in delivering these projects and being able to make good on the commitments that we make by signing those.

Senator Carper. Okay. Let me stick with you for another minute or two, Mr. Haase. I think one of my questions was, I

was going to ask you to please let us know what you think the Coastal Protection Restoration Authority considers before signing an agreement with the Corps. I think you have spoken to that. As a follow-up, how do you strike the balance between moving quickly and moving deliberately to advance large scale coastal restoration and protection projects?

Mr. Haase. That can be a difficult balance to strike, as you all certainly are aware. As I mentioned in my oral testimony, sometimes we feel like we are stuck with a sort of a take-it-or-leave-it kind of approach, where we have a model PPA before us, there is a tremendous need across the Country in all of our States, certainly in Louisiana, where we have experienced natural disasters just like other parts of the Country, there is a tremendous need to respond to those and protect our citizens from storm surges, flooding, and restore our ecosystem for all the reasons that is important.

So there is a calculus that has to be gone through essentially to evaluate the risk of delaying those kinds of projects and having citizens remain at risk into the future or going ahead and in some cases basically holding our noses and agreeing to terms that we might not particularly want to agree to, so we can get projects done.

So there is no science to that, that is probably more art than science. But in general, we have moved forward where we

needed to for the good of the citizens of the State of Louisiana to get projects on the ground that will help reduce risk to them and improve the ecosystem in which they live.

Senator Carper. Good, thanks. I am going to go back really quickly, Mr. Hague, I gave you and Ms. Wallace the opportunity to give us three areas where you think there is a great deal of consensus and agreement. You have one more, each of you. Don't pass it by, go ahead.

Mr. Hague. I would love this committee to look at flexibility in meeting the cost-share requirements. In the last WRDA bill, you did tackle this a little bit in allowing sponsors to use other Federal funds that meet the complementary purposes of the project.

The other place I would love to have some attention is when sponsors have material that they have received as a donation that can be applied for the purposes of the project. A lot of times the Corps doesn't give the sponsor full credit for bringing those materials to a project. That could be a simple thing for this committee to fix in the next WRDA bill and give sponsors a lot more flexibility now to meet the requirements.

Senator Carper. Good, thank you.

Very briefly, Ms. Wallace, one more shot.

Ms. Wallace. Lean into partnerships and encourage the Corps to provide collaborative leadership along with the local

sponsor.

Senator Carper. Thank you.

Senator Capito, and after Senator Capito has asked her questions, we are going to turn to the Senator from another large State, Rhode Island. Senator Whitehouse, welcome today. And then Senator Ricketts. Thank you.

Senator Capito. Thank you.

Mr. Haase, you have in your capacity or prior capacity actually negotiated one of these PPAs, is that correct? More than one?

Mr. Haase. Yes.

Senator Capito. Okay. When you have had a disagreement, and you say that you have to work out, you get the model and then you try to, what is the length of time to try to overcome that disagreement? Does it ever get to the point where you never really do? How have you worked those out in the past?

Mr. Haase. We do have a lot of experience in negotiating those, Senator, thank you for the question. It can take quite a long time, it can take months to negotiate the terms of these agreements, of course. That is where sort of the calculus of weighing the advantages, perhaps, to negotiating better terms for the non-Federal sponsor in these agreements, does it outweigh the potential risk, of course, of not getting a project done, or having that project being delayed and those costs being

increased or perhaps become infeasible in some way.

But in terms of kind of the mechanism for negotiating those, we work very closely with our local district, the New Orleans District, obviously, to try to negotiate those terms. At times we have had to bring those negotiations to the division and again up to headquarters, often, as well.

Senator Capito. Have you ever walked away from one? Have you been able to get disagreements put to rest?

Mr. Haase. I don't know if we have ever walked away from one. That is a good question. I am not aware that we have. We have signed many under duress, I would say. But I don't know that we have walked from any. I would have to get back to you.

Senator Capito. I was just curious.

Then, if you were a first-time non-Federal partner looking at this, what one piece of advice would you give a first-time applicant to become a partner with the Corps, under these circumstances that we have now?

Mr. Haase. If I might take the liberty of mentioning two things.

Senator Capito. Of course.

Mr. Haase. I would say be aware of what other non-Federal sponsors around the Country are agreeing to, know what those other agreements look like around the Country, to learn from those experiences and negotiations that other non-Federal

sponsors have gone through.

Secondly, I would say it is imperative to have a very good working relationship with your local district, the district commander. They of course are the ones that will elevate disagreements to division and to headquarters, and they can be your best advocates at times. Having a good, trustful working relationship with the districts is very, very important.

Senator Capito. Thank you.

This is for the panel. This is on the hold and save language. I mentioned in my opening statement, we have gone through this, but I am going to dig down a little bit into it. The 1986 law requires that PPAs include hold and save language. This language indemnifies the Corps except for when damages are due to the fault or negligence of the Corps.

So in thinking about this, I am trying to think, Mr. Hague, I will go to you first, what kind of circumstance could occur that would not be fault or negligence that would be an exception where the liability would fall to the non-Federal partner? I am trying to envision this.

Mr. Hague. Thank you for the question. Right. It is a difficult question to answer with specific examples. When I have talked to lawyers about the hold and save clause, in a lot of ways they are most worried about those sort of unforeseen and unimaginable instances, which is why it is particularly

problematic, because it is a perpetual indemnification of the Federal Government for any reason except where the non-Federal sponsor, who has the burden of proof, can show that the Corps was negligent.

I think that requirement is particularly problematic for non-Federal sponsors for a couple of reasons that you have heard today, one of which is, the Corps does retain a lot of the authority for filing decisions around planning and execution of these projects.

So when you have a situation of a partnership where one partner, the Corps, has so much control over project design and execution, and the other partner has to indemnify them and should have the burden of proving fault or negligence, that is a really tough balance to swallow for a sponsor, not to mention some of the State law objections that you have heard mentioned as well. That creates specific challenges for States where those conflicts exist.

Senator Capito. Right. Ms. Wallace, do you have any examples of things that you have thought of, or your group has thought of, that might hold to these exceptions?

Ms. Wallace. Yes, and I think Mr. Haase can answer that question, I think he has examples. ICWP doesn't have examples like that that we would want to speak to.

But I can say from a State perspective that it still would

conflict with the constitutional law for States to sign up for an unknown cost and unknown time for an unknown reason.

Senator Capito. Okay, so the States in red that have conflicts, do they still go through with PPAs or are they just absolutely prohibited because they have to sign this agreement?

Ms. Wallace. Some have, for the same reason that you spoke to, which is that you stand in between a Federal resource, Federal dollars, for an important project. But more and more, States are saying, we can't do this.

Senator Capito. Mr. Haase, do you have an example?

Mr. Haase. I do, in fact. A tangible example of this would be for projects that we have been involved in where pile driving, for example, is involved. So through the normal course of pile driving, even if it is done correctly, there can be damage to adjacent properties. It has been our experience that the Corps has viewed that as being, that liability as being indemnified, essentially.

We believe that should be a project cost. It is something that occurs in the normal course of doing business of constructing projects, and again, we think it should be a shared project cost, not the responsibility of the non-Federal sponsor.

Senator Capito. Thank you for that example. Thank you.

Senator Carper. Thank you, ma'am.

Senator Whitehouse, welcome. Good to see you.

Senator Whitehouse. Thank you very much. Thank you for doing this. I think particularly as we see sea level rise accelerating, our coastal States have a real sense of urgency about making sure that we can work effectively, timely and fairly with the Army Corps of Engineers.

I would reiterate what I have told this committee before, which is that the flooding funding of the Army Corps of Engineers tends to be heavily, heavily, heavily biased toward upland, inland river flooding. There have been years for which every \$100 spent on upland and inland flooding, \$1 was spent on coastal flooding. When you look at what climate change portends for coasts, when you look at what our map in Rhode Island shows our coast is going to look like in the decades ahead, this is a very, very serious problem. We need to make sure that the Army Corps is going to be responsive to it.

Let me particularly welcome Bren Haase here, because he was kind enough to have dinner with Senator Cassidy and myself when I visited Louisiana, what, four years ago now, to look at the work going on down there to respond to Louisiana's rather spectacular loss of property to sea level rise. I was grateful for his time and expertise then, and I am grateful, sir, for your time and expertise now. It is good to see you again. I hope all is well.

We have heard about the sponsor share, requiring a certain

amount of investment and risk, cost overruns adding further potential investment and risk, maintenance and operations being delegated to the sponsor, adding further financial exposure, and liability opening up and unknown can of potential risk, worms. In addition to that, it strikes me that even with all of those difficulties, if you could plan in an orderly way through time what an Army Corps project was going to look like and how it was going to roll out, that would make it a lot easier on the local sponsors.

My experience has been that the timing of Army Corps projects is very much also uncertain, often, and certainly unknown when you try to begin. So you have the additional variable of not knowing when you are going to have to spend the money, in addition to not knowing how much you are going to have to spend in all of those four areas.

Is that an observation that is unique to Rhode Island? Or is that an observation that you have seen in your worlds as well? Mr. Haase, let me start with you.

Mr. Haase. The short answer to the question is no, it is not just an observation from Rhode Island. It is certainly something that we have experienced as well.

The when, again, is an extremely important factor in all this, and it gets back to the theme I mentioned earlier, which is predictability and certainty on all of these things. With

less predictability comes less certainty that we are going to be able to be good partners and deliver what we have agreed to deliver on. That is something that we certainly have experienced in Louisiana.

Senator Whitehouse. You mentioned that when the Corps is a partner in a project, the Corps can seem inflexible and overly committed to the status quo. I think that is a very important signal, particularly when the future is unknown. You don't know how quickly things are going to roll out. It can be very hard to get into the Corps bureaucracy and get real responsible answers on any kind of a reliable or timely basis.

The last thing I will mention, I see my friend Dan Sullivan here, who does not quite have this exact problem, but small States and communities that have big projects. The other question here is, I think what banks would call leverage. If you are in the State of California, if you are in the State of Texas, if you are in the State of New York, and there is a very significant Army Corps project that goes in and you are the sponsor, the non-Federal sponsor, then how that turns out as a percentage of your State's budget or local community's budget can be a very minor thing. If it triples or doubles or gets moved from year to year in ways that you can't control, that is a little bit more manageable.

But Rhode Island is looking at having to build an entirely

new hurricane barrier to defend our capital city from predicted flooding that will flood right through the downtown business zone, so that existing buildings will be underwater, not in the upper stories, but their front doors will be underwater. The main entrance to city hall is up a grand staircase. Well, the grand staircase is predicted to flood up to a certain point. So all the operating doors along the sides that people use would flood out. You would presumably have to arrive at the city hall of Providence stairs in a boat and climb your way up.

So getting that fixed by having a proper hurricane barrier is a really big deal. That is going to be enormously, enormously expensive. So for small States with huge projects, we have a real problem that I would like to flag as I close out.

Thank you, Chairman.

Senator Carper. Just to reiterate the point that Sheldon is making, I don't know if this is correct or not, but I have been saying it for years, every 100 minutes they lose a piece of land in Louisiana the size of a football field. Is that still true?

Mr. Haase. Yes, sir, on average that is true.

Senator Carper. That is amazing. That is incredible.

I need to take a phone call, and I will be right back. Senator Capito is going preside for now, and I will be right back. Thanks very much.

Senator Capito. [Presiding.] All right. Senator Ricketts?

Senator Ricketts. Thank you, Chairman Carper, and thank you, Ranking Member Capito. Thank you to our witnesses for being here today to share your perspectives. I have often talked about the Army Corps of Engineers and my problem when I was governor about their performance, anything from how long it took them to issue permits to how they were managing water storage that actually increased the chance for flooding, and then what they were doing with regard to flood control.

So I am anxious to use WRDA to improve the governance of the Army Corps of Engineers, especially focusing on the fact that these projects need to be led by natural resource districts, municipalities and local communities. Flood control, in my opinion, needs to be the first priority for the Army Corps, and especially along the Missouri River. They should not be undermining that.

Before I get into some of these other topics, though, one of the things that the Army Corps of Engineers has rolled out is their permit finder. As we review the permit finder, it seems to be outdated already and lacks updates. If we are going to be able to manage these projects, it seems we have to have the proper information in there to be able to, and that needs to be prioritized, these tools to monitor the progress.

For all the witnesses, I would love you to share your experience with the Army Corps' permit finding data base. Have

you tried to navigate this? What has been your experience?

Mr. Hague?

Mr. Hague. Senator, thank you for the question. I do not have any experience navigating the permit finder just yet, but I would be happy to follow up with our conservation staff on the ground to see if they have, and report back to you.

Senator Ricketts. That would be great. I would appreciate it. Just contact our office. I am not looking for a big, long essay, I just want to know about your experience with it.

Ms. Wallace?

Ms. Wallace. We have also not had experience with the permit finder data base. I didn't know it existed.

Senator Ricketts. Oh, okay, maybe that is part of the problem with the Army Corps of Engineers, they didn't get that tool out there. That is why they are not updating it, because nobody knows it exists.

Mr. Haase?

Mr. Haase. Yes, sir, thank you, Senator. We do have a little experience with the permit finder data base, and have found it actually to be relatively good in our case. Most of our permits and our actions that are pending are included in the data base and we are able to find those and query those well.

Senator Ricketts. I would also note that I have had problems with the Army Corps in the past. The relationship

between the State of Nebraska and the Army Corps is improving with the leadership we have had there for the last couple of Colonels that have come through. So that has been a good deal. I think Colonel Hudson and Colonel Newbauer have all done a good job.

Ms. Wallace, you talked a little bit earlier about project partnerships, especially for small, local communities. How does the current PPA structure deter sponsorships? In Nebraska, we have primarily natural resource districts. We have 23 of them across the State that are all locally funded by property tax. How does the current PPA discourage something like a small entity like that from getting involved in a PPA?

Ms. Wallace. Exactly. I think on one side you have Federal investment that meets what the local entity can put together for an important water resource project. So you have a lot of energy and motivation toward signing that PPA. On the flip side, you have long-term consequences of fully indemnifying the Federal Government and taking on perpetual O&M, basically, having a Federal hold on your property and your tax base. It is shifting from a larger tax base, that consequence to a much smaller tax base for a project that is in the national interest.

So that comment earlier rang true. Who is that tax base and can they afford it, the project?

Senator Ricketts. Right. Maybe you can expand upon that a

little bit just about, if you are a small taxing base, and you are attempting a big project, and you have to take on full liability for the operations and maintenance as well as any sort of problems, especially, you said, 35 percent of the way through the project, you are actually taking this on.

Talk about that a little bit more, if you could. Have you seen specific instances of that where communities or small entities have said, hey, we are not going to do this because it is just too much?

Ms. Wallace. We have had States, organizations, entities say they cannot sign Project Partnership Agreements because of the unknown costs and time of that cost, the reason for that cost, and what that means for them long-term financially.

Senator Ricketts. In your estimation, would some of these projects be in the national interest, as you have described before?

Ms. Wallace. Correct.

Senator Ricketts. So the idea here is that we have small entities where you are taking on, the local property taxpayers, in the case of Nebraska, they would have to take on these huge responsibilities to be able to meet the current requirements. And that is just not going to be possible sometimes.

So maybe projects that are in the national interest are not being done because of the requirement to have that local

participation? Is that fair?

Ms. Wallace. That is exactly correct.

Senator Ricketts. Thank you very much, Ms. Wallace. I think Mr. Haase also mentioned this, about the flexibility, having flexibility with the Corps. Certainly my experience as Governor was the Corps often has its rules and does not feel like it has the flexibility to be able to change those, to get up the chain of command takes time, all that sort of thing. So I think there are some opportunities here for us to be able to take a look at that and see what we can do.

I appreciate your comment about having the local districts have more flexibility in negotiating these agreements, because they are the ones on the ground there, and certainly when you have local entities, they know exactly what their communities need. So I think more flexibility would also help us to be able to get that done faster.

Thank you.

Ms. Wallace. Thank you.

Senator Capito. Thank you.

Senator Cardin?

Senator Cardin. Thank you, Madam Chair. Let me thank our witnesses.

Army Corps projects are critically important to my State of Maryland. We recognize the challenges with Project Partnership

Agreements. Senator Ricketts mentioned, as many, the loss of opportunity because of the affordability and risk factors that we are not able to take full advantage of the Army Corps projects.

I want to take it from a little bit different angle. These projects in many cases have also national significance. It is not just the local benefit of the project to the entity that is submitting the project, but also to our Nation. The Chesapeake Bay I have talked about many times in this committee. It is a national resource, it is a national treasure, the largest estuary in our hemisphere. And it is endangered, and it requires constant attention.

So we have had Army Corps projects, partnership agreements, to deal with the Chesapeake Bay. The largest, from the point of economic impact, was Poplar Island. It was novel in its time, the first environmental restoration using dredged materials in order to restore an island in the Chesapeake Bay.

You go back 100, 150 years ago, there were several habitable islands in the Chesapeake Bay. They are almost all gone because of erosion and weather circumstances, et cetera. Poplar Island at one time was habitable. It was down to just a few acres, and we restored it through using dredged material, through an Army Corps project, through a Project Partnership Agreement.

It is critically important for the economics of our region,

because we are keeping our harbor and the channels dredged at the proper level, and having a place to dispose of the material that is not only without controversy, it is popular. People want it.

But at the same time, we are restoring an environmental island that is now a major area for migratory birds, it has restored wetlands which are critically important to filter the pollution in the Bay. It has all these positive impacts.

Now, we are just about at capacity at Poplar Island. We now have Mid-Bay. And Mid-Bay is now moving forward, another island that disappeared that will be restored, that will have benefit for the economics of the ports through the channels and will also have a major impact on our commitment to our environment moving forward.

So Mr. Hague, I would ask you this question. Yes, I am sensitive to the needs of easing the liability requirements. But shouldn't there be special consideration given to those projects that have a national significance, such as environmental restoration? I know that at the Nature Conservancy, that is your mission. Shouldn't we be having some considerations given in these partnership agreements when there is more than just the local benefit from the project?

Mr. Hague. Senator, thank you for the question, and thank you for your championing the Bay. You are exemplary in that

role. Certainly, we have worked with you and your office over the years on a variety of Chesapeake Bay work with the Corps. Nature Conservancy has been involved on oyster restoration in the Bay for many years with Maryland DNR and Virginia Marine Resources. That is a global model for how to do oyster restoration.

Re-using dredged material, as you said, is an excellent opportunity to align where that dredged material is coming from in the Bay versus where it should go or can go for a lot of the multiple purposes that you have identified. So we appreciate your support for all those options with the Corps and the Bay.

On your question, there are certainly examples of Congress looking at restoration projects and saying it is of national significance and should be a Federal function and making those costs 100 percent Federal. As you were thinking about reforms to the PPA, that could be a way to look at it, that a lot of these projects are unique and that some of them are of national significance, and may be very amenable to the kind of approach you are talking about for nationally significant eco-projects.

Senator Cardin. And I might point out, oyster restoration is another good example where we used partnership agreements. Blackwater, trying to restore inlands in Blackwater through the use of dredged material. All those are Army Corps type projects that could be subject to consideration as to their importance to

our Nation, not just to the local community. Blackwater is a national refuge, so it is not really local from that point of view. We will be looking at those types of considerations.

Thank you, Mr. Chairman.

Senator Carper. [Presiding.] Senator Cardin, thank you very, very much, not just for joining us but you are a highly valued member of this committee.

I would say to our witnesses, we talked a little bit about backgrounds, and Senator Sullivan, the witnesses who were good enough to share with us where they are from, and a little bit about themselves personally. I would say, to turn the tables here, we have three people sitting up here who are retired military, a retired Marine colonel, Senator Kelly, a retired Navy captain, and the last time I checked, I am a retired Navy captain.

We just celebrated about a month or so ago the anniversary of the birthday of the Marine Corps. So that is a big day. But in order to get someplace, the Navy provides the transportation for the Marines, the last time I checked.

All right, Senator Sullivan. That was my introduction.

Senator Sullivan. Thank you, Mr. Chairman. I appreciate that.

I am going to tee up a more specific question than we have been working on here, with the Chairman's good help. Mr. Hague,

I am interested in the Nature Conservancy's view on this in particular. It is something I am actually working on with Senator Kelly right now as we speak.

This involves indigenous lands, tribal, Native lands in Alaska. In 1971, Congress passed what is called the Alaska Native Claims Settlement Act, ANCSA. I won't go into all the background, but it is the largest indigenous land claims settlement probably in the world, certainly in America, 44 million acres of land in Alaska went to the Native people to manage and own, actually in fee simple. It is not like the lower 48 reservation system. It was very innovative, helps with the development of these communities.

Unfortunately, Congress gave a lot of this land, 44 million acres, I think that is bigger than almost every State in the Country, a lot of the land was contaminated, like severely contaminated. So, here you go, Native people. Here is your land settlement. Oh, by the way, it is completely contaminated.

Believe it or not, for years, the EPA under CERCLA was going to hold these Native communities, Native corporations, liable for the pollution, like we are going to sue you to clean up the land that we gave you that was polluted. That was absurd. It took a bill, Senator Carper and I got it passed in 2017, to say no, come on Feds, don't be stupid. The Native people are not liable for cleaning up contaminated lands that the Feds gave

them contaminated.

So we fixed that. It only took several years. But I really appreciate the Chairman weighing in on my amendment, co-sponsoring it. He said it was righting this wrong.

So here is the next idea. We all care a lot about mitigation banking. My State has 65 percent of all wetlands in America. So these are big issues for us. But we are trying to work with the Corps in this committee to get legislation that would say okay, when you do mitigation banking, wetlands, if you are doing that, and let's say you actually are mitigating in terms of a cleanup of a previously contaminated land in Alaska, that that would count with the Corps. It is complicated, but it is an innovative idea.

Because the idea that the Feds are going to come to Alaska and clean up all this contaminated land that they gave the Native people, it is probably never going to happen, because it is literally in the tens of billions, if not hundreds of billions of dollars. So it is not going to happen. We have to get some cleanup from the Feds. But this is an innovative approach.

So Senator Kelly and I are looking to introduce legislation that would have that provision and a second provision championed by Senator Kelly to establish a pilot program to allow the Army Corps to enter PPAs with Indian tribes to allow them to provide

full project management control for the construction of eligible projects.

So I know you guys at the Nature Conservancy say you are experts on these kinds of mitigation banks. But what do you think of an idea like that, that helps Native indigenous people clean up their lands, but maybe from a source that involves mitigation bank, not from the traditional way, saying the Feds are going to clean up, which they should have, they should have never given the lands, 44 million acres, half of it was polluted? What do you think of that?

Mr. Hague. Thank you, Senator.

Senator Sullivan. And I know you don't have the details, but in general. You guys do this a lot, so I am curious. We want to try and get this over the goal line in the committee. The Chairman has already worked with us, the staff is working on this, it is a big, innovative idea that we think is really important and timely.

Mr. Hague. Thank you, Senator, for the question. I certainly appreciate your leadership on fighting on behalf of your constituents. I know from our chapter up in Alaska that we have been in contact with folks on this kind of topic, the brownfields team, the Alaska Native Tribal Health Consortium, I believe. So we are definitely looking to build a partnership there for remediation of these kinds of lands. It is something

we are looking into very seriously.

And of course, the Nature Conservancy has a lot of experience with mitigation banking nationally, setting up banks and running banks in different States. So it is an approach that we embrace quite strongly as a way to get innovative financing approaches to the kind of conservation work we need to get done, where there is not an obvious source of funding elsewhere.

So it is a concept I would love to look at, if we are able to share the details, and report back to you.

Senator Sullivan. Good. We will do that as a part of this committee's follow-up. We are working through the committee here, staff, Senator Kelly and I and our bipartisan bill on these innovative issues, to try and help tribal indigenous communities that need help. A lot of them are unfortunately on lands that are polluted. Then they can't undertake economic development and other things like that.

So we would welcome your interest and eventually your support if you want to take a look at the language we are working on with the staff of this committee.

Thank you, Mr. Chairman. It is a big issue that hopefully we can resolve.

Senator Carper. Thanks. I appreciate the chance to work with you and your team on this.

Senator Kelly, welcome. Good to see you.

Senator Kelly. Thank you, Mr. Chairman. Senator Sullivan, I look forward to getting this across the finish line as well. It is really important in the State of Arizona as well. We have 22 Native American tribes, and often have similar issues with polluted land or land that needs to be cleaned up.

We have had some success with tribes working with the Army Corps. I was with Governor Stephen Lewis of the Gila River Indian Community just on Saturday at a football game, University of Arizona versus Arizona State. The annual in-State bowl game went very well for UofA, not so well for ASU.

Senator Sullivan. Who do you root for in that game?

Senator Kelly. I have mixed feelings. I live close to the University of Arizona. My eldest daughter is a student at the University of Arizona, my younger daughter is a graduate of ASU.

Senator Carper. My wife is a graduate of ASU, Appalachian State University.

[Laughter.]

Senator Kelly. They are both great schools. I am going to have to get one of those jerseys like Kelce's mother has, half on one side, half on the other.

This hearing is really important to identify other ways that the Corps can partner with communities on projects. One of the things that I have championed with Congressman Stanton, also

from Arizona, was the creation of Section 595, the Rural Arizona Water Infrastructure Program. This was about three years ago, one of the first things I did when I got to the United States Senate. I am coming up on being here for three years. It has gone by pretty quickly.

This 595 helps small and underserved communities in Arizona partner with the Army Corps to build drinking water, water conservation, flood control, and wastewater infrastructure. When he has appeared before this committee in the past, Secretary Connor has pointed to this program as an example of how the Army Corps can help make investments in the west to respond to long-term drought conditions.

There is just one problem here, and that is that many projects funded through this program still do not have finalized PPAs with the Corps. In fact, we have some communities like the City of Buckeye, Arizona, which has been waiting for more than two years to finalize a Project Partnership Agreement.

These projects are often rather small dollar projects, usually less than \$3 million. Especially for projects that help Arizona communities respond to drought conditions, years is too long to wait.

Mr. Hague, you mentioned in your testimony that the Nature Conservancy does lots of work with the Corps and local project sponsors. What challenges are faced by local sponsors when it

takes years for the Corps to finalize a Project Partnership Agreement?

Mr. Hague. Thank you for the question, Senator. When you have a project that is delayed like that and it takes many years, there are a variety of problems, of course, that could come up.

But you do think about the issue of time being money, and certainly with the Army Corps, that is the case as well. We have been involved in projects where if there is a very long gap between when a project is authorized, originally envisioned, and when you can sign a PPA and start construction, things like the cost of the real estate necessary for the project can go up dramatically. We have actually had instances where we have had to come back to Congress and get a project reauthorized at a higher level because of those kinds of delays.

So the quicker you can get to signing the easier it is. There are a lot of internal obstacles for that. I think any time that you are trying to negotiate a Project Partnership Agreement that requires on up to say, headquarters level for approval, we do see significant delays, at least of a year in how long that review at headquarters takes.

Senator Kelly. Have you seen communities just get frustrated by this and give up?

Mr. Hague. I don't have an example specifically of where a

community has walked away. But a lot of communities I think are either, they are faced with a choice of a take-it-or-leave-it in a lot of cases. They have a great need that they can only achieve these kinds of projects with the Corps.

So they either need to take the agreement as is, and maybe take on terms that they are really not comfortable with, or push for those kinds of higher level reviews that can delay projects for years and drive up the cost of doing business.

Senator Kelly. What are some of the tools available, here in my remaining time, that the Corps could use, administrative tools that they could use to sign these agreements?

Mr. Hague. The Corps has developed a bunch of model agreements, a couple of dozen model agreements. These are different template models that you could use for an environmental infrastructure project like you are discussing, an ecosystem restoration project, a flood control project. There are a variety of different models. As long as you are sponsoring or willing to accept that model sort of as is, you can get it done very quickly.

But any time you want to seek a deviation from that model, even a non-substantive deviation, that is going to require review by the division, and if you are looking for a substantive deviation, that is going to require review by headquarters. That is where things can really get delayed.

But they do have these model agreements, and have delegated some decision-making authority from headquarters down to division. So those have helped. But still, any time you are seeking deviations, it slows things down, and you can't get around the indemnification and operations and management challenges we have discussed here today, either way.

Senator Kelly. Thank you, Mr. Hague.

Thank you, Mr. Chairman.

Senator Carper. Thank you, Senator Kelly.

Senator Fetterman, I am going to yield to Senator Capito for a couple of questions, and we will come to you next. Thank you.

Senator Capito?

Senator Capito. Thank you, Senator Fetterman.

I just have a quick question. We have kind of dug down deep on the indemnity thing, I think I understand that issue. Let's talk about the operation and maintenance responsibility in perpetuity, trying to figure out ways to improve that. So you said, I think Ms. Wallace or somebody said that you have to sign these agreements at the 35 percent design phase. Is that correct?

Ms. Wallace. That is even in the planning.

Senator Capito. Even in the planning, okay. How would you improve that, besides just wiping the whole thing out? That is not going to happen, we don't think. So what would you say, Mr.

Hague, that would have meaningful impacts?

Mr. Hague. Right. I believe in your opening statement you referred to the useful life of the project. I think that is a concept that might be very helpful to latch onto. We have talked a lot about the operations and maintenance responsibility. I think in truth it is operations, maintenance, repair, rehabilitation and replacement responsibility. So it is an even longer acronym, if you pull it out.

That final R of that acronym is replacement. That kind of requirement also can be particularly problematic for a sponsor when they are signing a PPA very early on in the process to consider having to replace a project over and over and over again.

Our experience mostly in the ecosystem restoration realm, you can imagine situations where you have a useful life of project, you have achieved the project purposes, you have sort of restored natural functioning, and it would be tremendously helpful for the sponsors if there was a way to tie the end of their obligations some way to that useful life of a project, so that we know going on that there is an end point somewhere down the line.

Senator Capito. Good suggestion.

Ms. Wallace?

Ms. Wallace. That undefined period is so important, as Mr.

Hague said, there is an obligation, and that obligation is to the Corps for the design manual, the O&M manual.

Senator Capito. Right, that they give you at the end. Okay, I got that.

Ms. Wallace. Yes, at the ribbon cutting. So the question becomes, can the sponsor then decide what to do with that replacement, or is it beholden to the Federal Government.

Senator Capito. I see.

Ms. Wallace. So at the end of a design period, at least there is a cap on who that obligation is to, if it is to their local tax base, or to themselves or to the Federal Government.

Senator Capito. Mr. Haase, do you have any suggestions in there?

Mr. Haase. I would reiterate Mr. Hague's comments that the useful, reasonable sort of life of the project is the operative language that should be used.

Senator Capito. Is that a standard that you can find? Is that something that the Corps, you would say, okay, this dam is going to last 45 years, that is the useful life? Are those measurements out there to be able to figure that out?

Mr. Haase. They are. The projects that we are involved in with the Corps typically have a design life and a period of analysis associated with them. So that is well defined, yes.

Senator Capito. Okay, thank you. Thank you, Mr. Chairman,

and thank all of you. I am sorry I have to duck out. But I appreciate it, and it is good to see everybody.

Senator Carper. Senator Capito, thank you so much.

Senator Fetterman, welcome. Good to see you.

Senator Fetterman. Thank you, Mr. Chairman. I just want to say that I am a gigantic fan of the Army Corps, really. I wish I had a shirt that I could say that, but they don't have it in my size.

I live literally right on the Mon River, and I have seen the kind of work you have done. I have actually been at the ribbon cuttings for some. The important work you have done has generated another century of commerce on the river. Again, thank you for that. I could never figure out how you get it done, but you guys do. You get it done, and I am really in awe of your work.

Now you are working with our delegation to work on the lockage on the Allegheny as well, and that is important as well. We are grateful. Now I am here to talk about other important issues in which you are involved.

I am the last speaker, and this isn't exactly as sexy or as interesting as who Taylor Swift is dating. But we are here to talk about a really important issue in counties all across Pennsylvania, whether it is Clinton or Elk or Northumberland. They have significant issues of acid mine drainage. Not on the

tip of the tongue of a lot of Pennsylvanians or Americans. But it is really important in Pennsylvania.

Now I want to ask you about the kind of support we would need from the Corps. That is why I am proud to work with my colleague, the best Senator in Pennsylvania, Senator Casey, on this kind of work.

Mr. Hague, what can we learn from the Corps, from other environmental programs, to ensure that the Corps works are effectively working within communities to address this acid mine drainage?

Mr. Hague. Thank you for the question, Senator. I am also a huge fan of the Army Corps. We at the Nature Conservancy have done incredible work with them over decades doing ecosystem restoration across this Country. I was also born and raised in West Virginia, not too far from your State. I really appreciate your focus on the acid mine drainage issue. It is something I am familiar with.

The Corps is perhaps uniquely capable in this world of doing some of the largest, most complex ecosystem restoration work that there is. So training the resources of the Army Corps on the issues of acid mine drainage might be particularly helpful for your home State.

Apropos of the topic of this hearing, one of the things I might suggest is thinking again about, if there is a way to, the

ways to constrain the sponsors of those kinds of projects, constrain their financial or legal risks. I think particularly with acid mine drainage, where you might have an ongoing discharge of contaminated water, you might want to think specifically about how we can encourage non-Federal sponsors to join in those efforts by finding some ways to articulate an end point at which they can plan around their financial commitments.

Senator Fetterman. Limits on the financial resources, are there laws on the books that are working against that kind of an outcome? Or whether some of the abandoned mines -- is there anything more specific that is driving it?

Mr. Hague. Yes, Senator. A lot of the problem is that sponsors of all projects, and I think this would apply for restoration in the acid mine drainage context as well, do have to sign these Project Partnership Agreements that have similar requirements in them that are rooted in law. To hold and save the Federal Government harmless is something that is rooted in statute as well as this commitment to doing operations and maintenance on these works is something that is rooted in statute. So those things would be particularly powerful if this committee could address them in WRDA 2024.

Senator Fetterman. We don't have the time to really drill down on that. I don't do much well, but I do hire people that are a lot smarter than I am. I have a staff that is very much

part of this, and very much educating me. We would like to continue to have that conversation so we can be most effective in addressing that specifically, what is really at the root of some of these challenges that we have, to be more informed and to be a more effective Senator, to address this. So thank you.

Mr. Chairman, I have 23 seconds left, and I cede that back to the Chair.

Senator Carper. Well, I am going to use those 23 seconds well. You talked about surrounding yourself with people smarter than you. When I was elected governor, a former governor came to see me. He gave me some great advice. He was an older guy, probably about 80 years old by then, Bert Carvel, from Laurel, Delaware. He said, "Governor Tom," I had been governor for all of a month, and he said, "I have some words of advice." I said, "What are they?" He said, "First one is, the main thing is to keep the main thing the main thing." The other thing he said is, "Always hire people smarter than you." I have tried to do both of those. Obviously, you come from the same school as I do.

Senator Fetterman. And I am honored to be a member of your committee. Thank you.

Senator Carper. The honor is ours, thank you. Thanks for being here today.

In baseball, they have a term they use, telegraphing a

pitch, the way you hold a ball, the pitcher holds the ball, releases the ball sort of gives the hitter an idea of what the pitcher is throwing. So I am going to telegraph a pitch, unless another member of the committee shows up.

The last question I am going to ask you today is just to see if there is anything else you would like to add. Looking at this hearing, looking back, thinking about what you have been asked, what you have not been asked, maybe a closing thought or two from each of you. We will do that.

In anticipation of that, let me just say, we talked earlier about every 100 minutes Louisiana loses a piece of land the size of a football field. I don't know about you; I watched a lot of football over the weekend. Louisiana is a pretty big State, but it can't last forever at the rate we are going.

Having said that, the economy, we don't think often about good news in this body, or maybe even in this Country. There is a way to look at things negatively, we are pretty good at doing that. Finding the good news is sometimes buried.

But with respect to the economy, it is pretty darned good. I have been around for a while and I have seen some really bad economies, you have too. But it has been pretty darned good in the last three years or so. I have been saying it is like 10 million or 11 million, I learned today it is over 13 million jobs that have been created in the last three years or so, which

is pretty astounding. Our unemployment rate, I think for the last three years, has been coming in under 4 percent. I think the unemployment rate today for our Country is about 3.9 percent. Historically, that is a really good stretch. Hopefully, we can keep it going.

I am told that our employers in this Country have added in the last couple of years about 240,000 jobs a month. Think about that; 240,000 jobs a month, about a quarter million jobs a month for our economy. The number of people that are unemployed looking for jobs is small compared to the number of jobs that are out there going on. We hear those numbers every week or so from the Department of Labor.

GDP had a good month, a good year, 3 percent is considered really good GDP growth. For this quarter, it has been over 5 percent, over 5 percent. And that is the good news.

The reality is strong economies don't last forever. Eventually we will fall into recessions, the whole world falls into recession sometimes. What we want to make sure of is when that happens the recessions are as shallow as can be and as short as can be, and we get back on the right track. One of the ways to make sure that we get back on the right track is to do the kind of things for our Country, for our States that we are talking about here today.

And a big part of it is the ability to ship around the world

the products, the goods that we create here in all of our States. Without the Army Corps of Engineers doing the work to help enable shipping to move through our waterways throughout this Country, on our coasts, in our ports, like the Port of Wilmington is one example, but without that, we are not going to come back from a recession as quickly in the future. We want to make sur that our economy remains strong and the capability to do more with even less is realized.

The other thing I want to say is, most of us have heard of the golden rule, we are a Country of a lot of different religions. As it turns out, every major religion on the planet has a golden rule in it. If you are Protestant, Jewish, Catholic, Muslim, Buddhist, Hindu, they all have it. When I give commencement addresses, I say to the graduates, I give them a couple of rules to keep in mind to be successful, aim high, tell them to work hard, tell them to embrace the golden rule. And I tell them don't quit. Aim high, work hard, embrace the golden rule, don't quit.

And I tell them that the golden rule is in every major religion of the world, and if it is something that is in every major religion of the world, maybe we ought to pay some attention to it. Nobody has invoked the golden rule here today, but actually I think part of what we are talking about is treating other people the way we would want to be treated, and

at the same time, making sure they can have a better quality of life in States across America.

Any last thoughts that any of you would like to share with us before I wrap it up? Mr. Hague?

Mr. Hague. Thank you, Senator, for the opportunity. I haven't had a chance today to thank this committee enough for the work you have done to reform these PPAs in the past. I would refer you to my written statement, which does include several of the improvements that Congress has made to help sponsors through these processes.

One of them that I would point out is from WRDA 2016. We have talked a lot about the operations and maintenance requirement. That WRDA bill in 2016 did create a little bit of a relief for the operation and maintenance for the non-structural elements and non-mechanical elements of the ecosystem restoration projects.

So that might be an opportunity for you in your upcoming WRDA bill to look at leveraging that authority, perhaps expanding it to other project types with the structural elements and ecosystem restoration. I think that is a really good starting point for thinking about ways to give non-Federal sponsors some certainty that there is an end date to their financial obligations.

Thank you.

Senator Carper. Good. Thanks for that.

Ms. Wallace, a parting thought or two.

Ms. Wallace. Thank you. I want to reiterate my appreciation to the committee for this important issue.

We are missing out on the benefits of investments on important non-Federal lands. We are not fully realizing the potential to improve our Nation's water resources, because we are limiting the possible locations of those investments. If Congress does elect to resolve this issue, we could place our investments where the need and resulting benefit are the greatest.

Thank you.

Senator Carper. Thank you.

Mr. Haase. Thank you, Senator Carper.

One thing I would mention that we have not yet today is that it would be good for the Corps of Engineers to update its guidance for local cooperative agreements for local partners. That has not been updated since 1989. If done in coordination with a group of non-Federal sponsors from across the Country, it might be a good launching pad to implement some of the things we have discussed here today.

And then lastly, I would just leave you with a thought that while we are talking about PPAs, we are talking about indemnity, we are talking about some of these weedy things, these are all

related to projects that have real impacts to communities and to economies across the Country. So they are important that we address in order to support all those things for our States and for our Nation.

Thank you.

Senator Carper. All right, good. Thanks.

I said at the beginning of the hearing, if it isn't perfect, make it better, and bipartisan solutions are lasting solutions. As hard as we try, every two years when we pass the WRDA bill, it is not perfect.

But we know there are perfections out there somewhere, and our determination is to get closer every couple of years to that perfection and make sure that we are laying the groundwork for a stronger economy, a better economy, more jobs for people, and frankly, doing the right thing by our environment.

I want to close; we want to give you some follow-up questions. I mentioned we want to submit some questions for the record, as you might know, and might expect. I am looking at this, by 4:00 p.m. today, we would like to have the responses tomorrow. Well, that is not true.

[Laughter].

Senator Carper. We are going to ask our colleagues to submit their written questions for the record by 4:00 p.m. on Wednesday, December 13th. That is when we are asking our

committee to have their questions for the record. We will compile those at the committee level, working with our friends on the Republican side, we will send those questions to each of you and we will ask you to reply by next year, January 3rd.

With that, I once again want to give my thanks to Senator Capito and all our colleagues who have been able to join us today, and especially to the members of our committee staff, both minority and majority. We would not be able to have these hearings without them.

We are going to take what you provided us today, in addition to that which comes from our questions for the record, and see if we can't come up with an even better WRDA the next time around.

Anything else? With that, as we say here, in Senate language, it is a wrap. With that, the hearing is adjourned.

[Whereupon, at 11:43 a.m., the hearing was adjourned.]