GAO Highlights

ARMY CORPS OF ENGINEERS

Stakeholders and Corps Views on Legal Protections in Project Partnership Agreements

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A report to congressional committees

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What GAO Found

The U.S. Army Corps of Engineers enters into Project Partnership Agreements (PPA) with nonfederal sponsors to execute water resources projects. These PPAs include a clause to “hold and save the Government from damages arising from the project” except those due to the fault or negligence of the U.S. or its contractors. Corps officials said the clause may protect the federal government from legal costs by discouraging litigation—a key advantage.

Nonfederal sponsors described disadvantages they perceive with the clause. These include concerns about the scope of liability and conflicts with certain state laws. Corps officials said the agency has taken steps to address these reported disadvantages, such as including a provision in PPAs stating that the PPA does not obligate future appropriations where it would conflict with state law. Both Corps officials and nonfederal sponsors said that the clause has not been tested in court, so the financial impact of the clause remains uncertain.

Nonfederal sponsors and other stakeholders offered a range of recommendations to address what they reported as disadvantages of the clause. However, Corps officials told GAO that implementing such recommendations would increase costs for the Corps and conflict with statutory requirements. Even in light of the reported disadvantages, Corps officials and nonfederal sponsors continue to enter into PPAs, and they described a strong partnership.

Examples of Recommendations by Nonfederal Sponsors and Stakeholders to Address Reported Disadvantages of the Hold and Save Clause

Reported Disadvantage:
Open-ended liability

Recommendation:
Identify where there is shared liability, especially for uncontrollable circumstances (e.g., acts of nature).

Corps Response:
The statutory requirement for the clause does not include exceptions for these circumstances.

Reported Disadvantage:
Lack of clarity

Recommendation:
Provide examples that clarify “fault” and “negligence.”

Corps Response:
These terms depend on the circumstance of each case where fault or negligence is alleged and cannot be defined in advance.

Reported Disadvantage:
Conflicts with state laws

Recommendation:
Allow flexibility for state and local limitations on the amount of damages or liable parties.

Corps Response:
Congress has authorized the Corps to include a provision in contracts to acknowledge such prohibitions.

Source: GAO analysis of interviews with nonfederal sponsors, other relevant stakeholders, and Corps officials. I GAO-26-108625

The Bureau of Land Management, Bureau of Reclamation, and U.S. Forest Service also include clauses in agreements to protect the U.S. against damages. To address related concerns, these agencies have taken steps such as allowing parties to purchase insurance instead. However, Corps officials said their legal requirements differ from other agencies, and therefore they cannot offer similar flexibilities.

Why GAO Did This Study

Through its Civil Works program, the Corps plans, designs, and constructs water resources projects nationwide for purposes including flood risk management, navigation, and ecosystem restoration. In fiscal year 2025, the Corps received approximately $8.8 billion to carry out these projects.

For such projects, the Corps enters into PPAs with nonfederal sponsors, which can include states, local governments and Tribes. Nonfederal sponsors have reported concerns about the statutorily required hold and save clause in these agreements.

The Thomas R. Carper Water Resources Development Act of 2024 includes a provision for GAO to review issues related to federal legal protections in PPAs, among other things. This report provides information on reported advantages and disadvantages of the clause, actions taken to address the reported disadvantages, recommendations by nonfederal sponsors and others regarding such clauses, approaches used by selected federal agencies to address concerns about similar clauses that protect the U.S. against damages, and Corps responses.

GAO reviewed relevant federal regulations, statutes, agency policies, and sample agreements. GAO also interviewed a group of 12 nonfederal sponsors, two other relevant stakeholders, and Corps headquarters and district officials based on certain criteria.