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News

BP To Pay \$20.8 Billion For *Deepwater Horizon* Oil Spill

After more than five years of litigation, the Justice Department and the five Gulf Coast states have finally reached a settlement agreement with BP for the company's role in the *Deepwater Horizon* oil spill. BP is to pay \$20.8 billion in penalties for its involvement in the environmental disaster, making the settlement the largest with a single entity in American history and the largest civil penalty ever in U.S. environmental law.

The settlement requires BP to pay \$5.5 billion in Clean Water Act penalties, \$7.1 billion in response to natural resource damage claims under the Oil Pollution Act, \$1 billion previously committed to pay for early restoration work, \$4.9 billion to the five Gulf Coast states for economic damages claims, and up to \$1 billion to local governments. Eighty percent of this funding will be allocated to the Gulf Coast states for coastal restoration efforts through the RESTORE Act. According to Interior Department Secretary Sally Jewell, the settlement should bring renewed hope to fully restore the Gulf of Mexico by funding one of the largest environmental restoration efforts ever attempted in the United States.

Louisiana's exact portion of the settlement remains unclear, but it is speculated that the state will receive \$5 billion to be used for coastal restoration. Some sources indicate the state could receive more than \$6.8 billion from this settlement. According to the U.S. Attorney General, Loretta Lynch, the penalties assessed to BP could have been much higher, but seeking the maximum fines would have taken much more time and money in litigation and appeals costs. With the penalties settled, funding can now be put to use much sooner. Lynch also stated that this settlement is the punishment that BP deserves and she hopes that it will "inspire BP" and similar companies to take all necessary precautions to ensure that an environmental disaster like this never happens again.

Louisiana Attorney General, Buddy Caldwell, led Louisiana's litigation efforts in the case and expressed that the settlement funding can now be used to "begin rebuilding our coast and repairing the damage." The U.S. Commerce Secretary, Penny Pritzker, echoed Caldwell, stating that the government and communities of the Gulf Coast will now have the resources needed to make "significant progress toward restoring ecosystems, economies, and business of the region."

Sources: Alpert, Bruce, *Justice Department announces \$20B settlement in BP oil spill*, NOLA.com, (10/05/2015). Available at: http://www.nola.com/news/gulf-oilspill/index.ssf/2015/10/justice_department_announces_2.html#incart_most_shared-environment.

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Proposed Formula To Be Used for Allocation of Spill Impact Component Funding Published in Federal Register

Recently, proposed regulations to implement the Spill Impact Component of the RESTORE Act were published by the Gulf Coast Ecosystem Restoration Council (Council) for public comment in the Federal Register. The Council is an independent federal entity that was established under the RESTORE Act to ensure that funding from the Gulf Coast Restoration Trust Fund (Trust Fund) was properly allocated among the Gulf Coast states and that the state and local governments properly utilize the funding.

Under the RESTORE Act, in order for a Gulf Coast state to qualify for funding through the Trust Fund, it must develop a State Expenditure Plan (SEP), which shall be created by specified state entities and submitted to the Council for approval. In order to receive approval, these SEPs must meet criteria created by the RESTORE Act. The criteria focuses on an overall economic and ecological recovery of the Gulf Coast by requiring the SEPs to include steps in consideration of the Council's Comprehensive Plan, and requiring all programs and activities in the SEPs be considered "eligible" under the RESTORE Act. In addition, no more than 25 percent of the allotted funds can be used for infrastructure projects, subject to some exceptions. If a SEP complies with all of the above requirements, other applicable provisions of the RESTORE Act, and certain applicable Treasury Regulations, it must be approved within 60 days after its submission to the Council. Approval of the SEP allows the state to qualify for funding from the Trust Fund.

The Trust Fund, created under the RESTORE Act, is allocated "eighty percent of any civil and administrative penalties paid under the Clean Water Act...by parties responsible for the *Deepwater Horizon* oil spill." This funding is to be made available through five components, including the "Spill Impact Component," which is administered by the Council.

Under the Spill Impact Component, thirty percent of funding from the Trust Fund is to be divided among the five Gulf Coast states. The portion of the Spill Impact component that each state receives is based on a proposed rule under the RESTORE Act. Under 33 U.S.C. 1321 (t)(3)(A)(ii), the Spill Impact Component funding must be divided based on a formula established by the Council that weighs the average of the following three factors:

- (1) Forty percent is based on the proportionate number of miles of shoreline in each state that experienced oiling on or before April 10, 2011, compared to the total number of miles of shoreline throughout the Gulf Coast region that experienced oiling as a result of the *Deepwater Horizon* oil spill;
- (2) forty percent is based on the inverse proportion of the average distance from the mobile offshore drilling unit *Deepwater Horizon* at the time of the explosion to the

nearest and farthest point of the shoreline that experienced oiling of each State;
(3) and twenty percent based on the average population in the 2010 Decennial Census of coastal counties bordering the Gulf of Mexico within each State.

Under this proposed rule, Louisiana should receive the lion's share of the Impact Spill Component funding. Under the first factor, Louisiana's 658.3 miles of shoreline that experienced oiling on or after the *Deepwater Horizon* spill created a yield of 58.92 percent. The average distance from Louisiana's oiled coast to the *Deepwater Horizon* rig was 128.6 miles, which earned it a calculation yield of 20.55 percent under the second factor. Louisiana's coastal parishes population based on the 2010 decennial census data was 133,633, which created a yield of 13.99 percent under the third factor. Thus, the weighed average for Louisiana should entitle the state to 34.59% of the Spill Impact Component while Alabama, Florida, Mississippi, and Texas should receive 20.40, 18.36, 19.07, and 7.58 percent, respectively.

Comments on this proposed rule for the division of the funding under the Spill Impact Component were due by October 29, 2015. All submissions will be part of the public record and subject to disclosure.

Sources: 33 U.S.C. 1321 (t)(3)(A)(ii).
33 U.S.C. 1321 (t)(3)(B)(ii).
33 U.S.C. 1321 (t)(3)(B)(iv).
40 CFR Part 1800. Gulf Coast Ecosystem Restoration Council. Available at: https://www.restorethegulf.gov/sites/default/files/FRID%202015-24816_RESTORE%20Act%20Spill%20Impact%20Component%2C%2020150929.pdf

GOMESA Funding, Not BP Money, to Be Used for Construction of La Hwy 1 Bridge

In an effort to finish construction of the elevated sections of Louisiana Highway 1, Governor Bobby Jindal recently petitioned the Coastal Protection and Restoration Authority (CPRA) to "change state policy" and allow funding to flow from the state's BP oil spill settlement dollars that are dedicated to coastal restoration projects under the Federal RESTORE Act. Jindal asked that any surplus under the RESTORE Act be used for construction of the last segment of an 18-mile long bridge that will connect Port Fourchon to Golden Meadow. The bridge is estimated to cost an overall \$350 million upon completion of the remaining 8.8 miles. The highway is being elevated in response to the disappearance of wetlands and land in the area, which has created flooding and left the highway sinking. Several CPRA board members strongly objected to Jindal's request, which led to a tabled vote and resulted in a compromise proposal that has been approved by the CPRA board.

The compromise provides that the Louisiana Highway 1 Bridge will be completed with funding from offshore oil revenues under the Gulf of Mexico Energy Security Act (GOMESA) rather than the state's BP fine money. Under GOMESA, 37.5 percent of

Federal revenue gained from new Outer Continental Shelf drilling leases will be provided to Louisiana, Mississippi, Alabama, and Texas in an effort to reward the states for their support of oil and gas drilling in the Gulf of Mexico. Louisiana will begin receiving this funding in 2017 and expects to receive about \$140 million a year in offshore revenues under GOMESA. The compromise approved by the CRPA provides that ten percent of this funding may be used for coastal infrastructure projects directly impacted by coastal land loss, which would include elevation of La. 1.

The announcement of the compromise to fund elevation of the highway under GOMESA instead of the RESTORE Act was met with praise from the majority of interested parties. The Governor's Office issued a statement of support for the proposal: "We are pleased with the board's decision today to ensure that we have the infrastructure in place to support ongoing coastal restoration efforts." Other interested coastal groups, including America's WETLAND Foundation and members of Restore the Mississippi Delta Coalition also issued statements of support. A joint statement from the Foundation and Coalition stated, "The resolution... is an example of diverse coastal interests working together cooperatively on practical solutions that can help ensure a viable future for our delta and other vital coastal areas, our communities, and the economic activities that serve the state and nation." The Mississippi River Delta Coalition director also voiced his support for the new proposal. According to State Sen. Dan Dorrish, the compromise proposal is also fairer to "every coastal parish that now have a chance to try and apply for part of the funding."

Board members opposed to the use of BP fines for the funding of Highway 1 were concerned with exposing the federal funding to statewide infrastructural demands, the legality of using Federal RESTORE money for infrastructure purposes, and outside perception of changing state policy. King Milling, a CPRA member and the chairman of the Governor's Advisory Commission for Coastal Protection finds both projects to be priorities but believes that diverting BP moneys from coastal restoration to funding the bridge would put the funding at risk to future demands for other infrastructure projects. Senator Blade Morrish cited Highway 27 in Cameron Parish as one such project, which still requires extensive maintenance since damage from Hurricanes Rita and Ike. Millings further stated that Louisiana needs to "allocate every dollar we have to the [coastal restoration] we have been asked and mandated to do... for the future of the state and our children and our grandchildren." Lieutenant Governor Jay Dardenne agreed that the BP fine money should be used only for coastal restoration and stated that diverting money for infrastructure use would put Louisiana further behind in funding the Coastal Master Plan.

Whether the use of Federal RESTORE funding for infrastructure use was legal under state law was another concern addressed by the CPRA. Under the Restore Act, a large portion of the fines implemented on BP for violations of the Clean Water Act due to the *Deepwater Horizon* oil spill will be directed to Louisiana and other Gulf Coast states. According to Kline, this funding may be used for infrastructure projects under federal law but there might be a conflict of such use with the state's restoration program laws.

Another concern with Jindal's request was the effect such a change in state policy might have on the amount of RESTORE funding the state receives. The disbursement of the federal RESTORE Act funding is controlled by the Gulf Coast Ecosystem Restoration Task Force (Task Force), which is made up of representatives of federal agencies and the Gulf States. Steve Cochran, a representative of the Mississippi River Delta Restoration

Coalition, pointed out that the “federal government and other Gulf Coast states” have cited Louisiana’s efforts towards to coastal erosion as focusing “as much money as possible on coastal restoration projects.” If the state policy were to shift focus away from coastal restoration and towards infrastructure, it could lead the Task Force to allocate a smaller share of the Restore Act dollars to Louisiana.

It is believed that this proposal will allow money to flow much faster for the Highway 1 project. State Representative Gordon Dove and the Director of the South Lafourche Levee Board, Windell Curole, argued that the current Highway 1 is in desperate need of funding for it is the only car road access to Port Fourchon for many offshore oil industry workers, residents, and visitors. “It is a critical piece of coastal infrastructure that needs to be elevated,” said Chip Kline, the governor’s executive assistant and chairman of the CPRA board; “It is a piece of infrastructure that literally supports the fueling of this nation.” Due to land loss, Highway 1 is constantly threatened by flooding from smaller storms, which prevents offshore workers from reaching Port Fourchon and leaves locals and visitors stranded south of the highway. The road is also sinking as a result of the land loss, which further puts it at risk to flooding in the future. “This is a more appropriate revenue stream for this project,” stated Kline. While not everyone was satisfied with the proposal, opposition appears to be limited.

Sources: Masson, Todd. *Should BP fine money go toward building a bridge?* NOLA.com, (10/2/15) Available at:

http://www.nola.com/outdoors/index.ssf/2015/09/should_bp_fine_money_go_toward.html.

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Wold, Amy. *Compromise struck on La. 1 elevation project funding; showdown vote on coastal restoration spending avoided*, theadvocate.com, (10/21/15).

Available at: <http://theadvocate.com/news/13763970-123/compromise-struck-on-la-1>.

La. CPRA Awarded \$360,000 for Shell Beach Wetlands Restoration From EPA

This past August, the Environmental Protection Agency announced that the Louisiana Coastal Protection and Restoration Authority is to receive a grant of \$362,213 to help fund a project intended to create and support 634 acres of wetlands. The goal of the project is to try and prevent the erosion of land between Lake Borgne and the Mississippi River through the stabilization of the landform separating the two waterbodies. The project aims to create 346 acres and nourish another 288 acres of marsh using fill material from Lake Borgne. Marshlands are extremely important to aquatic environments through many functions, including reduction of flooding risks,

filtering of storm water runoff, limiting the amount of pollution entering the ecosystem, providing a habitat for fish and wildlife, and fighting coastal erosion. The wetlands to be restored are located off of Lake Borgne in Shell Beach, Louisiana. The grant is intended to assist in the design of “a project implemented under the Coastal Wetlands Planning, Protection and Restoration Act (CWPPRA) program.”

Source: Durant, Hubbard. *EPA Grant Helps Protect and Restore Louisiana Coast*, EPA.gov, (10/05/15), Available at: <http://yosemite.epa.gov/opa/admpress.nsf/0/6D1C97ACEFDB036985257E990058931C>.

Gulf Coast Restoration Council Seeks Entrepreneurial Input for Best Use of Transocean Settlement Winnings

The Gulf Coast Restoration Council (Council) is seeking public input on the best possible way to allocate Transocean Deepwater settlement money towards coastal restoration. The council recently gathered businesspeople and entrepreneurs at a New Orleans incubator in order to give details on proposed ideas for the spending and to seek input for other ideas. The Council is responsible for the disbursement of an estimated \$241 million of the \$800 million that was paid by Transocean for its involvement in the *Deepwater Horizon* oil spill of 2010.

The Council has released proposed conservation projects that could total up to \$140 million, but they are seeking local entrepreneurial input for more ideas for coastal restoration. Justin Ehrenworth, the executive director of the Council, announced on New Orleans Public Radio that the Council needs the help of citizens to find the solution to the coastal erosion problem. Ehrenworth further discussed that this funding creates a massive opportunity to rebuild the coast but the best possible solution has yet to be found: “No one state knows it. The federal government doesn’t know it...we don’t have final answers.” The Council further hopes to contract with local companies to complete the restoration work. Karim Belhadjali, deputy chief of planning for the Coastal Protection and Restoration Authority of Louisiana, urged the gathered crowd at the Propeller incubator, “I recognize that there is a lot of innovation going on and ... what I’m looking for is some inspiration from groups like this who have the ability to step outside of the discipline, step outside of their comfort zones, and really start thinking through the solution to that big red map.”

Sources: Burdeau, Cain. *\$140M in conservation work proposed for Gulf of Mexico*. AP.org. (10/9/15). Available at: <http://bigstory.ap.org/article/23855f9de3fd412e95043f5cc3fea332/140m-conservation-work-proposed-gulf-mexico>
Stanley, Jenn. *Gulf Coast Restoration Team Looks to New Orleans Entrepreneurs for Help*. NextCity. (10/9/15) Available at: <https://nextcity.org/daily/entry/new-orleans-business-owners-help-restore-gulf-coast>.

Louisiana Proposes Restoration Project Ideas

On August 19, 2015, the Louisiana Coastal Protection and Restoration Authority announced the state's tentative plan for use of the estimated \$7.2 billion from the BP oil spill settlement towards the state's coastal restoration Master Plan. The plan includes wetland building, marsh creation, and the rebuilding of nine barrier islands and four coastal ridges. Wetlands are hoped to be built up through sediment diversions from the Mississippi and Atchafalaya Rivers. Sediment to be used for marsh creation will be acquired through pipelines that run from rivers and the Gulf of Mexico for marsh creation.

The funding will be provided to the state over at least a fifteen-year period. The Louisiana Coastal Protection and Restoration Authority requires that the use of funding for the coastal Master Plan be updated every five years. The first update is already scheduled for the 2017 legislative session with the hope that by that time, current studies assessing the effectiveness of sediment diversions will have results.

Source: Schleifstein, Mark. *Louisiana Identifies Tentative Restoration Projects for BP Spill Money*. NOLA.com. (10/9/15). Available at: http://www.nola.com/environment/index.ssf/2015/08/identifies_tentative_restorati.html#incart_river.

CPRA Recommends Two Mississippi River Sediment Diversions Plans Advance to Engineering and Design

At the October meeting of the CPRA, the board recommended the advance of the Mid Barataria and the Mid Breton sediment diversions to the engineering and design stage. This recommendation is based on the results of model studies that began in 2013 and were aimed at determining the costs and benefits of implementation of lower Mississippi River sediment diversions. The funding needed for engineering and design of these two diversions will be formally requested through the CPRA's Annual Plan, which will go before the CPRA Board and state Legislature at the beginning of 2016. The Mid Barataria and Mid Breton sediment diversions are to be located near Myrtle Grove and south of Woodlawn, respectively.

The 2012 Master Plan lists the cost of the Mid-Barataria diversion at \$275 million and the Mid Breton at \$123 million. However, recent studies led to changes in the projected size of both diversions, with the Mid Barataria becoming smaller and the Mid Breton becoming larger and most likely affecting the estimates of both. Currently, the projected Mid Barataria and Breton Diversion Canals are projected to be capable of moving 75 and 35 thousand cubic feet of water per second, respectively.

The studies on possible effects of lower Mississippi River sediment diversions used some of the most advanced modeling tools available, including Delft 3-D, CASM, and EwE, to predict potential changes that could occur as a result of implementing sediment diversions. The model studies were designed to obtain data to allow a better understanding of the benefits and limitations of sediment diversion as well as address concerns raised by various stakeholders. According to Kyle Graham, CPRA Executive Director, "As these studies have matured and the results are coming in, we're continuing to have confidence in the ability of sediment diversions to maximize our use of riverine sources to create a more sustainable footprint for coastal Louisiana." Initially, there were

four potential diversions studied, with two more southern locations that were found to not be as effective in wetland rebuilding as expected. Through the analysis of these studies, Graham states that the Mid Barataria and Mid Breton diversions were determined to be priorities.

The CPRA anticipates the engineering and design work for the two diversions to take several years. During this time, the CPRA plans to refine their analysis, develop an operation regime, and continue to engage the public. Throughout the next several months, the CPRA will conduct twenty briefings to discuss results in further detail with various interested stakeholder groups.

Sources: Masson, Todd. *Will sediment diversions destroy Louisiana's fisheries?*

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<http://coastal.la.gov/wp-content/uploads/2015/10/FINAL-SedimentDiversionsRecommendation-2.pdf>.

Schleifstein, Mark. *Sediment diversions, La. 1 bridge on Wednesday coastal authority agenda*. NOLA.com (10/21/15) Available at:

http://www.nola.com/environment/index.ssf/2015/10/sediment_diversions_la_1_bridg.html.

Center for River Studies To Include Model and Exhibits on Louisiana Wetlands Crisis

The construction of the 45,000-square-foot Center for River Studies (Center), which is part of LSU's planned Water Campus, will feature exhibits, learning kiosks, and a floor model designed to demonstrate the changing of the lower Mississippi River system to help educate students and the public on the Louisiana wetlands crisis. The funding for this estimated \$17.9 million building will flow through the Coastal Impact Assistance Program, which is a federal program through the U.S. Department of Fish and Wildlife that "funds projects from federal offshore lease revenues to oil-producing states." The Coastal Protection and Restoration Authority is leading the project, acknowledging that visual explanations of coastal challenges is an important strategy that can be used in order to create public awareness of Louisiana's coastal issues.

The exhibit space is being designed by the LSU Coastal Sustainability Studio, which includes university scientists, engineers and designers. The focus of the exhibit is on the ecology, settlement, and economy of the Louisiana coast as it continues to change. The Center will also include a library, conferencing area, and meeting space.

Source: Richardson, Maggie Heyn. *The Center for River Studies model and exhibits will bring the wetlands crisis to life*. Business Report. (10/9/15). Available at:

<https://www.businessreport.com/realestate/center-river-studies-model-exhibits-will-bring-wetlands-crisis-life>.