



4.29.16

Commentary

The Public Affairs Research Council of Louisiana

Transparency in Coastal Restoration Funding: The Need for an Open Process

Louisiana is poised to receive and spend billions of dollars for coastal protection and restoration over the next decade and beyond. These funds come from a variety of sources. Louisiana has a duty to demonstrate to its funding authorities as well as its citizens that coastal dollars are being well spent and the program is well run. This can only be done by ensuring there is an open and transparent process.

Louisiana is a national leader in coastal restoration, due to the establishment of the Coastal Protection and Restoration Authority (CPRA), a single state entity that is accountable for the oversight of all coastal restoration and protection activities and funds. The CPRA has employed an extensive planning process and collaborative partnerships resulting in a comprehensive and coordinated plan of action and spending plan for coastal protection and restoration. CPRA leaders have affirmed their commitment to investing the Clean Water Act civil penalties, associated with the Deepwater Horizon oil spill settlement dollars, in coastal protection and restoration through the Coastal Master Plan. Gov. Edwards also has pledged to prevent any diversions of coastal dollars.

However, significant policy and investment decisions are being made, and will continue to be made, that will impact the effectiveness of Louisiana's response to the monumental task of restoring its coastal ecosystem and economy. Transparency in decision-making, procurement and expenditures will play a key role in ensuring accountability and results. To ensure that dollars are spent as intended, the decision-making process for coastal restoration investments should be transparent and understood by the policy-makers, stakeholders and the public.

Transparency in decision-making: The CPRA

The CPRA has a well-established process for transparency in decision-making and for engaging policy-makers and stakeholders in their planning process.

The development of Louisiana's Coastal Master Plan is recognized as an effective and transparent process by stakeholders and was unanimously approved by the Louisiana Legislature in 2012. The CPRA is required by statute (RS 49:214.5.3) to update their Master Plan every five years. Further, there is a conscious goal to keep stakeholders informed through quarterly meetings and independent sources of review, inclusive of focus groups and public meetings in parishes across the coast.

The CPRA has employed a process that provides information on upcoming bidding opportunities on its website. As pertains to professional (engineering, surveying, and geotechnical services) and consulting services (environmental science and land services), the CPRA is required to follow the procurement code

outlined in Title 39 of the state statutes. Title 39 requires a public bid process for consulting services contracts through a Request for Proposal (RFP). Title 39 does not require a public bid process for professional services, but the CPRA has implemented one. The CPRA incorporates a competitive process, inclusive of public notice using the Request for Statement of Interest and Qualification (RFIQ). Construction contracts are bid according to Title 38, the Public Bid Law.

Issue:

As the dollars flow into Louisiana from the federal RESTORE Act, offshore oil revenue sharing and other sources, how will we ensure those funds will be put to good use? As lawmakers face tight budget times, will existing state dollars dedicated to coastal restoration be siphoned off? Under the state constitution, money in the Coastal Protection and Restoration Fund can be appropriated only for expenditures related to coastal restoration and protection. For example, the previous administration had attempted to use a funds transfer bill, rather than an appropriations bill, to remove money from the Coastal Fund and place it in the state's Overcollections Fund, where it could then be spent on state operating costs. This plan was derailed when the House of Representatives removed this maneuver from the budget.

Recommendation:

As outlined in past PAR commentaries, the state's past practice of using the Coastal Protection and Restoration Trust Fund as a pass-through to balance the state's operating budget should be stopped. The new governor and Legislature should avoid raiding, supplanting, redirecting and using budget gimmicks that result in reducing the funding dedicated to and available for investing in coastal protection and restoration. With the RESTORE Act and other non-state funding programs comes a higher level of scrutiny as to how the funds are expended, as well as more stringent and frequent audits. If the state misuses these, any misspent dollars will have to be repaid.

Issue:

While CPRA does a good job alerting stakeholders and interested groups about upcoming meetings, the full agenda is often not available until the day before the meeting. In addition, the items discussed can be technical in nature. These items can take the form of scientific analysis, engineering reports or financial plans. Citizens and stakeholders can be at a loss if they do not have pertinent information in advance of, or at least during the course of, these discussions.

Recommendation:

CPRA should strive to go beyond the minimum requirement of the public meeting laws. Stakeholders and citizens would be better served if they had access to an agenda well in advance of meetings. Where possible, information distributed to the board should be made available electronically to the public.

Issue:

The Coastal Fund has been raided multiple times in the past few years to help meet mid-year operating budget shortfalls. While these raids are problems, they are compounded by the fact that they are usually

hidden in broader budget language. Only close analysis of secondary documents or further scrutiny revealed that the raids were even happening. This compounds the problem of the raid by seeking to cover it up.

Recommendation:

While those seeking to raid the Coastal Fund might try to hide the attempt, this type of move is a poor budgeting practice that is the antithesis of transparency. Funds sweeps of any sort, particularly of constitutionally protected funds, should be clearly disclosed. This disclosure should be made well in advance of any decision point, such as to the Joint Legislative Committee on the Budget, so that policy makers have time to digest the information and look for alternatives. Citizens and stakeholder groups should be able to weigh in on the issue.

Issue:

There is a well-established process for transparency in decision-making and planning, there are protections for the expenditure of the funds through the public bid and professional services laws, and there is general consensus that the Master Plan will serve as the prioritization tool for project selection. It is important for the state to continue the practice of employing transparency in decision-making and planning, to rely on the Master Plan as the guide book for all work to be funded, and to ensure that the plan is updated every five years in a transparent manner that engages the stakeholders and the public. Every indication from the new administration indicates it will do so, but follow-through will be crucial.

Recommendation:

The governor and Legislature should institutionalize the practice of employing transparency in decision-making for coastal funding. This will be a test of leadership for the new governor. He will have to insulate coastal restoration and protection from a variety of political influences that could sidetrack restoration efforts.

Issue:

The state does not have a clear and transparent contracting process or accounting of CPRA's expenditure of funds as it relates to the implementation of the Master Plan. While the Annual Plan does a good job projecting future expenditures, the information is not clear about how much has been expended or carried forward from one Annual Plan to the next year's plan. Historically, due to the state's old accounting system, the information system is not set up for project accountability. The state's new, more powerful accounting system, called LAGov, creates an opportunity to provide more transparency and consistency in reporting.

Recommendation:

CPRA should leverage the new IT system, LAGov, to improve transparency and real time public reporting regarding the state's investments in coastal restoration and protection. Further, the state should leverage Louisiana government's Transparency and Accountability (LA TRAC) portal and online state spending database by including CPRA expenditures and contracts on the portal. Currently, a significant number of vendor payments are generated outside the state's system and are not defined on LA TRAC.

The Coastal Annual Plan is required to include a 3-year projection of expenditures from the Coastal Fund. However, there is no retrospective reporting on what has been spent on projects. A balance sheet or reporting mechanism will help to show the public where dollars have actually been spent, as well as the status of the projects. The CPRA has indicated that the next phase of the LAGov project tracking module should address this issue. Also, the CPRA should consider building an external portal to allow for public access to CPRA's project transactions.

Issue:

With regard to the Direct Component distribution of the Coastal Fund, the RESTORE Act allows for a wide range of eligible activities including restoration and protection, mitigation, conservation management, state park improvements, infrastructure projects, planning and administrative costs, and tourism and seafood promotion. At this time, the state's decision-making process for these competing interests is unclear. Further, the coastal parishes will receive 30 percent of Louisiana's distribution. How the parishes will use the money and how the parishes will determine how these funds will be invested is largely unknown.

Recommendation:

If the state does not invest these funds directly into the Master Plan, the state should employ a transparent planning and prioritization process for the use of these funds. The state should offer technical assistance to the coastal parishes to ensure that they have a transparent planning and prioritization process for the use of the funds. The local governments should explore leveraging existing state and federal funding and the state should offer guidance for proper expenditure of such funds. Local governments should use the state planning process as a model as they decide how to move forward with their own projects.

Transparency in decision-making: The Gulf Coast Ecosystem Restoration Council

The Gulf Coast Ecosystem Restoration Council, established by the RESTORE Act, is comprised of the five Gulf coastal states' governors and the Cabinet-level official from six federal agencies. The Council is charged with developing a Comprehensive Plan to restore the ecosystem and the economy of the Gulf Coast region. In the development of the Plan, the Council initiated a significant public engagement process to receive input from stakeholders across the Gulf Coast region. The Council hosted meetings and established a web presence to gather public comments for consideration. The members have indicated that they will consider a variety of measurements and reporting tools on the results and impacts of the Council's component activities. The group plans to include project or program measurement and reporting requirements in funding agreements.

From their early actions, it appears the Council plans to administer a transparent procurement process for those seeking funding from the Comprehensive Plan Component allocation, inclusive of placing proposals on-line for the public to view. Further, the RESTORE Act places conditions on states and political subdivisions such as: audit requirements and certifications that the funds are being used as the Act intended; selections based on meaningful input from the public; protection and restoration projects shall be selected based on the best available science; contract awards shall be consistent with the standard rules and

regulations governing comparable programs or projects in that state; and recipients must submit a multiyear implementation plan for the funds.

The Council is responsible for administering the Comprehensive Plan Component and the Spill Impact Component of the Gulf Coast Restoration Trust fund allocation.

Issue:

How does the Council, made up of politically diverse representatives, choose the right projects to fund for the Comprehensive Plan Component with the limited amounts of funding currently available? The RESTORE Act directs the Council to use the best available science and give highest priority to those ecosystem projects and programs that meet one or more of the four RESTORE Act Priority Criteria.¹ The Council has indicated that they will use the criteria to select the best programs and projects to achieve comprehensive ecosystem restoration. The Council has discussed establishing a comprehensive review process in order to properly award project funding, including a three-stage process of scientific review which will make sure the best scientific developments and consensus are available to policy makers and the public. However, how does the Council ensure that it does not adopt a project based on faulty science? How does the Council ensure that it has the right scientific experts and that the reviews are being conducted in a consistent manner?

Recommendation:

The Council needs to ensure that there is a transparent and objective process for selection, based on specific criteria. The Council should clearly define the decision-making process and the specific criteria, including their science-based decision-making process. The Council should conduct its business in a transparent manner that mitigates political decision-making. This is particularly important with regard to the scientific peer review process. These reviews should be made available to the public.

Issue:

How does the Council provide for comprehensive restoration without specified funding amount and availability of funds? For the first list of awards, \$244 million was the amount granted, but the Council only discussed \$150 – \$180 million for projects, while trying to determine how much funding to disburse and how much to hold back in reserve in the event a project might require additional funding. Further, the Council has developed a varying range of project types and cost estimates that do not appear to have a practical approach for selection in a manner that will meet the intent of the RESTORE Act and the dollars available. It

¹ The four criteria are:

How a project/program is foundational in the sense that it forms the initial core steps in addressing a significant ecosystem issue and that future projects can be tiered to substantially increase the benefits;

How a project/program will be sustainable over time;

Why a project/program is likely to succeed; and

How a project/program benefits the human community.

appears that they intend to fund a portion of large cost projects without having a strategy for completing the projects.

Recommendation:

The Council needs to clarify publicly how it arrives at its project budget. It is not unreasonable to set aside some funds for future operations given the uncertain nature of a revenue stream based on litigation. However, the Council would engender more confidence with the public if it created a plan with public input.

Issue:

Related to the issue of reserve funds, what level of administrative cost is the Council budgeting for and what is the duration of its work? Stakeholders have expressed concern about dollars being diverted for administrative costs. While some allowance has to be made for the cost of administering a program, the focus should be using the RESTORE dollars to restore the coast.

Recommendation:

The Council should be transparent about its plans for the \$90 million set aside that is currently being discussed as contingency and administrative funding. An administrative cost guideline should be adopted that sets limits on how much can be spent on non-project expenses. Several models exist throughout the federal government. Since the Council is essentially a pass-through agency, a low percentage of the funds should be used for administrative costs.

Transparency in decision-making: Local governments and organizations

The coastal parishes will receive 30 percent of Louisiana's Direct Component allocation based on an allocation formula. The funds can be used for a wide range eligible activities including restoration and protection, mitigation, conservation management, state park improvements, infrastructure projects, planning and administrative costs, and tourism and seafood promotion.

As a condition of receiving the funds, the RESTORE Act requires that the chief executive of the eligible parish shall certify to the governor that the parish has completed a comprehensive land use plan. The RESTORE Act also imposes other conditions, including that "the project or program is designed to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, or economy of the Gulf Coast." The local projects must meet the eligible activities for the RESTORE Act Use of Funds. A project should be "selected based on meaningful input from the public, including broad-based participation from individuals, businesses, and nonprofit organizations." A natural resource protection or restoration project must be based on the best available science. The project and the awarding of a contract must be "consistent with the standard procurement rules and regulations governing a comparable project or program in that State, including all applicable competitive bidding and audit requirements." And the fund recipients must "develop and submit a multiyear implementation plan for the use of such amounts, which may include milestones, projected completion of each activity, and a mechanism to evaluate the success of each activity in helping restore and protect the Gulf Coast region."

Issue:

The efforts of coastal parishes are crucial to the success of the restoration efforts. Currently, it is unclear how each coastal parish plans to utilize the funds or how they will meet the conditions for receiving the funds.

Recommendation:

CPRA should develop guidance for the coastal parishes and provide technical assistance, as needed. This assistance should not be limited to helping each parish implement projects, but should ensure that the projects work together as a cohesive unit. As long as parishes stick closely to the projects outlined in the Master Plan, coordination between parishes becomes less of a problem.

The administration should continue the state matching program to leverage RESTORE Act funding through the RESTORE State-Parish Matching Program in an effort to encourage local governing authorities to use these funds for coastal protection and restoration and avoid diverting the funds for other use. Further, the state should consider the feasibility of implementing this policy for funding under the Gulf of Mexico Energy Security Act (GOMESA).

Local governing authorities should ensure that the decision-making and procurement process for allocating and investing the funds are done in a transparent manner that includes public input.

An auditing process needs to be established to ensure that the funds are spent how they are intended to be spent, especially for GOMESA revenue and significant new funding streams.

Further, when these funds result in capital improvements, the CPRA should require that local governing authorities should have a plan for how they will pay for the associated operation and maintenance of these assets and enter into an agreement with the state.

Summary

The recommendations raised in this commentary are not to suggest that those agencies involved in coastal protection and restoration have sought to avoid transparency. Rather the good work that has been done needs to be built upon. All government entities should strive for more openness and transparency, but this issue is particularly urgent when it come to coastal spending. Louisiana will receive billions to repair and improve the coast and with those dollars come an obligation to openness. Doing so is the best way to maintain the confidence of Louisiana's citizens and the American public.

For more information contact: Robert Travis Scott, President, 225-926-8414 ext. 221
robertscott@parlouisiana.org • P. O. Box 14776 Baton Rouge, LA 70898-4776
Phone: (225) 926-8414 Fax: (225) 926-8417 • Web Site: www.parlouisiana.org