

Gulf Coast Ecosystem Restoration Council
New Orleans, LA 70130



MEMORANDUM

FROM: Ben Scaggs
Executive Director BENJAMIN SCAGGS

TO: Andrew Wheeler
Acting Administrator, U.S. Environmental Protection Agency (EPA)
Chairperson, Gulf Coast Ecosystem Restoration Council (Council)

DATE: February 1, 2019

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Date: 2019.02.01 12:32:20 -06'00'

SUBJECT: Recommendation for Approval of Texas State Expenditure Plan

Pursuant to the Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economies of the Gulf Coast States Act of 2012, 33 U.S.C. §1321(t) *and note* (RESTORE Act), the attached Texas State Expenditure Plan (SEP) requires approval or disapproval by the Chairperson of the Council within sixty days after receipt by the Council. This sixty-day review period officially began on January 3, 2019; the statutory deadline for Chairperson approval or disapproval is March 4, 2019.

According to the Council's SEP Guidelines, Council staff are to review the proposed SEP and make a recommendation to the Chairperson as to whether to approve or disapprove it based on the requirements of the RESTORE Act, the Department of the Treasury's implementing regulations and the Council's SEP Guidelines.

I have reviewed the SEP and find that it is complete and meets all applicable requirements. I therefore recommend that the Chairperson approve the SEP on behalf of the Council. A more detailed explanation of this recommendation is provided below. If you agree with this recommendation and approve the SEP, the attached response letter has been prepared for your signature.

The attached letter would constitute the Chairperson's affirmative vote to approve the SEP. Pursuant to section 4.3.3 of the Council's Standard Operating Procedures, Council staff will post on the Council's website all deliberative materials (including this memorandum) at least seven days before formal Council approval of the SEP.

BACKGROUND

The RESTORE Act established the Council as an independent federal entity. Among other duties, the Council is tasked with administering the Spill Impact Component of the RESTORE Act (33 U.S.C. §1321(t)(3)), under which thirty percent of the funds in the Gulf Coast Restoration Trust Fund (Trust Fund) are disbursed to the five Gulf Coast States based on an allocation formula established by the Council by regulation, based on criteria in the RESTORE Act. In order for Spill Impact Component funds to be disbursed to a State or its administrative agent, the RESTORE Act requires each State to develop a SEP and submit it to the Chairperson for approval.

Under the RESTORE Act, the Council itself has no substantive role in the creation of SEPs or the design or selection of SEP activities; these actions are undertaken solely by the State members. The RESTORE Act specifies four criteria that SEPs must meet in order to be eligible for funding under the Spill Impact Component, and when a SEP meets these criteria (and otherwise complies with the RESTORE Act and Treasury regulations) the Council has no discretion to reject a SEP, to select or designate alternative versions of a SEP, or to select or designate alternative activities within a SEP. Although the Council must determine whether a SEP has met the statutory criteria, the RESTORE Act does not grant the Council discretion to separately consider external factors, for example environmental impacts, in its statutory review.

In March 2016 the Council updated its SEP Guidelines, which describe the required elements of a SEP, the process for submitting a SEP and the standards by which the Chairperson will evaluate a SEP. The SEP Guidelines set forth the elements required in a SEP to ensure compliance with the RESTORE Act and applicable Treasury regulations. The SEP Guidelines reiterate the four statutory criteria that all SEPs must meet:

1. Each activity in the SEP must be eligible for funding under the RESTORE Act;
2. The SEP must contribute to the overall economic and ecological recovery of the Gulf Coast;
3. The SEP must take into consideration the Council's Comprehensive Plan and be consistent with the goals and objectives of the Comprehensive Plan; and
4. No more than 25% of the funding made available in a SEP may be used for infrastructure projects under eligible activities 6 and 7 (i.e., coastal flood protection, port and other infrastructure projects) unless a waiver is provided as described in the RESTORE Act.

The Council staff review found that the Texas SEP meets all four of the required criteria. The review also found that the SEP is complete and meets all of the other requirements set forth in the SEP Guidelines. These requirements include descriptions of the financial controls and other financial integrity mechanisms that will be used, a description of the process used for preventing conflicts of interest in the development and implementation of the SEP, project/program-specific information, a certification that

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all activities in the SEP comply with RESTORE Act requirements, and information regarding the public participation process used in developing the SEP.

Pursuant to the SEP Guidelines, the Council members were given twenty days to review the SEP for completeness and consistency with the four statutory criteria described above. Council members were to provide any comments they might have to Council staff, which in turn would provide them to the Chairperson for his/her consideration in the approval or disapproval of the SEP. No Council member provided comments on this SEP. Please note that due to the partial shutdown of the federal government, four of the Council's eleven member agencies had limited time to review the TX SEP. Given the shutdown, the exigencies of the activities comprising the SEP as communicated to the Council by Texas, and the fact that no other Council members raised comments or issues with the SEP, I believe that the SEP Guidelines allow me to make my recommendation to you notwithstanding the time constraints on those federal members.

The Texas SEP, if approved, would provide \$31,320,000 in Spill Impact Component funding for four programs to support ongoing recovery from Hurricane Harvey and other ecosystem stressors. Specifically, these programs would fund efforts to improve water quality and quantity, restore beach and shoreline habitat, promote nature-based tourism, and mitigate ecosystem and other impacts to creeks, bayous and other waterways.

If the SEP is approved, funding for the activities in the SEP will then be disbursed to Texas via federal grants. As part of the grant process, all activities for which funding is sought will be carefully reviewed to ensure consistency with the approved SEP and compliance with the RESTORE Act and all other applicable requirements. Funding for implementation activities is disbursed only after verification of compliance with all applicable federal environmental and other laws.

In summary, the proposed Texas SEP complies with all of the applicable requirements set forth in the RESTORE Act, Treasury regulations and SEP Guidelines. If it is approved by you, we look forward to working with Texas to help ensure an efficient grant process for the activities included in the SEP.

Thank you in advance for your review of this matter. Please do not hesitate to let me know if you have any questions or would like to discuss this matter further. Technical questions regarding the SEP can be directed to John Ettinger of Council staff at (504) 444-3522 or at john.ettinger@restorethegulf.gov.

ATTACHMENTS

1. Texas State Expenditure Plan
2. Draft Letter Approving Texas State Expenditure Plan