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U.S. Department of Justice  
Washington, D.C. 20044-7611

**Re: U.S. v. BP Exploration and Production et al.**

On Monday, Oct. 5, 2015, the U.S. Department of Justice announced a final settlement with BP stemming from its role in the 2010 Deepwater Horizon/Macondo Well oil spill. BP agreed to pay \$20.8 billion for its role, in what amounts to the largest civil settlement with any single company in American history.

While we are encouraged that states now have the clarity needed to make planning, restoration and investment decisions related to the Gulf Coast recovery, the consent decree raises a number of concerns.

In 2012, Congress passed the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States (RESTORE) Act. The law redirects 80 percent of federal fines and penalties from the oil spill in a manner that affords local and regional officials significantly more control over restoring the economic and environmental damage inflicted on their communities.

Toward that end, the consent decree provides for \$5.5 billion in Clean Water Act (CWA) civil penalties. That means the actual penalty assessed (\$1,724 per barrel of oil) is 60 percent less than the maximum available penalty (\$4,300 per barrel). In other words, the consent decree reduces the maximum funds available through the RESTORE Act process from \$10.97 billion to \$4.40 billion. Control over billions of restoration dollars appears to have shifted away from the impacted communities to state governments, in the form of economic-damage payments, and to the federal government, through natural-resources damages.

While any settlement requires compromise, such a significant CWA penalty reduction against a party with clear culpability for damages raises significant questions.

In spite of our concerns about the consent decree, the resources available through the Natural Resource Damage Assessment (NRDA) process, RESTORE Act, economic-damage settlements and other revenue streams represent a tremendous opportunity for the Gulf Coast.

Each Gulf Coast state has responded differently to the oil spill, but each must develop a ready list of priority projects, if they haven't done so already. Each project should have clear objectives, define measures of success and be based on the best available science.

As each state develops its own coastal master plan, it must work with other states in a coordinated approach to Gulf Coast conservation. Rather than relying on distant federal authorities and mechanisms, Gulf Coast states must assume the responsibility to ensure both economic prosperity and environmental stewardship at the water's edge.

Louisiana's "Comprehensive Master Plan for a Sustainable Coast" is an exceptional model for coastal planning. Updated every five years, the plan focuses on prioritizing projects necessary to ensure the continued environmental and economic well-being of the state's coast. As funding becomes available, projects are initiated. Louisiana's plan demonstrates and effectively articulates the crucial interplay between the economy and the environment. Politicians, trade associations, landowner groups and environmental advocates across the political spectrum all contributed to the plan's framework. In that respect, it transcends politics, while focusing on the challenges facing the state's coast.

Gulf Coast states without comprehensive coastal plans would be wise to use the research and planning opportunities afforded by the recovery process to develop their own visions for the coast.

As states consider the types of economic and environmental projects to fund with resources derived from the Deepwater Horizon/Macondo Well spill, we urge decision-makers to consider the following questions for each project:

- 1. Does the project provide public benefit?** RESTORE Act funds should be used to provide public goods: products and services, such as infrastructure, that are used by most or all people and for which use by one person doesn't preclude use by others.
- 2. Is there a direct connection to areas impacted by the spill?** The RESTORE Act was passed to direct funds for economic and environmental projects in areas affected by the Deepwater Horizon oil spill.
- 3. Does the project confer economic benefit by reducing the impact of future natural or manmade environmental disasters?** RESTORE Act funds provide a tremendous opportunity for projects that prepare coastal regions for costly events, such as hurricanes and floods, which carry significant economic consequences.
- 4. Does the project reduce future environmental harm or ameliorate current damage?** Projects should mitigate future environmental harm by restoring wetlands and barrier islands or ameliorating current environmental harms.
- 5. Does the project require future funding once RESTORE Act funds are exhausted?** The RESTORE Act should not create ongoing financial burdens for state and local governments or develop projects with uncertain future costs.

**6. Does the project offer a positive benefit-cost ratio, based on sound accounting and economic projections?** The measure here should be the value created for citizens and taxpayers, not the number of jobs created.

**7. Are there measurable impacts and accountability metrics for the project?** To preserve public faith in the RESTORE Act's implementation process, decisions about project funding, and all expenditures made utilizing RESTORE Act money, should be completely transparent, measurable and accountable.

The consent decree provides finality, but also creates new issues that must be resolved before proceeding. At the same time, we shouldn't wait for another natural or manmade disaster to quicken our focus on commonsense ways to better preserve and protect our natural resources and Gulf Coast economies.

Sincerely

Cameron Smith  
State Programs Director  
R Street Institute