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**Minutes**

**Governor’s Advisory Commission on Coastal Protection, Restoration, and Conservation**

**Wednesday, April 1**

**9:30 a.m.**

Galvez Building

Oliver Pollock Room

602 North 5th Street

Baton Rouge, LA 70802

1. **Welcome/Call to Order** **–** *R. King Milling, Chairman*
2. **Roll Call**

King Milling, Sen. Morrish, Mark Delesdernier, Mayor Piazza, Dale Hall, Alan Front, Karen Gautreaux, Chris Macaluso, Ted Falgout, Nick Mathern for Pres. Claudet, Rep. Garofalo, Chip Kline, John Costonis, Rep. St. Germain (10:00), Joel Landry (10:05)

1. **Approval of Agenda** (no quorum 9:45)
2. **Approval of Minutes** (no quorum 9:45)
3. **Oyster Legislation Discussion**—*Lawrence Marino, Oats & Marino*
   * Background by Chip Kline. Legislation has been brought up in years past. The bill here today is different from ones in the past. This is an issue that needs to be addressed. The moratorium needs to be lifted but other things need to happen to. There will not be a bill introduced this year.
   * All entities need to come together to work through these issues.
   * Larry Marino: history of the moratorium. No new oyster leases being granted.
   * Opportunity for new leases helps the industry to grow, helps them to adapt to natural changes in salinity year to year and to proposed restoration projects.
   * 2009 moratorium lifting committee came back with recommendations.
     1. “first come, first served” a legislative change required by oil and gas
     2. Evaluation of state ownership of water bottoms before leases issued required by land owners.
     3. Committee assigned equal weight to all the different provisions.
   * History of legislation proposed in 2011, 2012, 2013. BP litigation on behalf of the oyster industry played a significant role in stopping legislation in each of those years.
   * 2014 bill added bidding for new leases, termination of leases for nonuse. Not enough time to introduce the bill.
   * Meetings for 2015 bill began in 2014. Oyster Task Force voted to oppose the bill.
   * Current iteration of the bill has the following:
     1. First come first served for permittees
     2. State ownership issue for water bottoms
     3. Grants right of first refusal for voluntarily non-renewed leases
     4. Authorizes boundary line straightening
     5. Authorizes 500’
     6. (see presentation for other components; slide 9)
   * Bidding changed to a strict raising of the lease rate. Propose raising the rate to $10/acre/year.
   * Termination for non-use proposes a 10 year non-use provision (same as mineral rights).
   * (Rep. St. Germain is present)
   * ”Use" is broadly defined to include cultivation, maintenance, harvesting on at least 10% of a lease/year. There will be a 1 year grace period if the lease is overlooked.
   * DWF may require reporting of cultivation, maintenance, and harvesting by lease.
   * Legislative Auditor report in February 25, 2015. Found our lease rate was very low.
   * (Joel Landry is present)
   * Auditor report noticed that LA did not require use of the lease as other states do.
   * Also raised issue of fixed limit of acreage controlled by one person and the auditor thought that should be addressed.
   * Lifting the moratorium would raise more revenue that could be directed back into the industry to provide to the state.
   * Mr. Falgout: as an alligator farmer I have to bid every year for my leases. Navigation: if an existing oil and gas lease has been in place but then they determine the route they need to get to their lease and that route impacts their oyster lease. How is that addressed?
     1. That would be a new permit for that route so first come first served would apply.
     2. Falgout: there is no environmental consideration? If the route needed to avoid the lease is longer and impacts more resources that does not matter?
     3. Marino: that would get worked out in the permitting process.
     4. Falgout: has there been discussion with LDWF? They have been very generous with their leasing. Are they on the same page as CPRA? Could I take a new lease in a fresh body of water? Are they being restricted to oyster producing areas?
     5. Marino: we address water bottoms and capable of producing oysters before the lease is issued. We have discussed this with LDWF and made many additions at their request.
   * Mr. Macaluso: How much revenue does the current leasing program bring into the department and does that cover the costs of maintaining the resource and how much early NRDA money went into cultch projects?
     1. $12 million of NRDA money went into cultch projects and $3 million went into the oyster hatchery
     2. The income was $2 an acre over 400,000 acres a year but as far as I know that is not dedicated and it goes into the general fund and I think they spend more than that maintaining the resource.
   * Rep. Garofalo: one of the reasons we discussed bringing back the moratorium raising commission is because some of these issues are new. I think it is appropriate to have all the different players on the table. Do we know how much surrounding states are putting back into their resource? I want to make sure you are working with DNR and LDWF so when we bring this issue back we will have all the right representation. Being involved in the 2014 legislation I can understand why the industry is hesitant to participate since the changes were so abrupt last time around.
   * Mr. Kline: we started discussing this in October which was ample time to get our heads around these issues. With regard to the fee raising we could easily add to the legislation that would put the money back into the oyster industry.
   * Rep. Garofalo: back in 2014 we were all surprised by the changes to the bill and I want to make sure that doesn’t happen again in the future.
   * Rep. St. Germain: on the lease itself, those areas have been discussed with the oyster industry?
   * Mr. Marino: we started working in (see tape) and had another major meeting with the Task Force in January. They opposed it in January.
   * Rep. St. Germain: why aren’t we doing the bill this year? Because they opposed it?
   * Mr. Kline: because of that very fact. When we discuss these issues it is important to come to the table with compromise in mind.
   * Rep. Garofalo: in 2014 all kinds of changes were added to the bill and the oyster industry now feels that all of these major changes were being thrust upon them with no input. I think when we come to the table this time we will have people in the mindset to compromise. They are being defensive and frankly I understand why.
   * Mr. Marino: the 2014 bill is off the table and we have engaged them this year from the beginning.
   * Mr. Milling: Let me see if we can move this forward. It seems that what is being proposed is a process to develop legislation. As far as I am concerned the issues being raised and discussed today have been on the table at one point or another. The question is how they can ultimately be resolved. We will be having a series of meetings composed of the individuals representing the affected industries where we can figure out what needs to be done to move this process forward.
   * Mrs. Gautreaux: these discussions have been going on for quite some time and we all understand the importance of having a healthy oyster industry and resource. We need to get updates at every commission meeting so we know what has taken place. I want updates from the oyster industry as well to hear how things are happening.
   * Mr. Costonis: has the issue of land owner reclamation rights come up?
   * Mr. Marino: no, that has not arisen
   * Rep. Garofalo: that has come up in some oyster meetings that have come up and I think it should be on the table for this new effort.
   * King Milling: sounds like the issues you have raised are more complicated than all these other ones put together; I think the point is well taken.
   * Mr. Costonis: I am speaking to the CPRA’s work in general.
   * Mr. Kline: Clarification, Larry is actually working for the Governor’s Office of Coastal Activities on this issue and not for the CPRA.
   * Public Comment:
     1. John Tessavitch, oyster task force: I want to point out a few things. This legislation is 23 pages. It is atrocious from the point of view of the industry. Rep. Garofalo hit the major points. The BP issue is not over with. Our attorneys are still concerned that changes to leasing will affect the BP claim. We are talking about a renewable resource in this case, not a non-renewable resource. The laws have worked for a long time. To say that we are raiding the coast and not paying for it is not true. We understand the lease rate is low and we will be addressing that in the coming session. The coast will be changing drastically in the next 20 years. And when we talk to Mr. Marino and the CPRA we ask where can we raise oysters? You are putting us in a situation of total speculation. People will be investing in leases that will be worthless in 10-20 years. We need a plan. We have to address all these things. We are not against lifting the moratorium.
     2. Mr. Macaluso: in the past few decades there have been a number of oyster beds close to Grand Isle and Grande Terre that were seemingly productive habitat. And they were good beds and they aren’t there anymore. Why are those leases going away? Is it because of salt water and could they return if there was a better balance?
     3. Mr. Tessavitch: those were cultivated. The oystermen would take seed and plant them in the Grand Isle area. That seed is no longer available. Those public reefs are no longer productive since the BP Oil spill. That is where the prime area used to come from. Without natural seed production we are looking at hatchery based seed for those types of leases.
     4. Mr. Milling: You know the issues we are faced with and much of what we are doing has to be driven by experts. Some of these issues we will never have answers for. We both know we have got to move forward. We have got to get as much information as possible. But we have few choices with the severity of the issues we are facing. That is why we are in this room having these conversations. We can’t allow for status quo to remain.
     5. Mr. Tessavitch: we are willing to work together in a smart way
4. **CPRA Fiscal Year 2015-2016 Annual Plan—***Kyle Graham, CPRA*
   * Reviewed the legislative guidance
   * Update on where we are today: 22 projects under construction at $11.6 billion dollars. If you subtract out the federal projects there is still $420 million of construction work going on today.
   * We have 8 project heading to construction today including Caminada Phase II
   * In the next 6 months we have another $389 million going to bid.
   * Displayed timeline of Annual Plan events.
   * Review of comments received from the public.
   * Restoration Partnership Program was able to be restored since CPRA has not yet been subject to the $2.2 million in cuts that was originally expected.
   * Mr. Falgout: the long distance sediment delivery through Barataria Basin. The whole concept was to try to get it into Lafourche. Lately I am hearing that the portions farthest from the sediment are going to be the highest in cost. The Lafourche and Jefferson part of the delivery is not in the plan any longer. How do we, on a smaller scale, to address more critical needs?
   * Mr. Graham: the pipeline is a means to implementing projects. The master plan is a green blog of marsh creation. Our current construction plan is to go into that area, about every three years to pump as far and as much as we can. We are out there today and we plan on draining all the resources available in the river. We would love to permit with the corps to get more. We have not yet done the next phase. The master plan has a project in that area and the goal is to mine from the river.
   * Mr. Falgout: that project, by the way, is beautiful.
   * Mr. Graham: we built a ridge to run the pipeline and the goal is to be able to go in and out of there over and over.
   * Mr. Matherne: point of clarification, I think where Mr. Falgout was going was with the latest FDT meeting where a proposed project for 2017 did not make the cut to move forward in 2017 modeling.
   * Mr. Graham: we are going through the process of vetting 2017 projects. People want us to expand the list of projects we model further but we can only do so much. We have to keep moving forward.
   * Mr. Falgout: it would be helpful if you defined a project because there are parts in the lower area around bayou Louis where private investment might be able to build that component for you. They want to be building a master plan project and not just a piece of marsh.
   * Mr. Graham: we are doing the best we can with the tools we have. We put green globs out there even though we don’t have total certainty. We know folks want to know if they are in or they are out. We put out some parameters with CWPPRA to have those conversations, but we just can’t have that level of planning for every project ahead of time.
   * Mr. Falgout: we just need to make sure we have a mechanism for outside funding to get involved.
   * Mr. Milling: we might have the horse before the cart. Sometimes it is going to be difficult to do that on this scale. But being able to use private funds is very important and we have yet to figure out how we are going to put it together. Maybe down the road it becomes clearer.
   * Mr. Falgout: we just need every dollar from anywhere.
   * Mr. Macalusso: We understand that there may be some incentives for the parishes to invest their money to further some master plan projects or state projects. Are those dollars going to be limited to master plan projects?
   * Mr. Graham: Great question. The master plan does not limit where the locals spend their money. It outlines the state priorities to spend its money. We are working on a proposal to flesh out the matching program and that will not be limited to master plan projects. We also don’t want to set up a blanket percentage. We need to do it as a discussion and see what projects are out there.
   * Mr. Miling: How we deal with local funding through the RESTORE Act will develop over time. We have to keep focused on the larger issues as much as possible and then some way to keep activities handled on the parish level is consistent with the master plan. We have to be careful about all of that as we move forward.
   * Mr. Front: I assume we will not be voting on a resolution due to our quorum. I still would love to recommend this plan. The level of achievement especially given the partner dynamics. There has been great progress year after year and we are making a difference. This process is the envy of other states. I just wanted to note that I am enthusiastic about it.
   * Mr. Milling: I would also agree that if one goes back and looks at the level of activity going into this, the degree of knowledge has been exponentially increased. There is more to learn. And some we won’t know until we do it. It is astonishing.
   * **Annual Plan Resolution (none due to lack of quorum)**
   * **Public Comment**
5. **Increase Atchafalaya Flow to Terrebonne—***Wes LeBlanc and Austin Feldbaum, CPRA*
   * Purpose of this study is to develop some detail about the measures that are a part of this project and what it looks like on the ground to determine if the project is actually construct-able.
   * Project has been in the hopper throughout many planning efforts.
   * Two parts to the project: diversion near Bayou Bouef lock into the GIWW and to dredge the GIWW and beneficially use the material.
   * Large area of analysis to measure wide range of potential impacts
   * Outlined different measures that could be part of the project.
   * Reviewed screening criteria and data collection.
   * Reviewed the model screenings and results.
   * Overview of variations on the initial alternatives
   * Showed potential locations and arrangements for the diversion portion of the project
   * Engineers working to develop actual designs for the southern flow through Avoca Island.
   * Showed modeled changes to isohaline line possible with implementation of the project. This helps determine the amount of wetlands benefited.
   * Displayed plan selection. See slide for details. And next steps.
   * Mr. Falgout: in your modeling of the Bayou Bouef lock, do you do a different lock operation and a smaller channel? Could you use a smaller channel if you had a different operation?
   * Mr. Feldbaum: leaving it open more often had a very small increase in the amount of water we were drawing. The limiting factor on how much water you can draw is the difference between the basin and river level.
   * Mr. Falgout: it would seem that the velocity of the current would be a limiting factor and if you could tweak them both then you end up with a smaller cross section of canal to be dredged.
   * Mr. Front: recognizing the purpose is related to salinity regimes, I am also mindful that the commission has seen ancillary but significant sediment benefits to other freshwater diversions. (see tape)
   * Mr. Matherne: with the Houma Navigation Lock going into design that will just increase the benefits we see from this project…there are a lot of stakeholders in this game. Austin has done an excellent job of wrangling some difficult people. Thank you for your work so far.
   * Mr. Milling: if you increase from 20-30,000 what are the costs or benefits?
   * Mr. Feldbaum: we would have to add flood protection measures to those communities. But we also got up to 6,000 more acres.
   * Rep. St. Germain: we also have to watch for impacts in Assumption Parish.
6. **The Coastal Index**—*Nihal Shrinath, The Data Center*
   * Looking at the economics of coastal restoration.
   * Importance of coastal populations
   * Analysis of job generators (more local jobs than local workers) along the coast.
   * Look ahead to the new report due in late April 2015.
   * Mr. Costonis: I can see how Silicon Valley draws on other spending, but it creates a product that it sells worldwide. I have difficulty seeing how water management creates a product. I also see that the consumer of the product is a public entity. I don’t see the parallel between Silicon Valley and what is happening here. I agree that huge resources will be spent but what is the product?
   * Mr. Shrinath: what we define as the water management economy right now might not end up being the center of the cluster we’re projecting for the future. There are clusters centered around expertise. Some of the largest engineering firms in the world are located in the Netherlands because of that work. We aren’t trying to identify the product, but saying that by having the right environment that product can emerge. We don’t think it is a cluster yet.
   * Mr. Milling: we entered into this program because we have incredible problems. At the same time we knew that from an engineering standpoint it was one of the most complex issues faced anywhere. What has been happening is that we have worked bringing in the best in the world to work on this. And that information is ultimately transferable to other places in the world with this same problem. It is a question not of if we end up with a cluster or not but we will end up with a significant amount of expertise that the world will need more and more of.
7. **RESTORE Act Update**—*Chris Barnes, Governor’s Office*
   * Overview of the RESTORE Act pots.
   * Pot 1—CPRA board has approved $38.3 million for projects. Multiyear implementation plan being drafted and will go out for public comment.
   * Pot 2—Council is reviewing the 50 project and program submissions for the initial funded priorities list ($150-$180 million). Fall is when the announcement is expected.
     1. LA submitted $45 million worth of projects and one program for this pot.
   * Pot 5—center of excellence: draft policies governing COE available for public comment until 4/17/2015
   * Pot 3: Impact Allocation
     1. 30% of the money; only portion tied to actual impact.
     2. Miles of shoreline oiled: need to treat oil differently based on degree of oiling, environmental sensitivity of the habitat oiled, and the duration of the oiling.
        1. Mr. Milling: what is the response from those who do not believe that?
        2. That it would be complicated to do. But the Coast Guard data contains all of these measures. This is all information that the Council has access to.
        3. Rep. Garofalo: you have showed this to the Council and what was their reaction? (didn’t like it)
        4. When the council publishes the regulation it will be subject to public comment.
        5. Mr. Macalusso: you have five states and six federal agencies. So we need to start working on the federal agencies.
     3. Proximity:
        1. Went over two types of averages. Outlier sensitivity in different types of calculation.
        2. Rep. Garofalo: the way the statute is written you could use either one. (yes. You have to make an interpretation either way).
        3. Showed calculations and how states faired under different “average” scenarios.
        4. Using arithmetic average penalizes a state for having more injury in the “impact allocation” of all places.
   * Mr. Hall: I think if we look at the history of this it was a real struggle to get this passed. We knew this fight was coming, we were just trying to post-pone it until we secured the money for the coast. I am curious as to a couple of other things: 1) the fines are based on the assumption that there were ecological impacts that occurred. Is there an assumption that NRDA will address that disparity among the states?
   * Ms. Barnes: I think together they start to get at the injury, but they are separate measures entirely.
   * Mr. Hall: I would urge you not to accept that. The fine is meant to be a punishment for impacts to the natural resources. I would make sure that RESTORE is still tied to the Clean Water Act which is connected to natural resources. What is going to be the controlling factor preventing economic type projects being used here?
   * Ms. Barnes: Treasury is going to determine the eligibility of certain projects. And each state will have to develop a state expenditure plan to outline all the projects they plan on implementing.
   * Mr. Hall: I urge all the people of Louisiana to pay attention to those developments.
   * Mayor Piazza: you never mentioned how any money was going to flow into municipalities, only to parishes. There were many municipalities left out during the road home program we were promised. A lot of coastal cities were hurt economically from this spill and we need to share in these funds. The parishes are not going to share. You need to include the LMA in the divvying up of these proceeds and not depend on the parishes. If you give it to the parishes the municipalities are not going to get their fair share.
   * Rep. Garofalo: it is probably just me, but that was the clearest presentation on RESTORE act allocations yet. Have the pot 2 projects been voted on yet? (not yet). I would move that this body create a resolution to support the state’s argument on this pot. (We can’t do that today because of a lack of quorum but we can at the next one.). Are we working on a brief?
   * We are working to get buy in from any and all interested parties and trying to get the federal agencies on the council to see things our way.
   * Rep. Garofalo: would you mind doing a presentation for how we are proposing allocating all money in all pots in the future. (yes).
   * Mr. Hall: can we get a copy of this?
   * Mr. Milling: there may be some precedence with how other federal groups are using this harmonic average. How we present this case is going to be an important piece. If the results are intuitively unfair, the rest of the states might be inclined to compromise. We should hope for that.
   * Rep. Garofalo: what makes logical sense is that this pot was for the highest impact and not because of some deal.
   * Mr. Costonis: are the decisions of the council subject to judicial review?
   * Mr. Milling: if not judicial review, pressure. The card is playing the agencies that are there.
   * Mr. Front: I agree with everything that has been said. My sense is that this is one of those situations where you stand depends on where you sit. MS, FL and other you are looking at these terms in a couple of different lights. I would also add that the council, made up of state and federal participants, is chaired by a federal participant with a great deal of influence. Outreach that might be most useful would probably be the most important. I know this is supposed to be impact money but that it is guided by the rule book provided by the statute and everyone seems to think they are not getting enough. It does strike me that LA is different from those other states not just in terms of damages but with what the state proposes to do with the money. LA’s projects are much better vetted and

address needs much more necessary than others. And we have dedicated our funds to restoration and protection. We need to include those aspects in our arguments alongside the impact arguments mentioned today. Highlighting the differences between LA’s plans and others will be critical.

* + Mr. Matherne: we have been fairly successful in getting together as parishes and NGOs to make an impact. I think we would appreciate a white paper on this argument so we could bring it to local groups to prepare resolutions. Even going up to NACO. When do you anticipate this conversation taking place on the public field with the Council.
  + Ms. Barnes: the pot 2 process is likely to be done by sometime in the fall when they would likely turn their attention to Pot 3. We have some time to prepare.

1. **Public Comment: NRDA, Oil Spill, Response and RESTORE Act**
   * none
2. **Public Comment**

* none

1. **Adjourn**