

**Gulf Consortium Board of Directors
December 2, 2016**

**Agenda Item 13.2
Discussion of Legal Issues Related to Bonding Pot 3 RESTORE Funds**

Executive Summary:

This agenda item outlines the legal issues regarding whether the "Spill Impact Component" funds received by the Gulf Consortium (the "Consortium") from the Gulf Coast Ecosystem Restoration Council under the RESTORE Act may be pledged to secure indebtedness.

Background and Relevant Provisions:

1. Recipients, including the Consortium, of federal funds must comply with the provisions of the OMB Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Grants contained at 2 C.F.R. Part 200. Among said provisions are restrictions contained on using grant funds for financing costs set forth in 2 C.F.R. 200.449, which permits such usage for the acquisition, construction or replacement of capital assets.
2. In "RESTORE Act Frequently Asked Questions (FAQs) Relating to the Direct Component Program," dated September 27, 2016, the Treasury stated (in the context of the Direct Component Program, but interpreting the same provision) that the RESTORE Act "...does not provide authority for the Treasury to pay for debt-financing costs after a project is completed, unlike some other federal assistance programs."
3. Section B.07 of the RESTORE Council Financial Assistance Standard Terms and Conditions, dated August 18, 2015, provides that "The non-federal entity shall not transfer, pledge, hypothecate, mortgage or otherwise assign the award, or any interest therein, or any claim rising thereunder, to any party or parties, including without limitation any bank, trust company or other financing or financial institution, without the express written approval of the Grants Officer."
4. Under Section 149(b) of the Internal Revenue Code, the interest on indebtedness issued by state or local governments will not be excluded from gross income for federal income tax purposes if said indebtedness is directly or indirectly guaranteed by the United States of America, in whole or in part. Due to the nature of the RESTORE payments to be received by the Consortium, it is unclear at this point if such payments would be deemed to constitute an indirect federal guarantee. Other federal programs which contemplate pledging payment for debt service have language specifying that the federal payment do not constitute such a guarantee; this language is not included in the RESTORE Act.

5. Although not necessarily a legal issue, the nature of the ultimate payment source (BP) for RESTORE Act funds presents some challenge for traditional municipal credit analysis, and will likely require additional review of BP's financial situation.

Analysis:

Based on the foregoing, the ability of the Spill Impact Component to be pledged for debt service (i) at a minimum requires the prior approval of the Grants Officer, and (ii) may be limited with respect to financing costs (i.e., interest) occurring after the completion of construction of the "project". In addition, the ability to issue debt, if the same can be done, on a tax-exempt basis is questionable.

Recommendation:

We recommend that the Consortium ask the Grants Officer, on at least a hypothetical basis, whether it may pledge the Spill Impact Component, before taking additional steps.

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