



September 21, 2009

S. Elizabeth Birnbaum
Director of the Minerals Management Service
U.S. Department of the Interior
1849 C Street, N. W.
Washington, D.C. 20240

Re: Coastal Impact Assistance Program

Dear Ms. Birnbaum

We are writing to share our concerns with the development and implementation of the Coastal Impact Assistance Program (CIAP) under the direction of the Minerals Management Service (MMS). While we appreciate the time and effort MMS has put into the CIAP, the recipient states have the following significant and substantive concerns:

1. The MMS grant approval process has been continually changing throughout the first three years of the program, causing excessive delays and unnecessary administrative expenses for the CIAP states and their respective coastal political subdivisions; and
2. A recently issued MMS directive contradicts all previous CIAP guidance documents, as well as standard grant procedures of other federal agencies, including agencies under the Department of the Interior (DOI).

Grants Process

Under the 2005 Energy Policy Act (Act), Congress directed the MMS to disburse \$250 million for each of fiscal years 2007 through 2010 to six states (Alabama, Alaska, California, Louisiana, Mississippi, and Texas) and their respective coastal political subdivisions. The only action required in the Act for the States is the submission of a state plan. The only action required in the Act for the MMS before disbursing a state's funding allocation is to review and approve the state's CIAP plan.

Rather than follow the process provided by Congress in the Act, the MMS decided to manage the CIAP through a grants process. First, we believe the administrative structure is contrary to the intent of the Federal Financial Assistance Management Improvement Act, which was enacted to simplify the federal grant application process. Second, the manner in which this grants process is being implemented has become extremely cumbersome and costly to the States. To date, approximately \$726 million should have

been disbursed to the States. In actuality, less than \$100 million has been disbursed. The value and intent of CIAP are not being realized at a time when these funds should and could be addressing critical coastal issues, including the recovery efforts associated with the impacts of recent hurricanes in the Gulf of Mexico.

MMS guidelines and requirements establish that, after a state plan has been approved, a separate grant application must be submitted to the MMS for *each project* described in the plan. Each State will submit approximately 100-500 grant applications for projects already described in its state plan. Unfortunately, the grant application form is continually changing, as are MMS personnel who must approve the applications. Applications have taken as long as seven months to be approved, not as a result of the complexity of the projects, but rather the result of excessive MMS grant revisions and/or prolonged MMS administrative procedures. This excruciatingly slow-paced award process will force some projects to be scaled back or dropped entirely due to the loss of windows of opportunity caused by changing weather conditions, partner funding, economies of scale, or contractors being unwilling to work with the States because of the long delays. Additionally, the associated uncertainty as to when grants will actually be awarded creates logistical and financial difficulties for the States – a seven-month delay in receiving grant approval from MMS, after waiting six months or more to have a state plan amendment approved, impacts the state budgeting process and how States allocate both staff and financial resources.

Sub-Granting

In addition to the frustratingly slow grants process, on July 17, 2009, the States received an MMS directive stating that universities and non-profit organizations are not eligible CIAP sub-grantees and that only state and local governments may hold title to property purchased with CIAP funds. This directive, introduced the third year of the four-year program, was a new interpretation of U.S. Code Title 43 that had not been discussed with the States, contradicts all existing program documents, and is believed by the States to be legally incorrect.

For three years, the States were told by MMS that universities and non-profit organizations were eligible sub-grantees. The States relied on that information as they developed their state plans. Four already-approved state plans contain or will contain over \$85 million for projects to be performed by universities and non-profit organizations. For many such projects, universities and non-profit organizations are the only entities that can achieve the project objectives. This new interpretation will require significant unnecessary and unplanned revisions to state plans at a time when the States should be focusing on getting the remaining grant applications submitted and projects started. Most likely, because of the new directive, the States will be unable to meet the arbitrary MMS deadlines of December 2010 for submitting state plan revisions and December 2011 for submitting grant applications.

This restriction on eligible sub-grantees is at odds with other federal conservation grant programs administered by the DOI. For example, over the past 20 years The Nature Conservancy, the Conservation Fund, Ducks Unlimited, and Wetlands America Trust have

received DOI grant funds or have participated as a sub-grantee from the U.S. Fish and Wildlife Service through the North American Wetlands Conservation Act grant program to purchase real property and conservation easements. At a minimum, the MMS should align its guidance with that of other DOI grant programs and allow the States to sub-award acquisition/conservation easement CIAP projects to non-profit organizations, where appropriate.

Recommendations

In light of these issues and the hardships that have been or will be created, we recommend for your consideration the following:

1. The grant process should be eliminated. If not eliminated, MMS should, at a minimum, revisit the grant process to streamline and expedite the approval process.
2. A consistent and uniform set of guidelines that allow universities and non-profits, as sub-grantees, should be maintained.
3. Acquisition/conservation easement CIAP projects to non-profits should be allowed.
4. The December 2010 deadline for submitting state plan revisions and the December 2011 deadline for submitting grant applications should be extended to reflect the realities of the length of time it is taking MMS to approve state plans amendments and grant awards.

Conclusion

The CIAP has the potential to be a wonderful environmental program and the States have a vested interest in ensuring its success. Like the DOI and MMS, the States want to protect our coastal uses and natural resources and advance scientific knowledge related to those uses and resources. We are anxious to begin projects with our universities and non-profit organizations to achieve these goals. Without addressing these issues and making appropriate and positive changes, the States and the MMS ability to successfully achieve the objectives and intent of the CIAP will be significantly impaired.

We are available to provide additional information and to discuss these issues in more detail. Thank you in advance for addressing our concerns.

Sincerely,

Jodena Henneke
Deputy Land Commissioner
Coastal Resources
Texas General Land Office

William W. Walker
Executive Director
Mississippi Department of Marine Resources

M. Barnett Lawley
Commissioner
Alabama Department of Conservation
and Natural Resources



Randy Bates
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CC: Chris C. Oynes
Robert P. LaBelle
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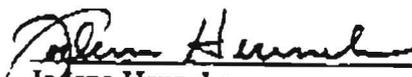
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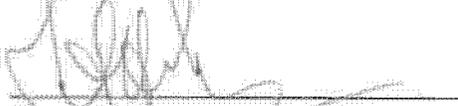
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