

ENVIRONMENTAL CREDITS: DO THEY LIVE UP TO THEIR PROMISES?



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Over the last decade, coastal Louisiana parishes have filed a total of 42 lawsuits against more than 200 energy companies. The parishes allege that the defendants' federally authorized oil and gas exploration and production activities caused coastal land loss. In March 2021, Louisiana Attorney General Jeff Landry announced that he had agreed to a \$100 million settlement proposed by lawyers and one defendant company, Freeport McMoRan.

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The Legislature will be asked to consider legislation that will establish the framework for the Coastal Zone Restoration Fund and an environmental credit scheme. The proposals will create a Coastal Zone Recovery Authority (CZRA), an unelected bureaucracy tasked with implementing the settlement agreement, including establishing the rules and regulations for the environmental credit scheme. The proposals only guarantee that 60% of the funds will be dedicated to the Coastal Master Plan. The remainder of the funds, to the extent they materialize, could be spent on pet projects within the settling parishes.

In addition to identifying how settlement funds can be spent, the legislation would also create “environmental credits” based on the environmental benefit provided by the projects. Those credits could later be purchased by developers or other entities that must provide environmental mitigation as required by state or federal regulation. The inclusion of salable credits appears to be an enticement to potential defendants, encouraging them to settle with the promise that settlement money could be recovered through the sale of environmental credits, reducing the total liability cost to companies.

The limited nature of the environmental benefits must be weighed against other economic costs and potential benefits of the settlement. If legislators are supporting the proposal because they believe it will dramatically increase coastal restoration, they may find that is not the case.

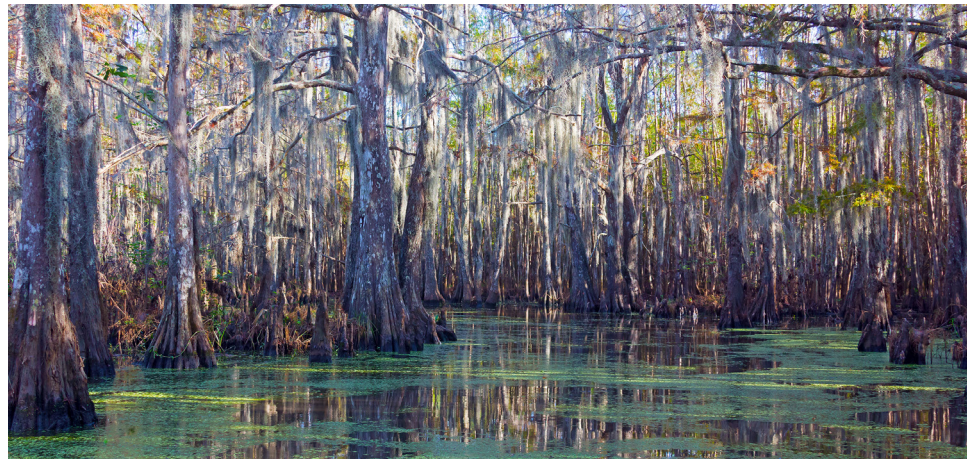
ENVIRONMENTAL CREDITS IN THE SETTLEMENT AND LEGISLATION

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Environmental credits are generated by projects, commonly known as “mitigation banks,” that restore the habitat of a particular type near the location of a future project requiring some environmental remediation. For example, a developer who needs to replace wetlands could buy credits created by an existing wetland restoration project. The State of Louisiana already oversees mitigation banks for marsh restoration and there are existing credits available in four of the six plaintiff parishes.¹

The original Memorandum of Understanding (MOU) between the plaintiff notes that credits could be sold and “profits from the sale of these credits could be used to buy down future defendant payments to the CZR Fund.” They also offer defendants the possibility of buying credits for future liabilities at a “discounted rate.” Those enticements come at the cost of reduced total environmental restoration and may actually result in net-zero restoration.

When an environmental credit is sold it satisfies the need for environmental mitigation that an entity would otherwise be responsible for. If a defendant like Freeport/Mosaic successfully sells credits associated with the projects it funded, it would eliminate its liability in the lawsuit, but would not increase the total environmental remediation that occurred. For example, marsh restoration required as a condition of development or another activity undertaken in the coastal region, would still have to occur with or without the CZR Fund. The net effect of the fund, therefore, could be limited by several factors.



¹ State of Louisiana Department of Natural Resources, OCM Approved Mitigation Banks – Updated 03/2021, March 2021, available at http://www.dnr.louisiana.gov/assets/OCM/Mitigation/Mitigation_Bank_Summary_Spread_Sheet_03.11.2021.pdf

PAST EXPERIMENTS WITH VARIOUS ENVIRONMENTAL CREDIT SCHEMES

Environmental credit and cap-and-trade style schemes have been tried and implemented in a number of areas around the country and the world. So often they have failed to live up to their promise of making environmental improvements and generating significant revenue. A study of these experiences reveals several consistent negative outcomes:



Environmental credit generating schemes can be unpredictable and fail to deliver on their promises of creating revenue and reducing environmental harm.

For example, a cap-and-trade scheme in California delivered only \$8.2 million of an expected \$600 million in credit sales associated with a high-speed rail.² A study of the Regional Greenhouse Gas Initiative (RGGI), another cap-and-trade program for nine northeastern and mid-Atlantic states that promised to cut carbon dioxide emissions from power plants by 30% from 2020 levels by 2030, confirmed that carbon emissions in the participating states were reduced at the same rate as emissions in non-participating states.³ While these programs are structured in a way that may be different from the proposed Louisiana language, lawmakers can learn from the failure of these programs.



Environmental credit generating schemes are primed for corruption.

The proposal would set up a Restoration, Protection, and Remediation Account that would be more flexible than projects required to be included in the coastal master plan. The types of projects that could be approved for funding may even generate environmental credits, but likely have limited coastal restoration benefit. Additionally, projects that create some environmental benefit might be less effective than alternatives because they satisfy a different priority that is important to the parishes or the oversight board. The definition of environmental credit can be amorphous and is easily manipulated for political reasons. Under Europe's CO2 cap-and-trade system, credits were created to satisfy political constituents, resulting in increased emissions.⁴

² Patrick J. Michaels, California's cap-and-trade train wreck. March 17, 2017, available at <https://www.cato.org/commentary/californias-cap-trade-train-wreck>

³ Institute for Energy Research, Is the regional greenhouse gas initiative having an impact? September 19 2017, available at <https://www.instituteforenergyresearch.org/uncategorized/regional-greenhouse-gas-initiative-impact/>

⁴ Phys.org, Credit scheme backfired, hiking greenhouse gases, study finds. August 24, 2015, available at <https://phys.org/news/2015-08-credit-scheme-backfired-hiking-greenhouse.html>



Environmental credit schemes **increase costs for consumers, especially lower-income families.**

Studies confirm that cap-and-trade style environmental policies adopted by New York and California increase the cost-of-energy burden on residents, particularly on working class and minority communities.⁵ Further, RGGI's costs moved jobs to other states and increased already high regional electric bills.⁶ **By design, these schemes increase the cost of gasoline and energy, which matters little to the rich, but which working class families are less able to absorb.**



Finally, environmental credit schemes **can be overly complex.**

The settlement documents include discussion of established, emerging, or potential environmental crediting opportunities. **However, the process for participating in credits can be cumbersome and subjective, reducing the likelihood that businesses would be willing to invest.**

For example, establishing a bank pursuant to Louisiana Coastal Use Permit Mitigation Banking would take several years, and credits are only released over the lifespan of the project. Some banks, such as Natural Resources Damages banks, are so new to Louisiana that no banks have been approved, and market potential cannot be determined. Even established banks, such as the Endangered Species Act Conservation Bank, have failed to materialize in Louisiana.

⁵ Wayne Winegarden, Ph.D., *Legislating Energy Poverty: A Case Study of How California's and New York's Climate Change Policies are Increasing Energy Costs and Hurting the Economy*. December 2018, available at https://www.pacificresearch.org/wp-content/uploads/2018/12/LegislatingEnergy_F_Web.pdf. See also Jonathan A. Lesser, *Less Carbon, Higher Prices: How California's Climate Policies Affect Lower-Income Residents*, July 2015, available at https://www.heartland.org/_template-assets/documents/publications/manhattan_ins_analysis_of_californias_power_plans.pdf

⁶ David T. Stevenson, *A Review of the Regional Green Gas Initiative*. August 10, 2017, available at https://www.cato.org/sites/cato.org/files/pubs/pdf/working-paper-45_1.pdf

COASTAL RESTORATION COULD BE LIMITED

Some of the projects that qualify for funding and environmental credits may not yield much tangible coastal protection. The guidelines for funding from the Restoration, Protection, and Remediation Account are more flexible than the projects required by the coastal master plan. Parishes can make recommendations and the CZRA oversight board approves them as long as they are merely “consistent” with the intent of the plan and settlement.

The settlement also includes a wide range of goals, including economic remediation. Such projects might be approved for funding and even environmental credits, but could have limited coastal restoration benefit. **Further, projects that created some environmental benefit might be less effective than other alternatives because they satisfy some other priority important to the parishes or the oversight board.**

Appendix A of the original MOU itself notes that environmental credits can be created for a wide range of environmental outcomes. In addition to the Louisiana Coastal Use Permit Mitigation Bank, there are environmental credits available for water quality, the Endangered Species Act, and even carbon reduction through afforestation. This latitude is attractive to defendants, who can earn credits from many types of projects, and pay down their financial obligations. It is also attractive to the political leadership in the parishes, who can tailor projects to fit local political priorities. On the other hand, that flexibility reduces the predictability of environmental outcomes.

As a result, the total net benefit of many CZRF projects could be zero, or close to zero, because they replicate what would have been required anyway, and some projects might have marginal benefit for coastal restoration. The system of environmental credits was created to reduce the cost of ecosystem restoration by providing more flexibility. That is generally positive.

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CONCLUSION

Environmental crediting schemes are a problematic solution for Louisiana's coastal damage. Given experience in other states and countries, such schemes often fail to make good on their environmental promises, fail to deliver on credit generation, and raise prices on people who can least afford it. There is no reason to expect that Louisiana's experience would be any better.



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