

# New Mexico Office of Natural Resources Trustee

Interim Committee on Radioactive & Hazardous Materials  
September 20, 2021

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# Overview

- ONRT mission and role in State's response to contamination.
- Natural Resource Damage Assessment and Restoration (NRDAR) process.
- Gold King Mine Release and Natural Resources Damage Settlement.
- GKM Restoration Project Solicitation Process.
  - Timeline
  - Targeted natural resource injuries
  - Screening Criteria
  - Evaluation Criteria
- Questions

# ONRT Mission

Under federal and state law, natural resource restoration is an essential component of the State's authority to hold polluters accountable.

When toxic substances pollute water, wildlife, fish, habitat, soils and other natural resources, laws require:

- A complete and timely clean up to protect public health,
- Natural Resources restored to the way they were, pre-contamination, and
- Compensation for lost natural resources and the services they provide.

ONRT's role established by:

- New Mexico Natural Resources Trustee Act [NMSA 1978, §§ 75-7-1 et seq]
- Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) [42 USC §§ 9601 et seq]
- Oil Pollution Act of 1990 [33 USC §§ 2701 et seq]
- Federal Water Pollution Control Act or Clean Water Act of 1972 [33 USC §§1321 et seq]

# Natural Resources Trustee Role

Following release of hazardous substances into New Mexico's environment, responsibility for the response is shared:

## NM Environment Department

Responsible for remediation:

- clean up to protect public health

## NM Natural Resources Trustee

Responsible for restoration:

- returning affected natural resources to pre-contamination condition
- If that's not possible, replacing or acquiring equivalent resources
- ensuring that communities are compensated for the loss of natural resources AND loss of use of those resources and the services they provide.

# CERCLA's Natural Resource Damage Assessment & Restoration Process

## Assess Injury

- Assess impact of hazardous substance on natural resources

## Determine Damages

- Identify restoration activities needed to compensate for injuries and determine reasonable damages from responsible party

## Prepare Restoration Plan

- Evaluate potential restoration actions

## Implement Restoration

- Compensate the public for losses

# Gold King Mine Release August 5, 2015



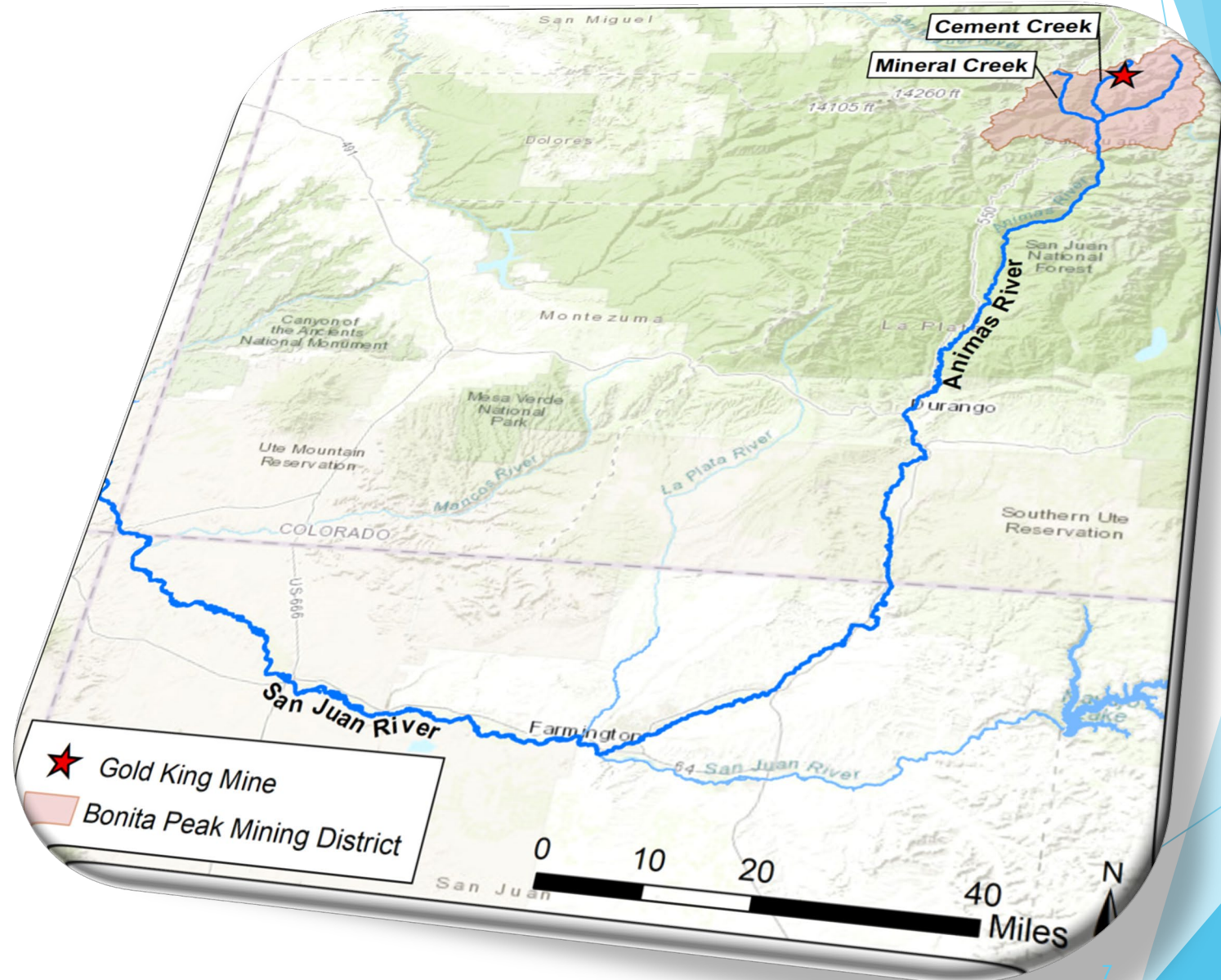
Photo Credit: Farmington Daily Times



Confluence of  
Animas and San  
Juan Rivers on  
August 8, 2015

# Gold King Mine Release

USEPA contractors working at site breached mine. Est. 3 million gallons acidic mine waste flowed downstream. Metals-laden water traveled down through Animas and San Juan Rivers.



# Natural Resource Injuries in New Mexico

## Spill-Related Impairments & Service Losses

Impairment or Service Loss	River System	Description/Details
Impairment	Animas River	Elevated lead concentrations
	San Juan River	Sedimentation/siltation
Service Loss	Animas and San Juan Rivers	Ecological service losses associated with metals contamination of surface water and sediment
		Loss of surface water supplied to local communities from the Animas or San Juan Rivers due to increase of lead content during turbulent river flow
		Loss of surface water supplied for growth of agricultural crops
		Loss of recreational opportunities tied to the Animas and San Juan Rivers resulting from concerns related to water contamination

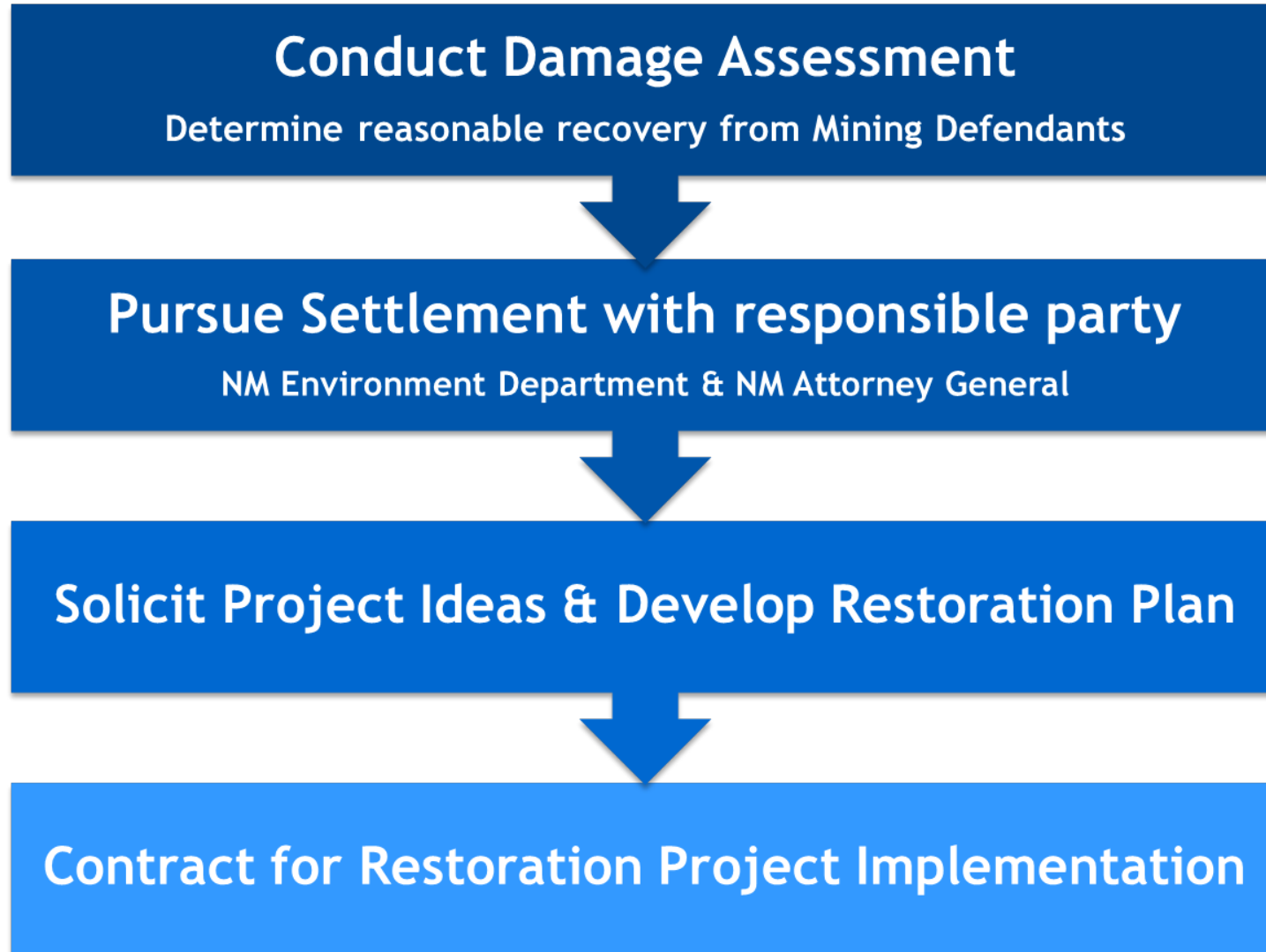




## GKM Natural Resource Damage Settlement with Mining Defendants

- The State of New Mexico and the Navajo Nation filed lawsuits against the U.S. EPA, its contractors, and the mining companies for environmental injuries resulting from the spill.
- In January 2021, the State reached a settlement with Sunnyside Gold Corporation and its parent companies that includes **\$1M for ONRT** to implement restoration projects to address natural resource damage claims.
- Litigation against the U.S. EPA and its contractors is on-going.

# Status of GKM Natural Resource Damage Assessment and Restoration Process



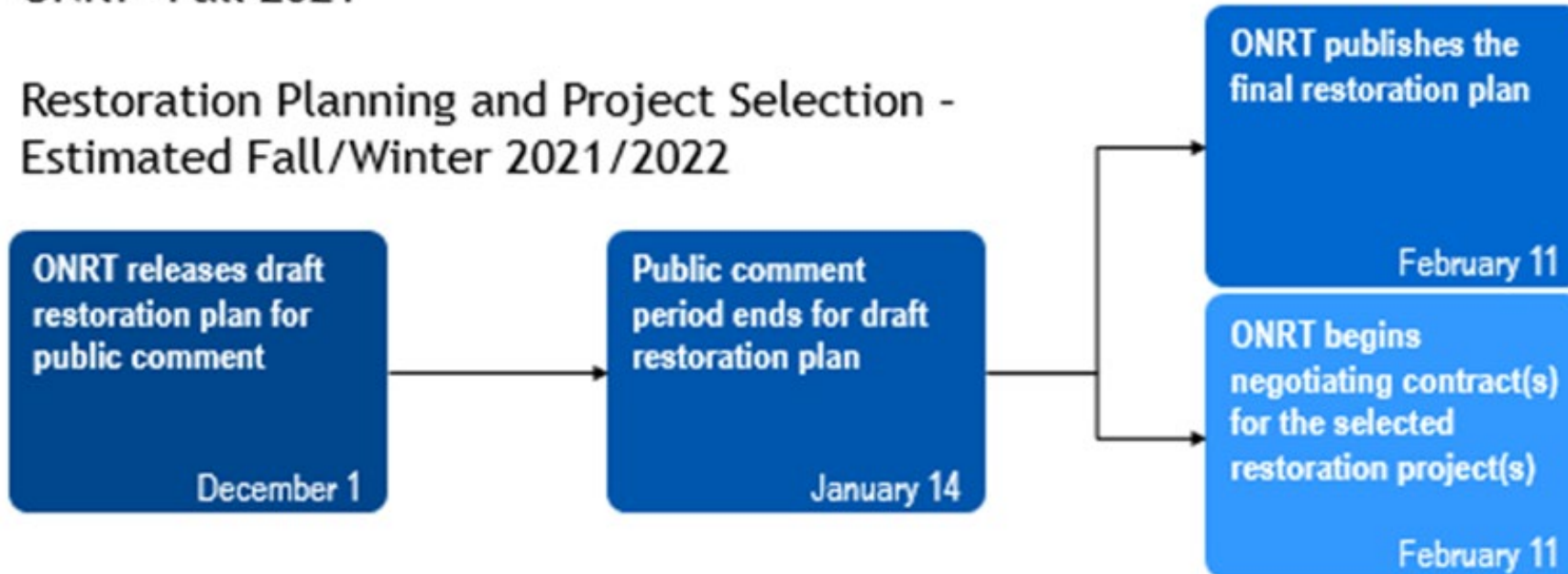
# GKM Restoration Schedule

## Project Solicitation - Summer 2021



## Restoration Project Screening and Evaluation by ONRT- Fall 2021

## Restoration Planning and Project Selection - Estimated Fall/Winter 2021/2022



# Screening Criteria

*Restoration projects must comply with screening criteria*

- Consistent with ONRT [mission](#).
- Results in a net overall improvement of natural resources and/or benefit to the public in terms of increased resource services.
- Technically and administratively feasible as demonstrated through established or previously implemented approaches.
- Unlikely to proceed without ONRT funding.
- Complies with applicable and relevant federal, state, local, and tribal laws and regulations.
- Has feasible and cost-effective provisions for operations, maintenance, and monitoring and a demonstrated source of funds for those ongoing costs, as relevant.
- Includes all the information necessary to evaluate the project.



# Evaluation Criteria

*Projects that meet the screening criteria will be evaluated and ranked by the following:*

- Cost effectiveness:
  - Availability of additional funds or in-kind support to leverage ONRT dollars.
  - Low ratio of planning and administrative costs to restoration costs.
  - Relationship of the expected costs of the proposed actions to the expected benefits.
  - Cost-effective compared to other projects that provide similar benefits.
- Geographically close to the Animas River from the New Mexico-Colorado state line to the confluence with the San Juan River, and/or the San Juan River downstream to the Colorado state line.
- Consistency with regional planning and federal and state policies, if applicable.



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Geographic Area of Focus  
Major Rivers

Service Layer Credits: Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

## Evaluation Criteria - *continued*

- Lead project proponent or partner is a state agency or local public body.
- Implemented in a timely manner.
- Likely to provide benefits quickly after project implementation.
- High potential for long-term success and a low risk of failure.
- Low potential for adverse impacts to natural resources or human health and safety resulting from the restoration project itself, including long-term and indirect impacts.

# Timeline for 2021 - 2022



# Questions?

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STATE OF NEW MEXICO  
OFFICE OF NATURAL RESOURCES TRUSTEE



Supplemental Information

# ONRT Restoration Projects

## New Projects in 2020-2021

- ✓ \$2.3m - to Village of Questa for two projects:
  - drinking water well and extension of wastewater infrastructure
- ✓ \$1.2m Questa Red River Aquatic Habitat Restoration project
- ✓ \$267,000 for Midnight Meadows Wetland project
- ✓ \$1.4m to Town of Silver City for wastewater system extension
- ✓ \$597,000 for proposed South Valley habitat and water quality improvement project
- ✓ \$150,000 for Cimarron River trout habitat restoration project

Total \$5,914,000



## ONRT Status Since Year 2000 - as of January 2021

		Cumulative Dollar Amounts	
NRD settlements achieved by ONRT/co-trustees:	12	Fronk Oil (\$150,000), Kinross/Gold King Mine (\$1,000,000), Van Waters ( \$135,000) <sup>1</sup> , Sparton (\$1,000,000) <sup>2</sup> , SOHIO L-Bar (\$29,830) <sup>3</sup> , So. Valley Superfund (\$4,857,548) <sup>4</sup> , AT&SF/Tie Treater (\$989,417) <sup>5</sup> , AT&SF/Clovis (\$404,456) <sup>6</sup> , ASARCO (\$1,029,598) <sup>7</sup> , FMI Mines Groundwater (\$12,794,308) <sup>8</sup> , FMI Mines Wildlife Habitat (\$5,500,000) <sup>9</sup> , Chevron Questa Mine (\$4,000,000) <sup>10</sup> .	\$31,890,157
Non-NRD grant won by ONRT:	1	Grant from the Water Trust Board (\$284,000) <sup>11</sup> : (project: the RGVSP Re-Vegetation)	\$284,000
Restoration projects completed:	32	Middle Rio Grande Liquid Waste Groundwater Protection <sup>1.&amp;2.</sup> , Municipal Water Conservation <sup>2.</sup> , Bosque Non-Native Plant Removal <sup>2.</sup> , L-Bar Sewer Projects <sup>3.</sup> , Mt. View Nitrate Plume <sup>4.</sup> , RGVSP Re-Vegetation <sup>5.</sup> , Whitfield WA Re-Vegetation <sup>5.</sup> , Isleta Pueblo Bosque Non-Native Plant Removal <sup>5.</sup> , So. Valley Sewer & Water Connections <sup>5.</sup> , Curry County Playa Conservation <sup>6.</sup> , WTB RGVSP Re-Vegetation <sup>11.</sup> , Blackhawk Mine Repairs <sup>7.</sup> , San Vicente Creek Mill Remediation <sup>8.</sup> , St. Clara Sewer Improvements <sup>8.</sup> , St. Clara Wellhead Protection <sup>8.</sup> , Silver City Blackhawk Sewer Extension <sup>8.</sup> , Bayard Wastewater Re-Use <sup>8.</sup> , Hurley Sewer Line Improvements <sup>8.</sup> , Silver City Ridge Rd. East Sewer Extensions <sup>8.</sup> , Burro Cienega/Pitchfork Ranch Restoration <sup>9.</sup> , Mimbres River Wildlife Restoration <sup>9.</sup> , Burro Cienega Watershed Restoration <sup>9.</sup> , Double E Ranch Acquisition <sup>9.</sup> , River Ranch Acquisition <sup>9.</sup> , Ancheta Springs Easement <sup>9.</sup> , Ancheta Springs Restoration <sup>9.</sup> , Prevost Ranch Easement <sup>9.</sup> , Southwest Sufi-Bear Creek Easement <sup>9.</sup> , Gila River Farm Wetland Restoration <sup>9.</sup> , City of Rocks State Parks Habitat Restoration <sup>9.</sup> Upper Whiskey Creek Restoration <sup>9.</sup> , Headwaters Burro Cienega Watershed Restoration-U.S. Forest Service <sup>9.</sup>	\$22,742,597
Restoration projects in progress (funds dedicated):	8	Headwaters Burro Cienega Watershed Restoration- Grant S&WCD <sup>9.</sup> , Restoration of the Midnight Meadows Wetland <sup>10.</sup> , Red River Aquatic Habitat Restoration within the Village of Questa <sup>10.</sup> , Questa Municipal Sewer Improvements <sup>10.</sup> , Questa Municipal Water Supply Well <sup>10.</sup> , Silver City Indian Hills Sewer Extensions <sup>8.</sup> , Water Authority Effluent Outlet <sup>4.&amp;5.</sup> , Cimarron River Trout Habitat <sup>11.</sup>	\$6,020,591
Land transfers as part of settlement with RPs:	2	City of Rocks State Parks Land Transfer <sup>9.</sup> , Anderson Ranch Land Transfer <sup>10.</sup>	N/A
NRD assessments cases in progress:	5	Ft. Wingate, LANL, Rio Algom, WSTF/NASA, BPMD/GKM	N/A





# Restrictions on use of NRD funds

The New Mexico Natural Resources Trustee Act [NMSA 1978, §§ 75-7-1 et seq] requires funds recovered in Natural Resource Damage cases be deposited into the Natural Resource Trustee Fund and used exclusively for restoration and ONRT cost recovery.

## 75-7-5. Natural resources trustee fund.

A. The "natural resources trustee fund" is created in the state treasury. Money appropriated to the fund or accruing to it through gifts, grants, fees, penalties, bequests or any other source shall be delivered to the state treasurer and deposited in the fund. **Money recovered for the state by or on behalf of the natural resources trustee shall be deposited in the natural resources trustee fund.** The fund shall be administered by the natural resources trustee as a separate account and may consist of subaccounts that the natural resources trustee deems necessary to carry out the purposes of the fund. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the natural resources trustee or the trustee's designated representative. Money in the fund shall not revert to the general fund at the end of a fiscal year.

B. Pursuant to the following criteria, **money in the natural resources trustee fund shall be used to carry out the provisions of the Natural Resources Trustee Act by restoring, replacing or acquiring natural resources in an area where natural resources have been injured, destroyed or lost, provided that money deposited in the fund because of injury to, destruction of or loss of natural resources in an area shall be disbursed to restore, replace or acquire natural resources in that same area**

# Federal Restrictions on use of NRD Settlement Funds



42 USC 9607(f) "Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State."