



### **Montana Natural Resource Damage Program**

The Montana Natural Resource Damage Program (NRDP) was created in 1990 to recover damages for injuries to natural resources held in trust for the people of Montana and use those damages to restore the injured resources. NRDP is administratively attached to the Department of Justice and acts on behalf of the Governor of Montana, the trustee of the State's natural resources. Specifically, NRDP's mission is "to recover damages for natural resources injured by the release of hazardous substances and to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources." NRDP's work is conducted under well-established State (Montana Environmental Cleanup and Responsibility Act; CECRA) and federal (Comprehensive Environmental Response, Compensation, and Liability Act; CERCLA, and Oil Pollution Act; OPA) law.

Since 1990, NRDP has been responsible for performing necessary natural resource damage assessments, recovering damages for injuries to natural resources caused by releases of hazardous substances, and using settlement monies to prepare and implement restoration plans. NRDP has used monies recovered from settlements to complete restoration projects throughout Montana. Examples of these projects include:

- Removal of residual contamination for groundwater and streambank restoration,
- Creating and enhancing wetlands and riparian areas,
- Restoring floodplain connectivity,
- Improving fish and wildlife habitat,
- Acquiring lands for the State to conserve and protect wildlife habitat, and
- Expanding outdoor recreation opportunities for communities impacted by environmental contamination.

The natural resource damage assessment and restoration process under CERCLA, CECRA, and OPA is separate from—but complementary to—the investigation and cleanup process under these laws. Remediation is generally conducted by the Environmental Protection Agency (EPA) or Montana Department of Environmental Quality (DEQ) and intended to clean up the contamination to a level that is an acceptable risk to human health and the environment. Following remediation, the natural resource damage assessment process is designed to identify and quantify the injured resources and the actions/cost to return injured resources to baseline conditions (i.e., the conditions that would have existed if the contamination had not occurred). Examples of typical EPA or DEQ cleanup efforts include excavating contaminated soil and pumping and treating the groundwater, while NRDP restoration actions might include things like restoring waterways, enhancing fish and wildlife ecosystems, building trails to replace lost recreational uses of the area, and expanding access to the outdoors.

To recover natural resource damages, NRDP follows procedures outlined in state and federal law. NRDP acts on behalf of the Governor as Trustee and coordinates closely with the Governor on each phase of this process. The general process includes five phases:

- *Phase 1: Preassessment Screen.* Using existing and readily available data, the Trustee(s) must determine whether an injury has likely occurred, if data to perform an assessment can be collected at a reasonable cost, and whether the cleanup will address the injuries. This review should ensure that there is a reasonable probability of making a successful claim before monies and efforts are expended in carrying out an assessment.
- *Phase 2: Assessment Plan.* Following completion of the Preassessment Screen, the Trustee(s) must develop an assessment work plan (Assessment Plan) to identify how the injuries will be determined and quantified and how potential damages will be evaluated.
- *Phase 3: Natural Resource Damage Assessment.* In accordance with the Assessment Plan, NRDP gathers the data necessary to quantify the injuries to the natural resources and the services they provide and determine damages. The damages that NRDP can recover on behalf of the Trustee include compensatory damages for the interim losses of the resources (i.e., damages to compensate the public for the time period when the resources have not fully recovered to their pre-injury condition).
- *Phase 4: Negotiation or Litigation or Other Source of Funding.* The results of the natural resource damage assessment (including quantification of damages) are presented to the responsible party. The vast majority of NRD cases reach voluntary settlements. If a negotiated settlement cannot be reached, NRDP would file litigation. Funds recovered in this phase must be used to complete Phase 5, and can also be used to refund costs incurred during Phases 1, 2, and 3.
- *Phase 5: Restoration Plan Development and Implementation.* Once damages are recovered, NRDP prepares a Restoration Plan to govern use of the recovered funds. Restoration Plans are developed in consultation with stakeholders, including other trustees and communities affected. The Restoration Plan outlines restoration actions that restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources. Upon completion of the Restoration Plan, including public comment, the Trustee determines whether to adopt the Restoration Plan. NRDP then implements the actions specified in the plan, collaborating with many project partners to ensure funds are used appropriately and effectively to restore the natural resources in the area for the benefit of wildlife and the community.

NRDP has documented success in completing these five phases. NRDP's natural resource damage assessments and involvement at other sites have resulted in voluntary restoration settlements totalling over \$256 million. Some of our successful settlements include the Upper Clark Fork River Basin from Butte to Milltown, the Upper Blackfoot Mining Complex, East Helena, and the two Yellowstone River oil spills near Glendive and Laurel. These settlement funds have been and legally must be used exclusively to "restore, replace, rehabilitate, or acquire the equivalent of" the injured resources, including the reasonable cost of assessing the damages.

Under restoration plans developed for each settlement, on behalf of the Trustee, NRDP has, to date, expended in excess of \$328 million on restoration actions in affected areas throughout Montana. In practice, this has meant substantial amounts spent on on-the-ground restoration projects that conserve, protect, and restore Montana's rivers, wetlands, watersheds, forests, grasslands, and important ecosystems; compensate the public for lost use of natural resources; expand public access to nature and the outdoors; and benefit fish and wildlife.

Throughout the natural resource damage assessment and restoration process, NRDP supports locally led and locally designed conservation efforts by working with local communities. For the two largest

settlements secured to date, NRDP has very active citizen councils led by local community members: the Butte Natural Resource Damage Council and the Clark Fork Advisory Council. These citizen councils have played an important role in the community having a voice in the restoration and have even allowed for community engagement and understanding of the cleanup process.

NRDP has a long history of honoring private property rights and supporting voluntary stewardship efforts of private landowners. A good example project of an important collaboration in an underserved community can be found here: <https://www.youtube.com/watch?v=ssq2pTw65Hc&t=8s>. In this project, NRDP worked with a local landowner to address a diversion along Mill Creek that was impacting fish and the water available to the local landowner. The end project was a voluntary collaboration that benefits fish and aquatic habitat and a local landowner in the Opportunity, Montana area.

NRDP's restoration projects also have economic benefits for local communities because they create a draw for expanded tourism in the injured areas. Further, the implementation of the restoration actions directly provides economic benefit. Expenditures on restoration create a significant amount of direct and indirect employment and economic activity. In a 2009 study of the Milltown Dam and Streamside Tailings (Silver Bow Creek) Restoration Projects by the Montana Department of Labor and Industry, the authors determined that approximately 31.5 jobs (10.9 directly, and 20.6 indirectly) were created for each million dollars spent on restoration of those sites. That same study concluded that each million dollars spent on restoration resulted in \$2.59 million in overall economic activity in Montana. <https://deq.mt.gov/files/Land/FedSuperFund/Documents/sst/RestorationEconomyRPT9-17-09.pdf>