

STATE-TRIBAL COLLABORATION ACT FY 2020 AGENCY REPORT



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I. EXECUTIVE SUMMARY

The New Mexico Office of Natural Resources Trustee (ONRT) was active during FY20 working collaboratively with Tribes/Pueblos/Nations Natural Resources Trustees and their representatives on Natural Resource Damage cases in New Mexico. That activity focused on evaluating, quantifying, and settling Natural Resource Damage Assessment and Restoration (NRDAR) cases common to all parties' geopolitical jurisdictions. The Trustees are focused on the common mission of Natural Resource Trustees which is "*to return injured natural resources and the services they provide to the condition that would have existed absent the release of contamination.*" When the restoration mission is not attainable, compensation is used to restore, replace, or acquire the equivalent of injured, destroyed or lost natural resources and the services they provide.

Statutory authorization under which ONRT implements the NRDAR program includes the following:

- 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]

Organizationally ONRT is comprised of four staff positions which are

- Natural Resources Trustee (Appointed by the Governor),
- Executive Director,
- Water Resource Professional III, and
- Budget Analyst – Advanced.

ONRT is an independent agency administratively attached to the New Mexico Environment Department (NMED). Legal services are provided by the New Mexico Attorney General's Office as per statute.

This past year ONRT progressed on four (4) NRDAR cases in collaboration with Tribes/Pueblos/Nations located within New Mexico. The cases and Tribes/Pueblos/Nations we are currently working with are as follows:

- Los Alamos National Laboratory (Los Alamos, Santa Fe and Sandoval Counties) – On this case ONRT is working with Trustees and their representatives representing Pueblo of San Ildefonso, Pueblo of Jemez, Santa Clara Pueblo, Pueblo de Cochiti and U.S. Department of Energy (DOE). This is a multi-year

process that was started in 2008 and will be ongoing for many more years due to the complexity of NRDAR process at this site. The Trustee Council selected ONRT by consensus to serve the council as one of the Co-lead Administrative Trustees.

- Rio Algom (McKinley County) - On this case, ONRT is working with Trustees and their representatives representing Navajo Nation and the U.S. Department of Interior (DOI) (Fish & Wildlife Service and Bureau of Indian Affairs). This case is in the early stage of the damage assessment planning process and will be ongoing for many years. The Trustee Council selected ONRT by consensus to serve the council as Administrative Trustee.
- Fort Wingate Army Depot (McKinley County) – On this case, ONRT is working with Trustees and their representatives representing the Navajo Nation and the Pueblo of Zuni. The case is in the settlement phase and associated restoration will commence upon settlement. The Trustee Council selected ONRT by consensus to serve the council as Administrative Trustee.
- Bonita Peak Mining District (BPMD) which includes the Gold King Mine (San Juan County) – On this case, ONRT is working with Trustees and their representatives representing the Navajo Nation and the State of Utah with DOI participating in an advisory capacity. The State of Colorado is currently considering joining the Trustee Council as well. The Trustee Council was formalized this past year via a Memorandum of Agreement in which the Trustee Council selected ONRT by consensus to serve the council as the Administrative Trustee. This MOA is currently under revision by the Trustees to include DOI in their advisory capacity.

ONRT will continue to collaborate with Tribes/Pueblos/Nations when natural resource damage cases concern resources that fall under state and tribal trusteeship. In preparation for maintaining and enhancing working relationships, ONRT personnel complete Cultural Competency Training and maintain familiarity with the agency’s Tribal Collaboration and Communication Policy as well as remaining aware of concerns and current events throughout our communities. The agency’s Trustee was appointed in December 2020 and will complete Cultural Competency Training when it becomes available.

II. AGENCY OVERVIEW AND BACKGROUND

A. Mission Statement

The New Mexico Office of Natural Resources Trustee’s (“ONRT”) mission is to return injured natural resources and the services they provide to the condition that would have existed absent the release of contamination.

B. Agency Background

The Natural Resources Trustee, through the ONRT, implements the Natural Resource Damage Assessment and Restoration Program. The ONRT assesses injury to natural

resources caused by the release of hazardous substances or oil, and then seeks compensation from the potentially responsible parties for restoration of those injured resources to pre-release conditions. Compensation is used to restore, replace, or acquire the equivalent of injured, destroyed or lost natural resources and the services they provide when restoration is not possible.

The ONRT was established by the Natural Resources Trustee Act, enacted in 1978. The Act also created the Natural Resources Trustee position. The Trustee is appointed by and serves at the pleasure of the state governor pursuant to the provisions of federal Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) of 1980, as amended by the federal Superfund Amendments and Reauthorization Act of 1986, and the Federal Water Pollution Control Act (or Clean Water Act of 1972). The ONRT is an independent agency administratively attached by New Mexico statute to the New Mexico Environment Department (NMED). The ONRT collaborates with NMED and the US EPA to facilitate coordination between their site remediation activities and the NRDAR process as well as on joint issues of environmental/natural resources concern. ONRT had in the past adopted NMED’s Tribal Consultation and Policy, however, since ONRT’s FY2019 STCA Report the agency implemented its own Tribal Consultation and Policy that closely mirrors NMED’s policy. The ONRT receives legal services support from the New Mexico Attorney General, as per New Mexico statute.

New Mexico’s natural resources Trustee, through the ONRT, is required by statute to take all actions necessary to carry out the responsibilities of the natural resources Trustee as provided in the federal CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986, the federal Water Pollution Control Act and any other applicable federal law, including the responsibility to:

1. act on behalf of the public to protect New Mexico's natural resources by recovering damages for injury to, destruction of or loss of those resources;
2. investigate injury to, destruction of or loss of natural resources;
3. determine the amount and cause of injury to, destruction of or loss of natural resources;
4. determine the liability of any person for injury to, destruction of or loss of natural resources;
5. assess and collect damages for injury to, destruction of or loss of natural resources, including bringing legal actions and collecting the costs of assessing and collecting the damages; and
6. expend money for the purposes set forth in the Natural Resources Trustee Act [75-7-1NMSA 1978].

The Trustee and ONRT strive to develop cooperative relationships with responsible parties to achieve a more efficient and effective resolution to resource injuries. The ONRT also works in partnership with the Trustees of Tribal Nations, other state agencies and federal agencies to forward its mission.

The ONRT operations are divided into two categories:

1. Damage Assessment and
2. Restoration.

Injury is determined through a damage assessment process. Natural Resource Damage Assessment (“NRDA”) can be time-consuming to

1. understand the complex ecosystem of which a particular resource is a part,
2. identify the adverse changes to the resource(s) and the service(s) the resources that they provide, and
3. determine appropriate compensation.

Once 1-3 above are completed, fair compensation for the loss of the resources and the services they provide can be determined. Compensation is either in the form of appropriate restoration projects or cash settlements. The purpose of both restoration projects and cash settlements is first to restore injured resources, and if restoration is not possible, to replace or acquire equivalent natural resources and the services that were lost or impaired. Cash sums recovered under CERCLA may only be expended for these purposes, and money in ONRT’s Trustee fund does not revert to the general fund. A careful process is required to plan and implement restoration projects.

To learn more about the ONRT, please visit our website: www.onrt.state.nm.us

C. Agency-specific Tribal Collaboration/Consultation Policy

In July 2020, New Mexico’s Trustee signed ONRT’s “Tribal Consultation and Collaboration Policy (Policy). The Policy, in addition to recognizing tribal sovereignty, provides guidance to ONRT and tribal governments for working together in a collaborative manner and outlines an approach for communication about consultation. The Policy is posted on ONRT’s website.

III. AGENCY EFFORTS TO IMPLEMENT POLICY (11-18-4.C (1)(3))

ONRT’s Trustee has participated in past Annual New Mexico State-Tribal Leaders Summits. During 2020 there has not been one scheduled due to the COVID-19 Pandemic. The New Mexico Office of Natural Resources Trustee works daily with Tribe/Pueblo/Nations, as equal Trustee partners, pursuing Natural Resource Damage Assessments and Restoration activities as authorized under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Oil Pollution Act (OPA). This collaborative work has continued despite the COVID-19 Pandemic through virtual Trustee Council Meetings. A list of current active damage assessment and restoration case agreements with Tribe/Pueblo/Nation(s) can be found in Section VIII. AGREEMENTS.

ONRT is currently partnering with six of our Tribe/Pueblo/Nations neighbors. It is our goal to introduce the ONRT to the remainder of our neighbors during FY21, as COVID-19 policies and orders permit, and let them know we stand ready to collaboratively pursue Natural Resource Damage Assessment and Restoration cases where the damages impact resources common to both our trusteeship.

IV. CURRENT AND PLANNED PROGRAMS AND SERVICES FOR NATIVE COMMUNITIES (11-18-4.C (5))

A. Current and Planned Programs and Services

Current

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Oil Pollution Act (OPA) authorize the United States, States, and Indian Tribe/Pueblo/Nation to act on behalf of the public as Natural Resource Trustees for natural resources under their respective trusteeship. It is the longstanding practice of ONRT to consult with each Tribe/Pueblo/Nation whenever ONRT is aware of a release that may have impacted the Tribe/Pueblo/Nation's natural resources, and to form Trustee Councils which include relevant Tribe/Pueblo/Nation in cases where both State and Tribe/Pueblo/Nation resources may have been injured.

The leadership of Tribes/Pueblos/Nations or persons designated by Tribe/Pueblo/Nation officials, act as Tribe/Pueblo/Nation Trustees for natural resources belonging to, managed by, controlled by, or appertaining to the Indian Tribe/Pueblo/Nation, or held in trust for the benefit of such Indian Tribe/Pueblo/Nation, or belonging to a member of an Indian Tribe/Pueblo/Nation, if such resources are subject to a trust restriction on alienation [40 CFR §300.610]. The Secretary of the Interior may act as Trustee on behalf of a Tribe/Pueblo/Nation at the Tribe/Pueblo/Nation's request.

Indian Tribe Trustees act on behalf of the Indian Tribe/Pueblo/Nation for natural resources, including their supporting ecosystems, that are:

- Belonging to, managed by, controlled by, or appertaining to such Tribe/Pueblo/Nation;
- Held in trust for the benefit of the Tribe/Pueblo/Nation; or
- Belonging to a member of the Tribe/Pueblo/Nation, if such resources are subject to a trust restriction on alienation.

Examples of resources under the trusteeship of Tribe/Pueblo/Nation governments include:

- Tribe/Pueblo/Nation -owned minerals;
- Ground and surface water resources on Tribe/Pueblo/Nation lands; and
- Any other cultural or natural resources found on Tribe/Pueblo/Nation land.

Current Funding

The New Mexico Office of Natural Resources Trustee does not provide any funding to Tribes/Pueblos/Nations through the Natural Resources Damage Assessment and Restoration Process. When cash settlements occur, The Trustee Council utilizes the proceeds first to restore injured resources, and if restoration is not possible, to replace or acquire equivalent natural resources and the services that were lost or impaired. Past and future expenses incurred by state and tribal trustees may be reimbursed from settlement proceeds.

Planned

ONRT has no new programs or services planned for FY21.

B. Main Agency Accomplishments and Challenges

Accomplishments

ONRT is currently working collaboratively with six (6) Tribe/Pueblo/Nations on four (4) active damage assessment and restoration cases. These cases are listed in a table at the end of this report in Section VIII.

Challenges

ONRT's major challenge has historically had challenges acquiring the dedicated fiscal resources required for initiating new natural resource damage assessment cases and funding the State's portion of assessment cost. This changed with the 2020 legislative session when a \$2.5 million special appropriation was approved. That appropriation was reduced to \$2 million during the 2020 Special Legislative Session. With this funding ONRT has been able to pursue New Mexico's natural resources trusteeship responsibilities.

C. Goals for Fiscal Year FY21

ONRT's goal for FY21 is to continue working with our Tribal/Pueblo/Nations neighbors to address damage to Natural Resources that impact our common trusteeships to the extent that ONRT has adequate funding to initiate new cases. During late FY 20 ONRT received funding, through a special appropriation, and restarted or moved forward more expeditiously on all non-cooperative NRDA cases not being funded by the potentially responsible party or parties. The agency is currently looking at potential new cases to pursue. When cases are opened where our Tribe/Pueblo/Nations neighbors have potentially damaged natural resources ONRT will be reaching out to them to collaborate through the NRDA Trustee Council process. Likewise, if one of our Tribe/Pueblo/Nations neighbors opens a case, where New Mexico has potentially damaged natural resources, ONRT now has the fiscal resources to collaboratively pursue the new case.

V. TRAINING AND EMPLOYEE NOTIFICATION (11-18-4.C (4) (6))

- A. STCA Training and Certification (11-18-4.C (4))** a certification by the state personnel office of the number of managers and employees of each state agency who have completed the training required by Subsection B of this section)

Executive Director Ralph Gruebel and the two ONRT staff have completed the Cultural Competency training. Maggie Hart Stebbins was appointed Trustee in mid-December 2019. Trustee Hart Stebbins has in the past and is currently working collaboratively with our Tribe/Pueblo/Nations neighbors. She will be completing the training when it is next offered during the ERA of COVID-19. The agency has four employees. Therefore, the completion rate is currently at 75%.

- B. EMPLOYEE NOTIFICATION ABOUT STCA (11-18-4.C (6))**

Upon hire personnel are introduced to the provisions of the State-Tribal Collaboration Act and scheduled for Cultural Competency Training.

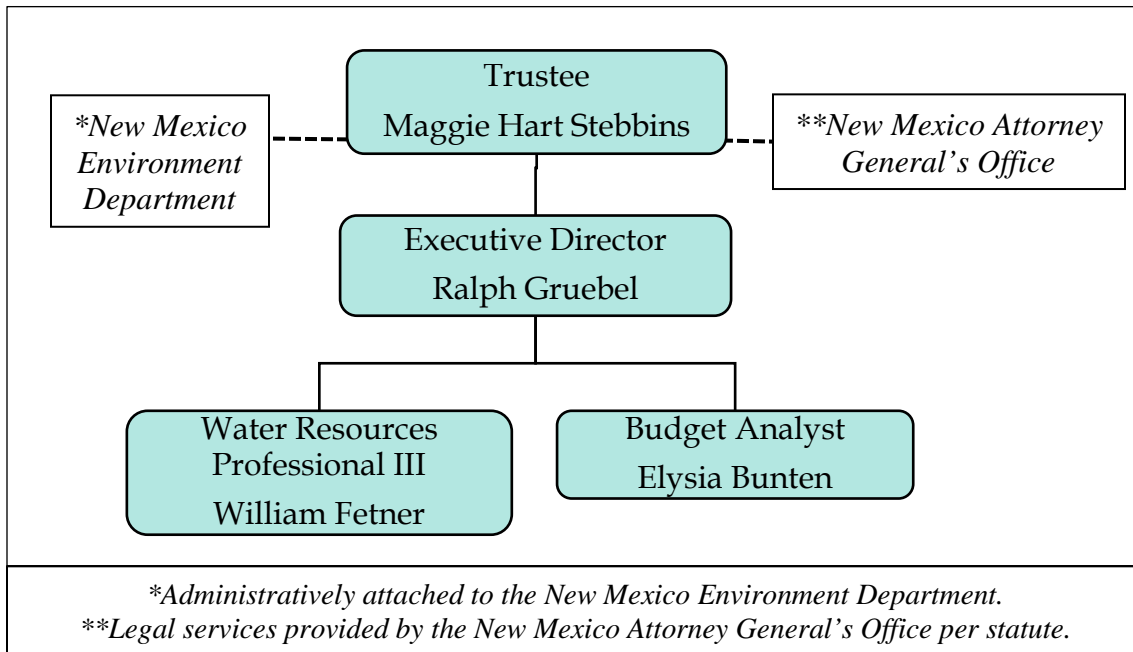
A copy of the ONRT Tribal Collaboration and Communication Policy located on the ONRT website: <https://onrt.env.nm.gov/tribal-liaison/>.

Agency-specific and applicable/relevant state or federal statutes or mandates documents also located on the ONRT website: <https://onrt.env.nm.gov/legal/>.

During the first months of FY21 ONRT plans to finalize incorporation of their Tribal Liaison webpage into their website which provides information regarding the STCA and associated policies.

VI. KEY NAMES AND CONTACT INFORMATION (11-18-4.C (2)) - the names and contact information for the individuals in the ONRT who are responsible for developing and implementing agency programs directly affecting American Indians or Alaska Natives) are presented on the following organizational chart and contact list

A. Organizational Chart - New Mexico Office of Natural Resources Trustee



B. Contact Information

The following personnel are the key contacts for the New Mexico Office of Natural Resources Trustee.

Maggie Hart Stebbins, NM Natural Resources Trustee
 Phone: 505-231-7542
 Email: Maggie.HartStebbins@state.nm.us

Ralph Gruebel, NM ONRT Executive Director (Tribal Liaison)
 Phone: 505-313-1837
 Email: Ralph.Gruebel@state.nm.us

William Grantham, Assistant Attorney General, NM Attorney General's Office
 Phone: 505-717-3520
 Email: WGrantham@nmag.gov

VII. RELEVANT STATUTES AND MANDATES

- 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]

VIII. CURRENT OR PENDING AGREEMENTS WITH TRIBAL NATIONS

**Active Natural Resource Damage Assessment and Restoration
Case Agreements with Tribe/Pueblo/Nation(s)**

Site Name	County	Activity	Tribe/Pueblo /Nation(s)	Current or Pending Agreements	Link for More Information
Los Alamos National Laboratory	Los Alamos, Santa Fe, and Sandoval	Natural Resource Damage Assessment	<ul style="list-style-type: none"> • Pueblo of San Ildefonso • Pueblo of Jemez • Santa Clara Pueblo • Pueblo de Cochiti 	Trustee Council MOA for Damage Assessment	https://onrt.env.nm.gov/los-alamos-national-laboratory/
Rio Algom (RAML)	McKinley	Natural Resource Damage Assessment	Navajo Nation	Trustee Council MOA for Damage Assessment	https://onrt.env.nm.gov/rio-algom-quivira-mill-and-mines/
Fort Wingate Army Depot	McKinley	Damage Assessment complete, Restoration starting settlement	<ul style="list-style-type: none"> • Navajo Nation • Pueblo of Zuni 	Trustee Council MOA for Damage Assessment	
Bonita Peak Mining District (BPMD) Includes Gold King Mine	San Juan	Natural Resource Damage Assessment	Navajo Nation	Trustee Council MOA for Damage Assessment	https://onrt.env.nm.gov/gold-king-mine-and-bonita-peak-mining-district/