



STATE OF NEW MEXICO
OFFICE OF NATURAL RESOURCES TRUSTEE



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Governor

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Lieutenant Governor

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Albuquerque, NM 87102
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MAGGIE HART STEBBINS
Trustee

July 15, 2021

Dear Stakeholder:

In August 2015, a blowout at the Gold King Mine in Colorado released millions of gallons of water laden with toxic metals and acidic waste into the Animas and San Juan Rivers. The plume of contaminated water adversely affected New Mexico residents, our natural resources, and agricultural and recreational tourism industries along those rivers. The New Mexico Attorney General and the New Mexico Environment Department subsequently sued the U.S. EPA and its contractors, who directly caused the blowout, as well as Sunnyside Corporation and its parent companies, Kinross Gold Corporation and Kinross Gold, U.S.A., Inc. (the three mining companies are collectively referred to as the “Mining Defendants”), seeking compensation for those injuries. The lawsuit alleges that the Mining Defendants are liable for creating the underlying conditions that made the blowout possible.

In January 2021, the State and the Mining Defendants reached a settlement that includes a payment of \$1,000,000 by the Mining Defendants to the Office of the New Mexico Natural Resource Trustee (“ONRT”) to implement natural resource restoration projects. The State’s lawsuit against EPA and its contractors is ongoing. ONRT’s use of settlement funds received from the Mining Defendants is governed by the provisions of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and other applicable law.

ONRT is in the preliminary stages of soliciting restoration project ideas and goals, and we are asking you, as a stakeholder, for your input. Attached to this letter is a request for specific restoration projects that will compensate for natural resource injuries in New Mexico caused by the Gold King Mine spill. Projects eligible for funding should have a connection to the Animas and/or San Juan Rivers, and benefit surface water, wildlife, and/or aquatic and terrestrial ecosystems and/or benefit the services these natural resources provide, such as irrigation or outdoor recreation, and/or address any existing impairments to the rivers.

Projects providing additional funds or in-kind support to leverage ONRT investments will be prioritized. ONRT encourages non-governmental entities seeking restoration project funding to partner with local or state public entities. Examples of our past restoration projects can be found on the ONRT website [here](#).

Ultimately, ONRT will prepare a draft Restoration Plan describing the projects evaluated and prioritized for implementation and will seek community input through a noticed public comment period. Any comments we receive at that time will be evaluated and incorporated, as appropriate, into the final Restoration Plan which will formally select one or more projects for implementation.

Please note that the funds at issue are derived of the January 2021 settlement between the State and the Mining Defendants, and as such are non-recurring. Ongoing project operations and maintenance, if any, must be guaranteed by another entity. Per New Mexico's Anti-Donation Clause, ONRT funds cannot be given to individuals to compensate for personal losses.

As part of ONRT's project solicitation process, I invite you to participate in an informational meeting with other interested stakeholders to discuss further the project solicitation process, including the screening and evaluation criteria for project selection as well as restrictions on project funding, and to ask questions. The meeting is scheduled for July 28, 2021, from 3:00 – 4:30pm and will be held virtually via a webinar. Further details are in the attached Request for Projects. Please circulate to other potentially interested stakeholders.

We recognize that this limited funding will not fully repair or restore all the injuries caused by the Gold King Mine release but represents a significant first step toward that goal. We look forward to hearing from you.

Sincerely,

Maggie Hart Stebbins
New Mexico Natural Resources Trustee
nm.onrt@state.nm.us



ATTACHMENT: REQUEST FOR PROJECTS

In August 2015, a blowout at the Gold King Mine in Colorado released millions of gallons of water laden with toxic metals and acidic waste into the Animas and San Juan Rivers. The plume of contaminated water adversely affected New Mexico residents, our natural resources, and agricultural and recreational tourism industries along those rivers. The New Mexico Attorney General and the New Mexico Environment Department subsequently sued the U.S. EPA and its contractors, who directly caused the blowout, as well as Sunnyside Corporation and its parent companies, Kinross Gold Corporation and Kinross Gold, U.S.A., Inc. (the three mining companies are collectively referred to as the “Mining Defendants”), seeking compensation for those impacts. The lawsuit alleges that the Mining Defendants are liable for creating the underlying conditions that made the blowout possible. In January 2021, the State and the Mining Defendants reached a settlement that includes a payment of \$1,000,000 by the Mining Defendants to the Office of the New Mexico Natural Resource Trustee (“ONRT”) to implement natural resource restoration projects. The State’s lawsuit against EPA and its contractors is ongoing. ONRT’s use of settlement funds received from the Mining Defendants is governed by the provisions of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and other applicable law.

ONRT is in the preliminary stages of seeking project ideas to address and improve the types of natural resources and resource services injured by the Gold King Mine spill. Spill-induced service losses and ongoing impairments to the Animas and San Juan Rivers are listed as part of Table 1 (below). Projects should address these service losses and/or ongoing impairments within the Animas and San Juan Rivers.

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Table 1. Summary of Animas and San Juan River Impairments and Spill-Related Service Losses.

Type of Impairment or Service Loss	River System	Description/Details
Ongoing Impairment	Animas River	Lead, turbidity, nutrients (total phosphorous), <i>E. coli</i> , and temperature
	San Juan River	<i>E. coli</i> , sedimentation/ siltation
Gold King Mine Spill-Related Service Loss	Both (Animas and San Juan Rivers)	Ecological service losses associated with metals contamination of surface water and sediment resources
		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

The deadline for submitting project proposals is August 31, 2021. Submit each project proposal to Will Fetner at nm.onrt@state.nm.us.

Questions related to this Request for Projects will be addressed during a webinar hosted by ONRT, scheduled for July 28, 2021, from 3:00 – 4:30pm. Project proponents are encouraged to attend this webinar by registering at the following link:

<https://app.smartsheet.com/b/form/cce2519791fb4ac79553be7d56e9c2c5>

Questions may be submitted in advance of the webinar by email to nm.onrt@state.nm.us.

The following sections include guidance on the information that should be included in project proposals and outline the screening and evaluation criteria that ONRT will use to evaluate each project. In the event clarifications are necessary, ONRT may ask a project proponent to provide additional information during the evaluation phase. That should not be construed as a project award. The evaluation and planning process explicitly includes a public comment process, so restoration project selection will occur after the draft Restoration Plan with proposed projects is reviewed by the public, ONRT evaluates all public comments received, and the final Restoration Plan is published.

A. INFORMATION TO BE INCLUDED IN ALL PROJECT PROPOSALS

1. General project description

- a. Include information on project location, land ownership, the length of time needed for project design, planning, and implementation, and the entity responsible for planning and implementing the project.
- b. Identify any permit requirements (e.g., Sections 401 and 404 Clean Water Act (“CWA”) permits, Section 120 National Historic Preservation Act (“NHPA”), Section 7 Environmental Site Assessment (“ESA:)) and any evaluation or assessment of environmental impacts that has been undertaken.

2. Benefits

- a. Specify the population and geographic area that the project will benefit.
- b. Specify how the project benefits regional natural resources and/or resource services or addresses impairments, as listed in Table 1. Projects that benefit more than one resource, service, or impairment are preferred. For example, for surface water resources, how would the project improve the quality of surface water? How would the project improve wildlife aquatic habitat and to what degree? How would the project compensate for lost recreational or agricultural opportunities? Specify the wildlife species that may benefit from the project.
- c. If possible, quantify the benefits to each resource (surface water, groundwater, wildlife habitat, etc.). Any models or calculations used to estimate the project benefits should be described.
- d. Include an assessment of when the project benefits will begin to accrue, and how the benefits are expected to continue after the project’s implementation phase is complete.
- e. Identify the ecological consequences if the project is not implemented (e.g., to the resource, habitat, or species).

3. Project size

- a. Provide pertinent size estimates to give an understanding of the scale of the project. For example, if the project benefits surface water, describe the estimated volume of water being benefitted. If the project is constructed as a wetland, provide the estimated acreage. If the project creates or improves habitat, specify the acreage that was created or improved. Any models or calculations used to estimate the project size should be described.

4. Cost of project implementation

- a. Provide costs for project design, planning and implementation including labor, materials and any other additional costs that would be incurred.
 - i. Note, cost estimates must be valid for a period of 12 months.
- b. Provide contingency costs and estimate the New Mexico gross receipts tax associated with the project. More information on the gross receipts tax is available from the New Mexico Taxation & Revenue Department, [here](#).

5. Longevity and maintenance needs.

- a. Describe the longevity of the project once implementation or installation is completed.

- b. Describe the operational, monitoring, maintenance needs and costs once project implementation is completed. Specify the entity that will assume operation and maintenance responsibility and costs.

6. Funding

- a. Describe each source of additional funding available to implement the project and when that funding would become available. Indicate which phases of the project will be funded by each source (e.g., design, planning, implementation, and operations and maintenance phases).
- b. Describe the source, type, and amount of additional funding or in-kind contributions that could be used to leverage ONRT funds, if applicable. To the extent certain design or planning elements have already been completed, these past costs can be noted as additional funding.
- c. If project funding comes from multiple parties, please provide a breakdown of project funding sources.

7. Project timeline and reporting

- a. Provide a reasonable timeline for the project, from contract execution to project completion (expanding on Item 1.a. above).
- b. Identify the type of reporting/deliverables that will be provided to ONRT, such as design/engineering plans, quarterly progress reports, final close-out report, final as-built drawings, or monitoring reports.

B. RESTRICTIONS ON USES FOR SETTLEMENT FUNDS

1. The project must have a nexus to natural resources and/or the services natural resources provide to people, as described in Table 1.
2. ONRT funds will be finalized at the time of award and applicants must identify a source of funds for ongoing maintenance costs, as needed. Funds beyond allocated contingency costs will not be available.
3. Any funding provided directly to non-governmental entities will need to go through an additional, formal competitive solicitation process, consistent with New Mexico procurement rules.
4. Project funds will be disbursed on a reimbursable basis as costs are incurred throughout the implementation phase, or the implementation and monitoring phase, if funds for monitoring are included in the project.

C. RESTORATION PROJECT EVALUATION/SELECTION PROCESS

Under the ONRT Natural Resources Damage Assessment and Restoration (“NRDAR”) program, restoration projects ultimately will be put forth to the public in a draft Restoration Plan that, among other things, describes the process followed to evaluate potential restoration projects that meet the screening criteria outlined below. Following a noticed public comment period during which comments related to the draft Restoration Plan will be received and evaluated, the final Restoration Plan will ultimately select the project(s) recommended for implementation.

After the restoration project request period has closed, project proposals will initially be reviewed for general suitability. This first set of criteria are **screening criteria**, which are

used to identify whether a given project meets the project requirements outlined by ONRT. Projects must pass the screening criteria before they can be considered further in the evaluation process. The second set of criteria are **evaluation criteria**, which are used to evaluate and rank the potential restoration projects and assist ONRT personnel in project selection from among the projects that meet the screening criteria. These criteria will enable ONRT to meet their evaluation responsibilities under CERCLA. All the criteria used in the screening and evaluation process will be detailed in the draft and final Restoration Plans. Below are the screening and evaluation criteria ONRT will use for project evaluation.

Screening Criteria – To be deemed acceptable, a project proposal must comply with all of the following criteria. Depending on the number of projects proposed, ONRT reserves the right to use additional criteria at the screening stage in order to reduce the number of projects evaluated during the evaluation stage to a reasonable number of alternative projects and available funds.

- 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 the use of 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 above screening criteria will be evaluated and ranked by the following criteria. ONRT does not anticipate that a successful project must achieve high marks for every criterion.

- 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.
- Consistent with regional planning and federal and state policies, if applicable.
- Cost-related criteria:
 - 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-effectiveness compared to other projects that provide similar benefits.
- 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.

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