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STATE OF NEW MEXICO
OFFICE OF NATURAL RESOURCES TRUSTEE

121 Tijeras Avenue NE, Suite 1000
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MAGGIE HART STEBBINS
Trustee

August 11, 2022

Dear Stakeholder:

On August 5, 2015, the United States Environmental Protection Agency (U.S. EPA) and contractors working on U.S. EPA's behalf caused a release of millions of gallons of acid mine drainage and tons of toxic metals from the Gold King Mine in Colorado. The plume of contaminated water from the release caused the Animas and San Juan Rivers to turn bright yellow through Colorado, New Mexico and the Navajo Nation to Lake Powell in Utah. The release also forced communities to close intakes for drinking water systems, prompted many farmers to stop irrigating their crops, and drastically decreased recreational use of the rivers. Although the rivers are now safe for farming and other uses, the stigma associated with the event has had lasting effects on the region's economy.

In 2016, the New Mexico Attorney General and the New Mexico Environment Department ("the State") sued the U.S. EPA, its contractors, and certain mining companies, for their alleged respective faults in the incident, seeking compensation for the injuries caused by the Gold King Mine release.

On June 14, 2022, the State reached a settlement with the U.S. EPA with a total value of approximately \$32 million.¹ As part of that settlement, the United States will deposit \$10 Million into an escrow account for use by the New Mexico Office of the Natural Resources Trustee (ONRT) for natural resource restoration. ONRT will administer those funds through a process governed by the provisions of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and other applicable laws. The funding will be available for projects that restore or replace injured natural resources or the services they provide. That may include, among other things, river, land, habitat, and watershed restoration and conservation, or projects that compensate for the loss of use natural resources.

ONRT is in the preliminary stages of identifying projects that may be eligible for that funding and we invite you to submit proposals 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 or San Juan Rivers, and must benefit surface water, wildlife, or aquatic and terrestrial

¹ In January 2021 the State reached a separate settlement with the mining companies for \$11 Million, including \$1 Million for natural resource damages, and ONRT is in the process of expending that \$1 Million (see [website](#)). Litigation against the contractor defendants is ongoing.

ecosystems; address existing impairments to the rivers; or benefit the services those natural resources provide such as consumption, farming, or outdoor recreation. Screening and evaluation criteria are contained in the Project Solicitation that follows.

ONRT will prioritize projects providing additional funds or in-kind support to leverage our investments and we encourage non-governmental entities seeking restoration project funding to partner with local or state public entities. Examples of restoration projects funded by ONRT 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 again seek community input through a publicly noticed 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 involved are derived from the June 2022 settlement between the State and the U.S. EPA, and therefore are non-recurring. Ongoing operations and maintenance for proposed projects, if any, must be guaranteed by another entity. In accordance with the Anti-Donation Clause of New Mexico's Constitution, settlement 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 regarding the project solicitation process, the screening and evaluation criteria for project selection, and restrictions on project funding. The meeting is scheduled for August 24, 2022, from 3:00–4:30pm. Information about the webinar is available [here](#) and more details are in the attached Project Solicitation. Please feel free to circulate this information to other potentially interested stakeholders.

No amount of money could fully compensate for the anguish New Mexicans suffered due to the Gold King Mine release, but this settlement provides fair compensation for natural resource injuries to the extent provided by law. As a resident and stakeholder who was affected by the contamination, you may have insight into the best use of this settlement fund. I hope you will give ONRT the benefit of your input into this process.

Sincerely,



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

Project Solicitation

The State of New Mexico Office of Natural Resources Trustee (ONRT) is in the preliminary stages of identifying projects that may be eligible for funding provided by a settlement reached with the U.S. Environmental Protection Agency (U.S. EPA) compensating for injuries caused by the Gold King Mine release. ONRT invites the public propose restoration projects that will compensate for natural resource injuries in New Mexico caused by the release. Restoration project proposals should focus on the Animas and San Juan River watershed areas, and projects must benefit surface water, wildlife, or aquatic and terrestrial ecosystems; address existing impairments to the rivers; or benefit the services those natural resources provide, such as consumption, farming, or outdoor recreation [*see the frequently asked questions section for more background information on the ONRT and this Project Solicitation*].

The Office of Natural Resources Trustee is seeking restoration project proposals in New Mexico, with the following overarching and specific restoration goals:

Overarching Restoration Goal:

ONRT will implement restoration that has a geographic connection to the Animas and San Juan Rivers in New Mexico so that the benefits are felt in the areas most adversely affected by the Gold King Mine release. Restoration will focus on restoring the specific resources that were injured and services that were lost as a result of the Gold King Mine release.

Specific Restoration Goals:

- Improve and protect water quality and quantity within the Animas and San Juan watersheds, for the benefit of aquatic resources (e.g., fish and other biota) and humans (e.g, improve/protect drinking water sources).
- Restore and conserve aquatic and terrestrial habitats within the Animas and San Juan watersheds.
- Restore human uses of natural resources within the Animas and San Juan watersheds, including, for example, cultural uses of resources, farming, recreation, and use of surface water as a drinking water supply.

Where to Submit Your Restoration Project Proposal

All questions and project proposals can be submitted via email or hard copy to the Office of Natural Resources Trustee ([link](#) to form):



State of New Mexico:

Sara Gerlitz
Office of Natural Resources Trustee
121 Tijeras Avenue NE, Suite 1000
Albuquerque, NM 87102
Email: nm.onrt@state.nm.us

When to Submit Restoration Project Proposals

Project proposals need to be received by the Office of Natural Resources Trustee by close of business **September 30, 2022**.

Questions related to this Project Solicitation will be addressed during a webinar hosted by ONRT, scheduled for **August 24 2022, 3:00–4:30 pm**. You can register for the webinar using the following link: [GKM Restoration Project Solicitation Webinar](#). Translation services will be available.

Background Information

On Aug. 5, 2015, the United States Environmental Protection Agency (U.S. EPA) and contractors working on U.S. EPA's behalf caused a release of millions of gallons of acid mine drainage and tons of toxic metals from the Gold King Mine in Colorado. The plume of contaminated water from the release caused the Animas and San Juan Rivers to turn bright yellow through Colorado, New Mexico and the Navajo Nation to Lake Powell in Utah. The release also forced communities to close intakes for drinking water systems, prompted many farmers to stop irrigating their crops, and drastically decreased recreational use of the rivers. Although the rivers are now safe for farming and other uses, the stigma associated with the event has had lasting effects on the region's economy.

In 2016, the New Mexico Attorney General and the New Mexico Environment Department (the State) sued the U.S. EPA, its contractors, and certain mining companies, for their alleged respective faults in the incident, seeking compensation for the injuries caused by the Gold King Mine release.

On June 14, 2022, the State reached a settlement with the U.S. EPA with a total value of approximately \$32 million.² As part of that settlement, the United States will deposit \$10 Million into an escrow account for use by the New Mexico Office of the Natural Resources Trustee (ONRT) for natural

² In January 2021 the State reached a separate settlement with the mining companies for \$11 Million, including \$1 Million for natural resource damages, and ONRT is in the process of expending that \$1 Million (see [website](#)). Litigation against the contractor defendants is ongoing.

resource restoration. ONRT will administer those funds through a process governed by the provisions of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and other applicable law. The funding will be available for projects that restore or replace injured natural resources or the services they provide. That may include, among other things, river, land, habitat, and watershed restoration and conservation, or projects that compensate for the loss of use natural resources.

Summary of the affected resources and related service losses in the Animas and San Juan Rivers resulting from the Gold King Mine release

Affected Resources	Related Service Losses
<ul style="list-style-type: none">• Surface water• Habitat - terrestrial and aquatic• Human use	<ul style="list-style-type: none">• 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

ONRT is in the preliminary stages of soliciting restoration project ideas and goals, and we are asking you, as a stakeholder, for your input. 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 farming or outdoor recreation, and/or address any existing impairments to the rivers.

The following pages 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. This should not be construed as a project award. The evaluation and planning process explicitly includes a public comment process. Restoration project selection will occur after the public reviews the draft Restoration Plan with proposed projects. ONRT will then evaluate all public comments received, and the final Restoration Plan will be published.

Map of the Gold King Mine Release Area:



Eligible Restoration Categories

The Office of Natural Resources Trustees is seeking “shovel-ready” restoration project proposals in the Animas and San Juan watersheds in New Mexico that fall within at least one of following categories of restoration (or restoration types), and can be initiated within a reasonable timeline:

Proposed projects should be shovel-ready so that selected projects can be initiated within 1 year of ONRT’s publishing of the final Restoration Plan, and generally completed within 2–3 years of implementation.

Water Quality and Quantity

Projects that improve or protect water quality and quantity

Examples:

- Implement pollution source control and mitigation measures that address impairments in the Animas and San Juan Rivers, including lead, nutrients, E. coli, temperature, sedimentation impairments
- Install drinking water protection systems
- Increase water quantity, for example, by removing water-intensive non-native plant species

Habitat Restoration and Conservation

Projects that restore or protect terrestrial and aquatic habitats

Examples:

- Restore terrestrial habitats by removing invasive plant species or planting native vegetation
- Protect/enhance riparian and aquatic habitats, for example, by planting native vegetation or installing fencing to keep livestock out

Human Use Benefits

Projects that restore human use of natural resources

Examples:

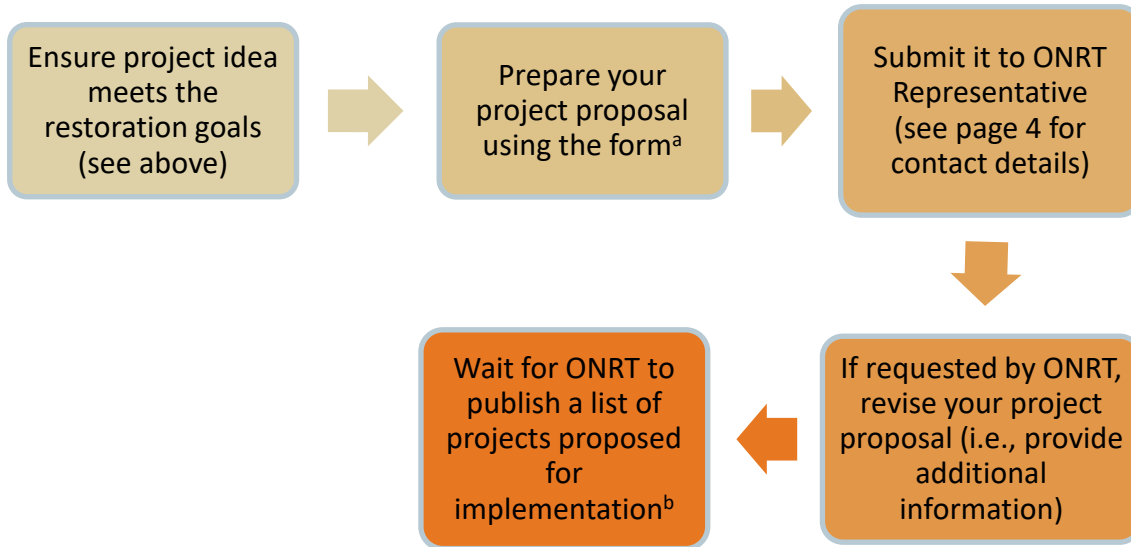
- Enhance or expand recreational opportunities, for example, through construction of access points or installation of other recreational amenities
- Restore cultural uses of natural resources through traditional educational programs or other means
- Improve drinking water treatment and delivery systems
- Provide improvements and/or education to benefit local farming

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.
2. ONRT funding is non-recurring so applicants must identify a source of funds for all ongoing operating and maintenance costs. Following award, no additional funding will be available.
3. Any funding proposed by 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.
5. Settlement funds cannot be given to individuals to compensate for personal losses.

Submittal Process

Please follow these steps to submit a project proposal:



a. The use of the [application form](#) to submit project proposals is preferred. However, project proposals may be submitted using other formats. If using another format, please ensure that all the information described on the form is included in the project proposal.

b. After reviewing the project proposals, ONRT will release a draft Restoration Plan for public review and comment that describes the restoration projects ONRT proposes for implementation.

What to Include in Your Project Proposal

The project proposal should contain the following categories of information, which are described in detail in the attached project proposal form.

General Project Description

Project Benefits

Project Size

Cost of Implementation

Longevity and Maintenance Needs

Matching Funds

Screening and Evaluation Criteria for Project Proposal

After the project solicitation 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
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 be completed 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
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: <ul style="list-style-type: none"> • 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.

Frequently Asked Questions

What does the New Mexico Office of Natural Resources Trustee do?

The New Mexico Office of Natural Resources Trustee (ONRT) ensures that natural resources and the services they provide that are injured or lost because of contamination are restored for the benefit of the environment and the enjoyment of New Mexico residents and visitors now and in the future. ONRT's mission is to return injured natural resources and the services they provide to the condition that would have existed absent the release of contamination. The Natural Resources Trustee through the ONRT implements the Natural Resource Damage Assessment and Restoration Program.

What types of matching funds are allowed, and is there an expected matching funds contribution?

Though additional funds and in-kind support are not required, project proposals that provide leverage to ONRT investments will be prioritized. For example, additional funds or in-kind support may include funding received from another entity for a portion of the project, the value of volunteer labor, or the value of equipment already purchased and available for use. Funding received from other sources (e.g., federal agencies, Tribes) counts as additional matching funds. Project proposals with a greater percentage of additional/in-kind support to total project costs will be prioritized in the evaluation process.

What types of projects will be considered?

Restoration projects should benefit natural resources and/or resource services in the vicinity of the Animas or San Juan Rivers. For example, projects could improve and/or protect water quality and quantity, restore and/or protect terrestrial and aquatic habitats, or compensate for lost human use of natural resources.

What types of projects are not eligible?

Projects that do not address the injuries to natural resources, resource services, or ongoing impairments are not eligible. In addition, ONRT funds cannot be given to individuals to compensate for personal losses, in accordance with the anti-donation clause of New Mexico's constitution.

Would a project that involves remedial (cleanup) actions be considered?

Projects that require cleanup actions are not excluded from this funding opportunity. For example, ONRT will consider projects that seek to improve water quality by cleaning up hazardous substances other than those that caused injury in the Gold King Mine blowout. Such projects provide a net environmental benefit to injured resources.

However, as remedial actions are governed by federal, state, and local laws, projects that include a remedial component would need to justify the use of ONRT restoration-focused dollars to complete site cleanup (e.g., the absence of a viable responsible party or other funding mechanism).

Can ONRT funds be used for design, permitting, and other pre-construction costs?

Yes, project proponents may include design, permitting, and pre-construction activities as part of a project proposal. However, project proponents should be aware that the evaluation criteria include several cost-related topics, including a "low ratio of planning and administrative costs to restoration costs."

Are project proponents responsible for compliance with permitting requirements?

Yes, project proponents are responsible for compliance with all applicable federal, state, and Tribal laws related to permitting. In addition, project proposals will be evaluated based on the completeness of information needed to evaluate the project's short- and long-term benefits and collateral impacts.

Is there a maximum length of time for project completion?

Proposed projects should be shovel-ready, such that selected projects can be initiated within 1 year of ONRT's publishing of the final Restoration Plan, and generally completed within 2–3 years of implementation. Upon project selection, a deadline will be discussed and agreed upon as part of contract negotiations and should not exceed 4 years from the award date.

Are partnerships encouraged (e.g., between non-governmental entities and public entities)?

Based on New Mexico procurement requirements, partnerships between non-governmental entities and local/state public entities are strongly encouraged. One of the project evaluation criteria addresses this topic (i.e., lead project proponent or partner is a state agency or local public body) to prioritize projects from local and state agencies. Any funding provided directly to non-governmental entities will need to go through an additional, formal competitive solicitation process, consistent with state procurement rules. Examples of local public bodies are counties, municipalities, state agencies, certain educational institutions, and any political subdivision of the state.

Funding for projects proposed by non-governmental entities will need to go through an additional, formal competitive solicitation process, consistent with New Mexico procurement rules.