



# A Trustee's Perspective:

## The New Mexico Office of Natural Resources Trustee

Rebecca de Neri Zagal, Executive Director, and Dr. William M. Turner, Trustee – New Mexico Office of Natural Resources Trustee

*The work of the natural resource trustee can make the difference between an environment that is cleaned-up but sterile and an environment that is cleaned-up, diverse, and productive.*

The primary legal authorities for the designation of natural resource trustees lies under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Oil Pollution Act of 1990. According to these acts, federal, state, and tribal officials may be designated to serve as natural resource trustees.

In New Mexico, the Natural Resources Trustee is an individual designated by the Governor who oversees the New Mexico Office of Natural Resources Trustee (NMONRT). The Trustee holds an unsalaried position and is responsible for decision-making for the agency and ultimately for the Natural Resource Damage Assessment and Restoration (NRDAR) program. The goal of the New Mexico NRDAR Program is to restore or replace the state's natural resources and their associated services that have been injured by releases of hazardous substances or oil. The NMONRT is the only state agency with responsibilities for the NRDAR program.

In New Mexico, most natural resources belong to, are managed by, held in trust by, pertain to, or are otherwise controlled by the state. These resources include air, surface water, groundwater, biota, and geological resources. The NRDAR program works not to punish polluters, but to facilitate payment by responsible parties for the restoration of natural resources back to baseline conditions and to compensate the public for the lost use of the service. Baseline is the state of the natural resource prior to contamination by releases of the hazardous substances.

### **NRDA Sites in New Mexico**

New Mexico has sites statewide with potential natural resource injuries that

warrant investigation. The sites are varied in size and include industrial facilities, mineral extraction sites and federal installations. The NMONRT conducts preliminary investigations of sites with potential resource injuries, prepares and implements natural resource damage assessment and restoration plans, oversees contractor NRDAR activities, coordinates activities with state and federal agencies and negotiates settlements with responsible parties. The NMONRT works closely with the New Mexico Office of the Attorney General (AGO), who provides legal counsel for the NMONRT.

### **Funding Sources**

Unlike the federal Superfund program, no funds exist for natural resource damage assessment and restoration. The NMONRT receives yearly operating expenses from the state's general fund. Costs incurred to investigate and settle a claim are recoverable and are used for future NRDAR program activities. The NMONRT maintains a separate fund for cost recovery money and restoration settlements. Interest accrued in this account can be used to support the agency's activities after initial startup funding is paid back to the state's general fund and the AGO.

### **Coordination with Other Agencies**

In order to address the numerous sites in the state, the NMONRT coordinates assessment and restoration efforts with federal natural resource trustees, as well as with other federal and state agencies conducting remedial investigation and cleanup. Under a coordinated approach, information is shared regarding environmental conditions. The NMONRT has also created a memorandum of agreement with co-trustees, the Department of the Interior and the Department of Agriculture, Forest Service. The agreement outlines procedures for a

cooperative working alliance for the determination of natural resource injuries and subsequent restoration activities at those sites where the state shares trust resources.

When a site with co-trustees is identified as having potential natural resource injuries, a site-specific trustee council is formed consisting of representatives from each trustee agency. Trustee representatives coordinate planning, assessment and restoration, and interact with the responsible parties as a trustee council instead of as individual trustees. This approach results in a cost-effective use of personnel and finances as NRDAR tasks are shared among co-trustees, and a comprehensive approach is taken to the natural resource damage assessment and restoration process. New Mexico is one of seven states that have taken the initiative with the Department of the Interior to formalize this approach. The other states are Alaska, Florida, Kansas, Louisiana, Maine, and Texas.

### **Long-Term Objectives**

Restoration projects in New Mexico are undertaken with an eye for long-term effectiveness. The NMONRT conducts restoration research prior to implementation of restoration projects to select the most appropriate restoration alternatives. For example, NMONRT is currently conducting watershed restoration research to select water replacement alternatives for lost use of groundwater services caused by contamination of the groundwater resources in the Middle Rio Grande area. As the NMONRT represents the interest of the citizens of New Mexico, two-way public communication, in addition to scientific understanding, is a key element in any restoration planning.

Contact Rebecca de Neri Zagal at [rebecca\\_nerizagal@nmenv.state.nm.us](mailto:rebecca_nerizagal@nmenv.state.nm.us)