

**GUIDELINES FOR PREPARING  
NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION  
FUND REQUESTS AND RECORDKEEPING**

Under the Comprehensive Environmental Response, Cleanup, and Liability Act (CERCLA) and Oil Pollution Act (OPA), natural resource trustees obtain restoration of trust resources injured by contaminant releases and oil spills and may recover their assessment costs. In some cases, restoration is provided directly by the potentially responsible person (PRP) and, in other cases, the PRP provides funds for the trustees to implement restoration. Settlements for restoration range from thousands of dollars to millions of dollars. Since its inception approximately 15 years ago, the Department's NRDAR Fund has received approximately \$180 million for restoration and approximately \$20 million in recovered assessment costs. In addition, the \$900 million Exxon Valdez settlement provided approximately \$687 million for restoration. Additional funds for restoration reside in court and other outside accounts. Use of these funds must be in compliance with CERCLA or OPA and case-specific settlement documents or court judgments, as well as restoration plans developed and memoranda of agreement signed with co-trustees and/or responsible parties. It is critical that we continue to be diligent in accounting for NRDAR Fund expenditures to ensure that they are spent as intended and as required by law, because of the large amounts of money involved, the complex terms for expenditure, and our responsibility to the public and settling parties. Service requirements may go beyond those imposed by the Department's Program Management Office (PMO), although some of them may be similar to or parallel those requirements.

Management of individual NRDAR cases for the Service was delegated to Regional Directors in 1998 and subsequently to the Manager, California/Nevada Operations Office (RDs/CNO), as Authorized Officials (AOs). AOs are responsible for preparing funding requests authorizing release of returned Service assessment and restoration funds from the Departmental NRDAR Fund. These guidelines are intended for use by the AOs in making these requests. When the Service is not the AO for the Department, the RD/CNO Manager still needs to approve release of funds to the appropriate Service office. This provides oversight and accountability. The process will be the same as described here for cases where the Service is the AO. This guidance document is divided into several sections. The first section applies to all funding requests. Subsequent sections identify additional requirements specific to a particular type of funding request.

Exhibit 2 summarizes the documents required for the different types of NRDAR funding requests. FWS Form 3-2301 (NRDAR Fund Request for Advance Assessment Funding) is required for advance assessment funds. FWS Forms 3-2302 (NRDAR Restoration Funding Request) and 3-2303 (NRDAR Assessment Funding Request) may be substituted for a request memorandum. To facilitate preparation of funding requests, Exhibit 3 is a series of checklists of required information and documents for each type of NRDAR funding request.

## SECTION I. ALL FUNDING REQUESTS

1. Before requesting the release of recovered assessment or restoration funds from the NRDAR Fund, the AO must ensure that the plan for spending those funds is consistent with: (1) the settlement agreement (e.g., consent decree or administrative order, communications from the party providing the funds, or similar documents), (2) any pertinent Memorandum of Understanding or Agreement with other trustees or with other parties, (3) trustee council resolutions (if applicable), (4) Departmental and Service NRDAR policies, and (5) any applicable laws, regulations and policies (e.g., NEPA, permitting, etc.). If there are requirements for concurrence, notification, or reporting, the AO should assure these are met before requesting release of funds.

2. Funds being used for restoration must also be consistent with a publicly reviewed restoration plan. Funds used for damage assessment in excess of \$100,000 must be consistent with a publicly reviewed assessment plan, except where funds are being used to develop a settlement position or for ephemeral data collection.

3. All funding requests should be signed by the AO and sent to the Departmental Fund Manager, with a copy (including all attachments, except where noted below) provided to the Division of Environmental Quality (DEQ).

A. All request memoranda should include the following identifying information, which is necessary to properly track the funds:

- (1) The name of the site where the funds will be used except for non-case-specific assessment funds;
- (2) The name, station, and phone number of the case manager responsible for overseeing use of the funds;
- (3) The name and location of the site or incident resulting in receipt of funds. If there have been multiple settlements for the same site/incident, information sufficient to identify the settlement providing the funds (e.g., court case name and number, settling parties) should be included except for advance assessment funds; and
- (4) The purpose for which the funds will be used; i.e., general NRDAR work, a case-specific damage assessment, advance assessment funding, restoration planning, or restoration implementation. Additional information may be required depending on the type of funding request (see below).

B. The following documents should accompany ALL requests for funding and be provided to DEQ unless they are already on file:

- (1) A final consent decree (preferably signed, but since obtaining the signed version is subject to availability from Department of Justice and may be beyond Service control, the signed version is not essential as

long as the AO has assurance from the Solicitor that the copy provided is the final version). Versions with strike-outs are not acceptable because this document is the legal instrument that determines the amount and purpose of the funds the Department receives. Exceptions:

(a) If advance funds are being requested where there is a Funding and Participation Agreement with the Potentially Responsible Parties (PRPs) a consent decree is not required as these funds are provided by PRPs prior to settlement.

(b) If the PRPs are reimbursing the Service for assessment costs where there will be no settlement because the Service determined no further assessment or restoration is needed, the letter written by the DOI Solicitor (or NOAA General Counsel or State trustee's attorney) to the PRP requesting reimbursement for assessment expenditures and the correspondence from the PRP included with payment of assessment costs to the Departmental NRDAR Fund should be provided in lieu of a consent decree.

(c) If funding has been provided by the Oil Spill Liability Trust Fund (OSLTF), the claim sent to the U.S. Coast Guard Claims Center and their response stating what portions are being paid should be provided in lieu of a consent decree.

- (2) A settlement tracking form (STF) (FWS Form 3-2299) surnamed by all affected DOI bureaus and the Solicitor's Office. The STF confirms agreement among the DOI bureaus on the splits in funding among the bureaus and assurance by the Solicitor that the break-down is consistent with the settlement agreement, court ruling, or funding and participation agreement. The signature level for settlement tracking forms is not specified in the Departmental Manual or in the Restoration Program's fund deposit guidance. For the Service, this can be the Service Regional NRDAR Coordinator or higher at the discretion of the Regional Director/CNO Manager. For the Solicitor's Office, it could be the DOI attorney responsible for the case or it may also be someone at a higher level. For most other bureaus the signature level is the DOI NRDAR Work Group member, but this should be confirmed for areas within your jurisdiction.

## SECTION II. RECOVERED BUREAU ASSESSMENT FUNDS

1. **Case-specific NRDAR Funds** (80-100% of assessment funds recovered). Case-specific NRDAR Funds are bureau assessment funds recovered on the settlement of a given case that are used to provide funding for further assessment work at the same site or assessment work at another site. At least 80% of the bureau assessment funds

recovered for a given case must be spent on site-specific assessment work.<sup>1</sup> The items identified in Section I are required to request these funds, plus:

A. A brief (one paragraph to one page) statement of the assessment work that will be done with the funds should be retained in the Regional Office/CNO files and provided to DEQ. The Restoration Program Office does not currently require a copy. If an NRDAR Fund Proposal or Assessment Plan/Work Plan exists, then this should be referenced in the request memorandum and the brief statement is not necessary. Copies of NRDAR Fund Proposals do not need to be provided. If funds requested for a given case exceed \$100,000 (cumulatively) and are not for collection of ephemeral data or development of a settlement position, then a final assessment plan (OR public draft with final to follow; this allows the request to be made during the public review period so that funds will be available immediately when the final plan is signed) is required and should be retained in the Regional Office/CNO and provided to DEQ (along with the URL if it is posted on the worldwide web). The requirement for a publicly reviewed assessment plan is in keeping with the regulations and should strengthen our case for recovering assessment funds.

*OPTIONAL:*

B. A funding schedule, which authorizes release of funds on a predetermined schedule based on an existing assessment plan. This saves having to make separate requests for each release when the timing and purpose of funding is known in advance (e.g., for an ongoing project where specific tasks, for example sampling, are scheduled over a set time period). This reduces paperwork and maximizes the interest accruing. Any changes in the schedule (timing) may be made either via emails from the project manager to the NRDAR Fund Manager, with a copy to the AO and DEQ or a phone call to the NRDAR Fund Manager, and notification of the AO and DEQ. No additional signatures are required as long as the total amount of funding and purpose stays the same. Funding schedules may not be used where the exact amount of funds or use of the funds is not known or where the supporting document (e.g., assessment plan) has not been completed.

**2. Non-case-specific NRDAR Funds** (up to 20% of total assessment funds recovered): Non-case-specific NRDAR Funds are bureau assessment funds recovered on the settlement of a given case that are used to provide funding for general NRDAR activities such as attendance at general NRDAR meetings, NRDAR training, review of Restoration Program or DEQ NRDAR guidance documents, development of Regional/CNO training or guidance documents, etc. Up to 20 percent of the bureau assessment funds recovered for a given case may be spent on non-site-specific assessment work.<sup>1</sup> Only the items identified in Section I are required to request these funds.

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<sup>1</sup> See the August 23, 2000, Revised Policy on Recovered Assessment Costs issued by the DOI Restoration Program Manager to the Bureaus.

### SECTION III. RESTORATION FUNDS

1. **Restoration Planning.** Restoration planning funds are the portion of the restoration receipts used to develop a restoration plan. Only the items identified in Section I are required to request these funds, unless it is a joint settlement. For joint settlements, see Section III.3 for additional documentation needed.

2. **Restoration Implementation.** Restoration implementation funds are the portion of the restoration receipts used to implement, oversee, and monitor restoration activities. The items identified in Section I are required to request these funds, plus:

A. The request memorandum must include a statement describing which projects are being implemented with the funds requested if the whole restoration plan is not being implemented at once. DEQ needs this statement to track accomplishments and ongoing activities.

B. A copy of the final restoration plan (OR public draft with final to follow; this allows the request to be made during the public review period so that funds will be available immediately when the FONSI or ROD is signed or categorical exclusion documented) will be retained in the Regional Office/CNO files. Provide a copy to DEQ, unless it is already on file. The Restoration Program Office does not currently require a copy of the restoration plan. Where the restoration plan is part of the consent decree, the request memorandum will state this and note which section of the consent decree contains the restoration plan.

C. If this is a joint settlement, see Section III.3. for additional documentation needed.

*OPTIONAL:*

D. A funding schedule, which authorizes release of funds on a predetermined schedule based on an existing restoration plan. This saves having to make separate requests for each release when the timing and purpose of funding are known in advance (e.g., for an ongoing project where specific tasks, such as monitoring or wildlife relocations, are scheduled over a set time period). This reduces paperwork and maximizes the interest accrued on the fund. Any change in the schedule (timing) may be made either via email from the project manager to the NRDAR Fund Manager, with a copy to the AO and DEQ or a phone call to the NRDAR Fund Manager, and notification of the AO and DEQ. No additional signatures are required as long as the total amount of funding and purpose stays the same. Funding schedules may not be used where the exact amount of funds or use of the funds is not known or where the supporting document (e.g., restoration plan) has not been completed.

3. **Additional Requirements for Joint Restoration Settlements.** Where restoration funds are held jointly with co-trustees, retain the following documents in the Regional Office/CNO files and provide a copy to the Program Management Office with the request memorandum for both restoration planning and implementation funds. DEQ does not

need copies of these documents; only the request memorandum and other supporting documents specified above are needed by DEQ.

A. A trustee Memorandum of Understanding (MOU) signed by all parties or a statement that no MOU exists. If available, the MOU is needed because it may include requirements that DOI must meet; e.g., submitting financial reports, requiring notification of other trustees of various actions, etc.

B. A trustee council resolution or equivalent signed by all of the co-trustees to confirm that all trustees agree on how to spend settlement.

#### **SECTION IV. ADVANCE ASSESSMENT FUNDS**

1. Limited advance assessment funds are available from the NRDAR Fund to conduct assessments when there is a PRP Funding and Participation Agreement (or MOU or similar document) and the PRPs refuse to provide advance funds, but agree to reimburse trustee assessment costs. Up to \$50,000 per project may be advanced at a time from the NRDAR Fund if there is a signed agreement with the PRP that the Service will be reimbursed and if NRDAR Fund monies are available. Future advances for the same project are dependent on reimbursement of the NRDAR Fund by the PRPs.<sup>2</sup>

**2. *Requests for Advance Assessment Funds are not delegated and must be routed through DEQ for signature by the Service's Work Group Member (Chief, Branch of Environmental Response and Restoration).*** The requirements for these requests are included here so that all of the funding requests requirements (except NRDAR Fund Proposals, which use separate procedures) may be found in one guidance document. The following additional documents are required with the request memorandum (as defined in section I.1.):

A. Signed Funding and Participation Agreement with the PRPs. This is required to assure reimbursement of the NRDAR Fund. Where possible the Agreement should include a provision to reimburse the Fund at least quarterly.

B. FWS Form 3-2301 (NRDAR Fund Request for Advance Assessment Funding).

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<sup>2</sup> See the May 19, 1997, Memorandum from Brooks Yeager, Deputy Assistant Secretary, Policy, Management and Budget to John Rogers, Acting Director, FWS on Allocation for, and Policy and Procedures for Use of the Natural Resource Damage Assessment and Restoration (NRDAR) Fund for Advance Funding for Assessment Costs Under Memoranda of Agreement with Responsible Parties (FY1997-02) for additional details.