



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

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Memorandum

To: Director, Bureau of Indian Affairs
Director, Bureau of Land Management
Commissioner, Bureau of Reclamation
Director, U.S. Fish and Wildlife Service
Director, National Park Service
Director, Office of Environmental Policy and Compliance
Deputy Solicitor

From: Frank DeLuise, Program Manager *Frank DeLuise*
Natural Resource Damage Assessment and Restoration Program

Subject: Policies and Operating Principles for Natural Resource Restoration Activities

The following policies and operating principles provide a framework for restoration activities associated with the Department of the Interior (DOI) Natural Resource Damage Assessment and Restoration (Restoration) Program. The policy is intended to address implementation of restoration activities using funds recovered by DOI in settlements or judgments of damage assessment cases. Nothing in this document is intended to alter, in any way, the specific statutory or regulatory requirements, obligations, and responsibilities of the Department or to vest any rights or responsibilities in third parties. Additional resources and information can be found in the Draft Restoration Handbook, dated June 2002, which is currently being field tested and will be finalized in 2004.

Background

The mission of the Natural Resource Damage Assessment and Restoration Program (Restoration Program) is to restore natural resources injured as a result of oil spills or hazardous substance releases into the environment. In partnership with other affected State, Tribal, and Federal trustee agencies, damage assessments provide the basis for determining the restoration needs that address the public's loss and use of these resources.

As authorized by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), the Clean Water Act (CWA), and the Oil Pollution Act of 1990 (OPA), injuries to natural resources that the DOI manages or controls are assessed, and appropriate restoration projects or compensation are identified to support negotiated settlements or legal actions (in rare cases) with potentially responsible parties. Recoveries, in cash or in-kind services, from the responsible parties are then used to finance or implement the restoration of the

injured resources, including replacing or acquiring the equivalent of the injured, diminished, or lost natural resources and services, pursuant to a publicly reviewed restoration plan.

General Policy

The goal of the Restoration Program is the timely restoration of injured resources, including lost human and ecological services, to those conditions that would have existed if the releases and injuries in question had not occurred. When appropriate, restoration includes compensation for the value of interim losses pending restoration of the injured resource. Restoration implementation is usually undertaken in partnership, consultation, and coordination with relevant co-trustees, subject to the requirements and constraints of each of the co-trustees.

For the Department, restoration cases will be managed by a DOI Authorized Official, representing the Secretary, who will work to ensure that all planning and implementation of restoration activities are completed in a timely manner, consistent with all relevant regulations and policies, in consultation with all affected DOI Bureaus/Offices and other natural resource trustees, and in coordination with response agencies where appropriate. A restoration plan will be developed and will meet all relevant environmental compliance requirements, including requirements under the National Environmental Policy Act. Implementation should follow the public review and the concurrence of the appropriate Federal, State, and Tribal co-trustees or their designees.

Given the mission focus on restoration, the restoration needs of the injured resource should influence the damage assessment phase, with restoration planning taking place throughout the process of damage claim development. Damage claims should document and include recoveries for response and assessment costs, interim losses and accumulated interest, and the cost of restoration implementation and direct and indirect costs for restoration activities, including, but not limited to, planning, implementation, operation, maintenance, oversight, legal protection, and environmental monitoring. Planning and monitoring costs should be commensurate with the restoration implementation costs. In determining the amount of monitoring required, consideration should be given to the total value of the damages, certainty of restoration success, and ability to implement alternative actions based on the monitoring results.

Restoration Coordination

The DOI Authorized Official and co-trustees should attempt to identify and resolve restoration issues early in the planning process. DOI Bureaus/Offices should work together and with other interested trustees in formulating and implementing natural resource restoration plans. DOI Bureaus/Offices are encouraged to work in partnership with internal programs such as the FWS Joint Ventures, Coastal, and Partners for Fish and Wildlife Programs, and the NPS Conservation Challenge, as well as with external natural resource management programs and organizations whose policies are compatible with those of the DOI Restoration Program and other DOI Bureaus/Offices. When partnerships are used to implement restoration projects, they should be used to enhance or facilitate restoration actions. DOI Bureaus/Offices should coordinate with EPA, the Coast Guard, other governmental agencies and the responsible parties who are conducting remedial/response actions to control, prevent, or minimize residual natural resource

injuries. Generally, more comprehensive and effective remedial actions or spill response will reduce the level of residual injuries to natural resources.

Restoration Planning

The statutes that authorize natural resource damage claims require trustees to restore, replace, or acquire the equivalent of the natural resources and services that have been injured. The restoration plan should clearly identify, and explain to the public, the relationship between each restoration alternative considered and the resource injuries or service losses the action would address. In addition, the plan should include provisions that establish performance standards (materials and methods), performance criteria (measures of success) and describe the legal protections (easements, deed restrictions) established for the completed restoration projects.

Restoration planning should take place as early as possible in damage claim formulation and continue throughout the process of developing the damages claim. A formal Restoration Plan will be prepared, either early as a basis for the claim or after the recovery of damages, and be made available to the public for review and comment. After public review, the restoration plan should receive the concurrence of the appropriate Federal, State, and Tribal trustees or their designees prior to implementation of the plan. The form, timing, level of detail, and nature of public review or involvement for the restoration plan may vary depending on applicable legal requirements, relevant regulations, and other case-specific considerations.

In the preparation of the restoration plan, the alternatives defined in the plan should include a natural recovery (no action) alternative. The alternatives should be evaluated according to the criteria outlined in 43 CFR Part 11 (“Public Lands: Interior, Natural Resource Damage Assessments” for CERCLA cases) or 15 CFR Part 990 (“NOAA, Natural Resource Damage Assessments” for OPA cases) as appropriate. When monetary recoveries are received for interim losses, the plan should describe how those monies will be used to fund additional associated restoration work.

In an area where there have been multiple settlements for similar types of injury, or where such settlements are anticipated, a regional restoration plan may be developed and used as the basis for combining claims to maximize restoration success. An existing plan (*e.g.*, regional, endangered species recovery, Coastal Zone Management, Tribal Resource Management Plan, etc.) or portions thereof, may be incorporated into a restoration plan.

A mechanism for modifying or supplementing restoration actions based on monitoring results should be included in the restoration plan whether the restoration plan is to be implemented by the responsible party as part of the settlement or by the trustees. For example, a contingency provision for additional plantings should be included in the restoration plan in the event that plant survivorship does not meet the success criteria. Restoration implementation may be performed using a phased approach that allows necessary adjustments. This is especially important when implementing complex or long-term restorations. Such restorations should be designed in a manner that would allow mid-course changes to be made, as needed, based on appropriate evaluation of monitoring results.

Whenever possible, acquisition of equivalent resources should be supported by endowment or stewardship funds to cover long-term operation, monitoring, and maintenance. All lands acquired for DOI are subject to DOI Pre-acquisition Regulations and Guidelines. In addition, Congressional action may be required prior to acquisition if the acquisition is to be added to existing Federal lands.

Compliance with applicable statutes and regulations, such as the National Environmental Policy Act, Endangered Species Act, and National Historic Preservation Act, and others, should be integrated into restoration planning processes as early as possible. To the extent possible, restoration planning documents should be integrated to meet the requirements of multiple needs at the same time.

Restoration Implementation Timeline

Once a settlement or judgment has been entered, restoration planning (if not already completed as the basis for the claim) and implementation should proceed as expeditiously as possible. A restoration team or restoration trustee council should be formed within three months of the date of the entering of the settlement or judgment. Within six months of the entering of the settlement or judgment, the restoration team or trustee council should prepare a restoration strategy or project management plan that identifies milestones. For settlements preceding the adoption of this policy, the restoration team should formulate a restoration strategy or project management plan within six months of the date of this policy. The DOI Restoration Program Manager, with assistance from the Program Management Team, will track the accomplishment of these milestones annually or at the request of the Assistant Secretary – Policy, Management, and Budget to ensure timely progress of restoration.

Restoration implementation should begin as soon as possible after the completed restoration plan has been approved by the DOI Authorized Official and appropriate co-trustees, following documentation that environmental compliance requirements are being addressed. Restoration implementation may be performed in a phased approach, if such an approach is identified in the restoration plan, or it may be performed continuously. In some cases, emergency restoration actions may be appropriate prior to completion of the restoration plan and environmental compliance documentation.

Success Criteria and Monitoring

Provisions of the restoration plan should establish success criteria - performance measures to evaluate the effectiveness of the restoration - to help assess both the function and the physical appearance of the restored resources. Because unanticipated factors, such as weather events or technical difficulties, may impede the progress of restoration, midcourse corrections in the restoration plan may necessitate changes to the success criteria.

Oversight

The restoration plan should include provisions for oversight to ensure the restoration project is conducted as intended. Oversight includes reviewing project plans, attending planning meetings,

conducting site visits, monitoring restoration results, tracking the project budget, and other project management tasks. Effective communication and coordination are important aspects of oversight, and although time-consuming, are vital to the success of the restoration effort.

Legal Protection

The restoration plan should include the establishment of legal protection measures to ensure continued resource benefits when a restored resource may be vulnerable to future, foreseeable impacts that could negate the effect of the restoration actions. Examples of such legal protection measures include conservation easements and deed restrictions.

Restoration Completion

The DOI Authorized Official should work with the co-trustees to ensure that restoration actions are completed as specified in the restoration plan or the consent decree. The DOI Authorized Official will provide a report annually to the Restoration Program Manager summarizing the progress in meeting the milestones cited in the restoration strategy and the restoration plan. Information from annual reports will be used to identify restoration successes and to help the Restoration Program Manger target restoration support funding.

When long-term monitoring is the only action required, the DOI Authorized Official should notify the Restoration Program Manager through the annual reports that all other restoration activities have been completed and only monitoring remains. The DOI Authorized Official will then follow up by including summaries of monitoring results in subsequent annual reports. Upon completion of all restoration activities, the DOI Authorized Official will deliver to the Restoration Program Manager a final completion report that will indicate that all restoration activities have been completed and restoration success criteria have been met. If the success criteria established in the restoration plan are not met and restoration funds have been exhausted, the DOI Authorized Official, in coordination with co-trustees, is responsible for determining what further action is appropriate (if any) and for communicating to the Program Manager what action is being pursued (in the annual report) or why it is appropriate to take no further action (in the final completion report).

Restoration Administrative Record

The DOI Authorized Official will ensure that the Lead Administrative Trustee develops and maintains a Restoration Administrative Record or Report of Assessment, which includes, but is not limited to, decision documents, documentation of public and responsible party involvement, the alternatives analyzed, the rationale for the selected restoration projects, and documentation of the completion of restoration projects.

Contacts

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