



Natural Resource Damage Account

Annual Legislative Report
3/4/2021

Legislative Charge

By November 1 each year, the commissioner of natural resources must submit a report to the chairs and ranking minority members of the House of Representatives and Senate committees and divisions with jurisdiction over environment and natural resources policy and finance on expenditures from the natural resources damages account during the previous fiscal year.

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As requested by Minnesota Statute 3.197, this report cost approximately \$1000 to prepare, including staff time, printing and mailing expenses.

Upon request, this material will be made available in an alternative format such as large print, Braille or audio recording. Printed on recycled paper.

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NRDA Legislative Report Executive Summary

Wildlife, water, air, and other natural resources can be harmed when petroleum or hazardous substances are released into the environment. These natural resources and services provided by natural resources belong to all Minnesotans. State co-trustees assess injuries to natural resources resulting from releases of petroleum and hazardous substances and may pursue a Natural Resource Damage Assessment (NRDA) claim against the party (parties) responsible for a release to compensate the public for harm that occurs. The goal of the NRDA Program is to rehabilitate, restore, or acquire natural resources to compensate for injuries or losses to natural resources resulting from the release of hazardous substances or petroleum by:

- Assessing injury to natural resources and lost services provided by natural resources
- Seeking compensation for damages from the responsible party
- Planning and implementing restoration projects

The Governor's April 5, 2019 Executive Order #19-29 authorizes the Commissioners of Natural Resources and the Pollution Control Agency as co-trustees for natural resources in Minnesota under CERCLA, 42 U.S.C. § 9607(f), the Clean Water Act, 33 U.S.C. § 1321 9f) and the Oil Pollution Act of 1990, 22 U.S.C., as well as Minnesota Environmental Response and Liability Act, Minn. Stat. 115B.17, subd. 7 and State Pollution Control Act, Minn. Stat. 115.071.

Minnesota's NRDA statute (Minn. Stat. § 115B.172) requires the Department of Natural Resources (DNR) to provide a report to the Minnesota Legislature on expenditures from the NRDA account during the previous fiscal year. This report fulfills the requirement and covers FY 2020 (July 1, 2019 to June 30, 2020) activities. NRDA staff also assist with the 3M 2018 NRDA Settlement implementation. Efforts on 3M are reported on a semi-annual schedule and separately from reporting on the general NRDA program.

NRDA program highlights in FY 2020 included:

- Participation in multiple NRDA cases, including three formal trustee councils.
- Planning for and commencing implementation of the Kingsbury Bay restoration project as part of the St. Louis River/Interlake/Duluth Tar 2017 Settlement.
- Development and public release of the NRDA webpage housed on the Minnesota Pollution Control Agency (MPCA) website: www.pca.state.mn.us/waste/natural-resource-damage-assessment

The NRDA Program spent \$1,566,208 in contractual and administrative costs in FY 2020 to accomplish these and other activities.

Future NRDA work includes continued assessment and restoration planning for several existing NRDA cases, including restoration planning for the Northwest Refinery 2012 settlement. Identification of potential new NRDA cases will be a low priority due to limited staff and funding.

Administration of the program is currently funded by revenues from settled NRDA cases, and this account does not receive any appropriations from state or federal government. At the current rate of expenditures, and assuming no additional revenues into the account beyond the fund's interest, the NRDA fund will go negative by the end of Fiscal Year 2022. DNR and MPCA are evaluating potential options for continuing the important work of the NRDA program.

Assessment and Restoration Planning Activity

The NRDA assessment process consists of case screening, preliminary assessment of potential injuries, assessment studies to determine injury, damage quantification and initial restoration planning. In FY2020, Minnesota participated in three formal Trustee Councils, each represented by federal, state and tribal natural resource managers for three complex Superfund cases. In addition, the NRDA program works on several state-only co-trustee cases involving spills and other eligible releases of hazardous substances and petroleum.

Restoration Project Implementation

The 2017 St. Louis River/Interlake/Duluth Tar settlement for \$8.2 million dollars provided funds for four restoration projects, two of which are underway and are being managed by the DNR (www.dnr.state.mn.us/st-louis-river-restoration/index.html):

- The Kingsbury Bay restoration project (\$5,477,242) is part of the DNR Kingsbury Bay-Grassy Point Habitat Restoration Project and it will restore 70 acres of shallow, sheltered embayment habitat that will include recreational access. This project will be completed in the 2021 construction season.
- The Kingsbury Creek watershed project (\$637,500) will result in a reduction of sediment deposition to Kingsbury Bay, improving water quality and protecting against degradation of the shallow sheltered embayment habitat. This project will be completed in the 2022 construction season.

Program Restoration Projects Cumulative Benefits

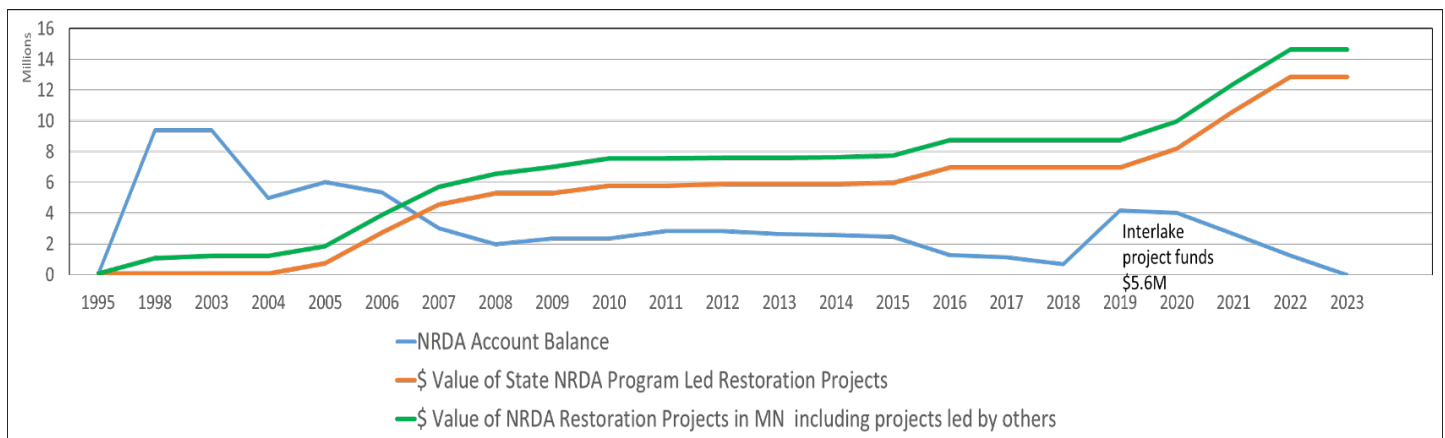
Over the 25-year history of Minnesota’s NRDA Program, from 1995-2020, the program has funded or supported 39 restoration projects, with a dollar value of \$15.2 million, across Minnesota (includes projects currently being implemented). Restoration projects typically provide multiple benefits to natural resources. The list below identifies the primary benefits for all of the projects completed and planned under Minnesota’s NRDA Program, with some projects having more than one primary benefit:

Project Metrics	#Projects with metric	Benefit
Habitat and Shoreland Protection	17	2489 Acres
Habitat Restoration for Improved Ecosystem Services	13	360 Acres
Debris Removal	1	114,000 Yds ³
Stream Habitat Restoration	1	6200 Linear Feet
Air Emission Reduction	3	118,404 Pounds/yr.
Recreational/Cultural (Tribal) Opportunities	12	Trails, fishing access, cultural preservation
Groundwater Protection/Recharge/Conservation Projects	2	Groundwater quantity and quality
Other Research/Education Opportunities	2	Enhanced information and public knowledge
Surface Water/Stormwater Projects	2	Surface water quality improvements

Future NRDA 5 Year Program Goals

1. Injury Assessment:
 - Review five to ten new cases for potential NRDA actions
 - Begin assessment activities on three to five new cases as funding allows
2. Restoration Project Implementation:
 - Support DNR implementation of the Kingsbury Bay/Kingsbury Creek projects
 - Plan for restoration projects using the Northwest Refinery and several other settlements (\$88,520 value)
3. Future Program Funding Needs:
 - DNR and MPCA NRDA program activities are funded solely by a NRDA account within the Remediation Fund under Minn. Stat. § 115B.172. This account receives settlement money that supports staffing, case assessment costs and restoration projects. At the current rate of expenditures and assuming income to the account consists solely of interest, the NRDA fund will be depleted by the end of FY22. DNR and MPCA are currently evaluating potential options for continuing the important work of the NRDA program.

NRDA Program and Restoration Projects Past and Future Spending*



*The value of projects is calculated by the actual costs from the state NRDA account to implement projects (orange line) and costs or value of projects paid be others (green line), such as the value of donated land or projects implemented by responsible parties. Costs paid by others were not included in the NRDA account balance.

Expenditures

Expenses related to the Natural Resource Damage Account (115B.172)

Covering the period July 1, 2019 - June 30, 2020

BALANCE / REVENUE / EXPENDITURE	AMOUNT
Balance as of July 1, 2019	\$ 4,175,083
Revenue	\$42,228
Expenditures (FY 2020)	
<i>Injury/Damage Assessment and Restoration Planning</i>	\$ 136,461
MPCA and DNR selected Abt Associates as consultants to provide expertise with natural resource damage assessment and restoration planning activities. Abt Associates is providing an essential supplement to existing agency staff capacity.	
<i>Restoration Project Implementation</i>	\$1,218,522
DNR has planned and begun implementing the Kingsbury Bay and Kingsbury Creek restoration projects (total cost of \$5.5 million). Approximately \$2 million for this restoration project was expended in prior fiscal years.	
<i>MPCA/DNR Payroll Expenses</i>	\$211,225
MPCA and DNR have dedicated agency resources to oversee NRDA activities. Such activities include planning, communication, implementation, and coordination with other Trustees, consultants, and stakeholder groups.	
<i>Expenditures subtotal</i>	\$1,566,208
Balance as of June 30, 2020	\$ 2,651,104 ²

² \$2,256,452 of the balance is dedicated to planning and construction for the Kingsbury Bay and Kingsbury Creek Projects. \$394,652 remains to support staff and assessment work for general NRDA work.