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# Natural Resource Damage Account

**Annual Legislative Report**  
**03/17/2022**

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## 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 act on behalf of the public to 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 2021 (July 1, 2020 to June 30, 2021) 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 2021 included:

- Active in multiple NRDA cases, including three formal trustee councils on long-term cases, to conduct injury assessments and implement restoration projects to offset the injuries.
- Agreed to conduct a cooperative injury assessment with US Steel for the US Steel Duluth works NRDA case. US Steel also entered into an agreement to fund the assessment effort.
- Continued implementation (project completed in November 2021) of the Kingsbury Bay restoration project as part of the St. Louis River/Interlake/Duluth Tar 2017 Settlement. Planning for additional restoration projects along Kingsbury Creek has been mostly completed. For more information visit this webpage: [St. Louis River Restoration Initiative | Minnesota DNR \(state.mn.us\)](https://state.mn.us/st-louis-river-restoration-initiative) and select the Kingsbury Bay and Grassy Point and Kingsbury Creek Watershed tabs.

The NRDA Program spent \$2,773,781 in contractual and administrative costs in FY 2021 to accomplish these and other activities.

Future NRDA work includes continued assessment and restoration planning for several long-term NRDA cases, and one potential new case with federal Trustees. It is anticipated that two restoration projects in the St. Louis River will be completed next fiscal year. Initiation of potential new NRDA cases is a low priority due to limited program staff capacity and lack of available funding to support the program.

Administration of the program is currently funded by revenues from settled NRDA cases. This account does not receive any appropriations from state or federal governments. At the current rate of expenditures, and assuming no additional revenues into the account, the NRDA account will be depleted during fiscal year 2023. 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 FY2021, 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](http://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 that will restore 70 acres of shallow, sheltered embayment habitat that will include recreational access. Construction was completed in November 2021.
- 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 2023 construction season.

## Program Restoration Projects Cumulative Benefits

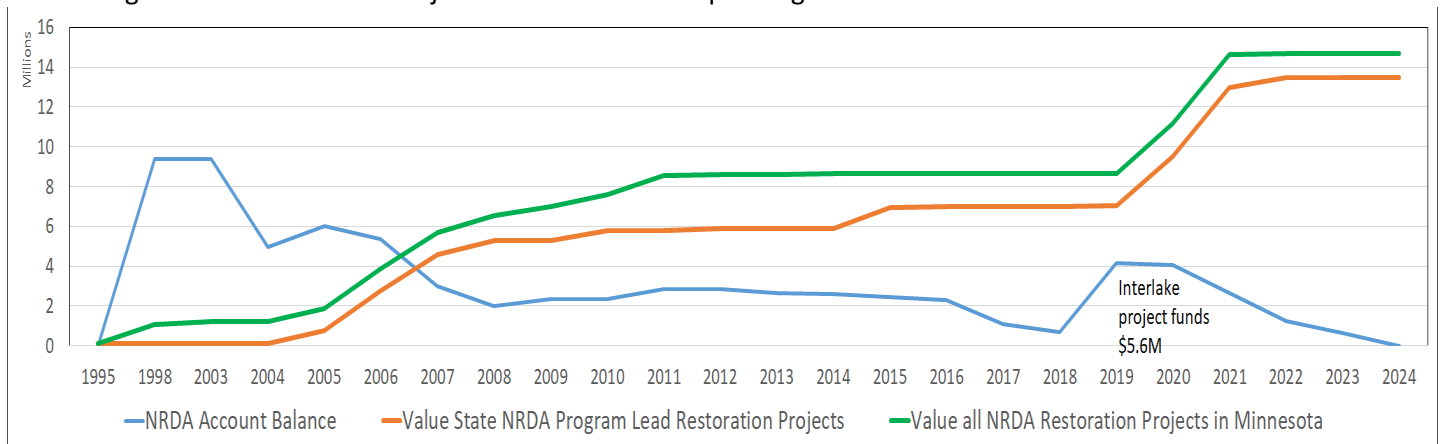
Over the 26-year history of Minnesota’s NRDA Program, from 1995-2021, the program has funded or supported 39 restoration projects, with a dollar value of \$15.2 million, across Minnesota (includes projects currently being implemented). Restoration projects typically provide multiple benefits to natural 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 Types   | #Projects | Benefits/Metrics                              |
|---|-----------|---|
| Habitat and Shoreland Protection                      | 17        | 2489 Acres                                    |
| Habitat Restoration for Improved Ecosystem Services   | 13        | 360 Acres                                     |
| Debris Removal  | 1         | 114,000 Yds <sup>3</sup>                      |
| 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:
  - Support the St. Regis trustee council in our effort towards reaching settlement with the responsible parties. St. Regis was a wood treating facility located in Cass Lake, Minnesota and within the Leech Lake Reservation. The treatment facility released hazardous substances and diesel fuel to the groundwater, surface water and soil. US EPA is overseeing the remedial process with several responsible parties.
  - Move forward in the injury assessment and restoration planning processes cooperatively with US Steel on the US Steel Duluth Works case.
  - Prioritize work on a state only case that has been dormant since 2014 and work towards a settlement.
  - Begin assessment activities on one to three new cases as funding and staff resources allow.
2. Restoration Project Implementation: For the St. Louis River Interlake/Duluth Tar Settlement (2017)
  - Complete construction (completed in November 2021) and monitor recovery of Kingsbury Bay/Grassy Point;
  - Design and complete Kingsbury Creek restoration projects (FY 2022-2023, DNR lead); and
  - Contribute to on-going estuary restoration efforts of manoomin (wild rice) beds, and implement cultural and recreational fishing projects.
3. Explore long term funding options to support and grow the NRDA program:
  - 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 funds restoration projects. At the current rate of expenditures and assuming income to the account consists solely of interest, the NRDA fund will be depleted during FY23. DNR and MPCA are currently evaluating potential options for continuing the important work of the NRDA program (See NRDA Program and Restoration Project’s Past and Future Spending figure below).
  - Once funded, several strategies to expand the NRDA case portfolio and approaches to injury assessment can be realized moving forward. Expanding the program would allow equitable application of the State trusteeship as intended by the Governor’s executive order.

NRDA Program and Restoration Project’s Past and Future Spending\*



\*The value of projects is shown by the actual costs from the state NRDA account to implement projects (orange line) and costs or value of projects paid by others (green line), such as the value of donated land or projects implemented by responsible parties and state NRDA program participation in the case. The NRDA account balance (blue line) (operating budget) does not include costs paid by others (green line).

## Expenditures

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

Covering the period July 1, 2020 - June 30, 2021

|  |                   |
|--|-------------------|
| Balance as of July 1, 2020   | \$ 2,683,162      |
| Revenue  | \$2,249,072       |
| Expenditures (FY 2020)   |                   |
| <i>Injury/Damage Assessment and Restoration Planning-(payment from the account to MPCA for contractual expenditures occurred in FY2020). FY2021 MPCA spending was \$52,955.43.</i>   | \$ Paid in FY2020 |
| 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>  | \$2,683,131       |
| 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>   | \$90,650          |
| 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>   | \$2,773,781       |
| Balance as of June 30, 2021  | \$ 2,158,453*     |

\*\$1,793,307 of the balance is dedicated to planning and construction for the Kingsbury Bay and Kingsbury Creek restoration projects. \$365,146 remains to support staff and assessment work for general NRDA work.