

December 12, 2022

***Delivered Via Email***

Senator Carrie Ruud, Chair  
Senator Fong Hawj Ranking Minority Member  
*Environment and Natural Resources Policy and Legacy Finance Committee*

Senator Bill Ingebrigsten, Chair  
Senator Patricia Torres Ray, Ranking Minority Member  
*Environment and Natural Resources Finance Committee*

Representative Rick Hansen, Chair  
Representative Josh Heinzeman, Ranking Minority Member  
*Environment and Natural Resources Policy and Finance Committee*

Dear Senators and Representatives:

Please find attached the *Natural Resources Damage Account Annual Report* for fiscal year 2022 as required by Minnesota Statutes 115B.172.

Please contact Randall Doneen at 651.259.5156 or [Randall.Doneen@state.mn.us](mailto:Randall.Doneen@state.mn.us) if you have question regarding this report.

Thank you.

Sincerely,



Jess Richards  
Assistant Commissioner

Cc: Legislative Reference Library



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# **Natural Resource Damage Account**

**Annual Legislative Report**  
**December 12, 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 \$500 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 benefits/opportunities 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 benefits 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), within the Minnesota Environmental Response and Liability Act, 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 2022 (July 1, 2021, to June 30, 2022) activities. NRDA staff also assist with the 3M 2018 NRDA Settlement implementation. Efforts on 3M, including staff costs, are reported on a semi-annual schedule and separately from reporting on the general NRDA program.

NRDA program highlights in FY 2022 included:

- Actively managing multiple NRDA cases (St. Regis, US Steel, etc.), including participation in three formal trustee councils with federal and tribal trustees to conduct injury assessments and implement restoration projects to offset the injuries.
- Completed implementation (project completed in November 2021) of the Kingsbury Bay restoration project, that removed excess sediment to help establish a variety of native wetland plants, create more open-water habitat, and increase recreational opportunities. Planning for additional restoration projects along Kingsbury Creek (\$500,000) has been mostly completed. For more information visit [St. Louis River Restoration Initiative | Minnesota DNR \(state.mn.us\)](#) and select the Kingsbury Bay and Grassy Point and Kingsbury Creek Watershed tabs.

The NRDA Program spent \$1,523,886 on project and administrative costs in FY 2022 to accomplish these and other activities. The largest expenditure was \$1,298,561 for the Kingsbury Bay and Kingsbury Creek projects. Slated for completion in 2023 are the stabilization of several segments of Kingsbury Creek to reduce excessive sedimentation to Kingsbury Bay.

Future NRDA work includes striving to settle cases that are in progress and seeking funding agreements to fund the assessment and restoration planning work, however, neither outcome is certain. Administration of the program is currently funded only by revenue 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 revenue received, the NRDA account will be depleted during fiscal year 2023. The MPCA and DNR are not pursuing new NRDA actions at this time due to limited program funding. DNR and MPCA are evaluating potential options to continue the important work of the NRDA program.

## Assessment and Restoration Planning Activity

The NRDA assessment process consists of case screening, preliminary identification of potential injuries, assessment studies to determine injury, damage quantification and initial restoration planning. In FY2022, Minnesota participated in three formal Trustee Councils, each represented by federal, state and tribal natural resource managers for three complex Superfund cases; St. Louis River: Interlake/Duluth Tar, St. Louis River: US Steel and St. Regis in Cass Lake, Minnesota. In addition, the NRDA program manages several state-only co-trustee cases involving releases of hazardous substances and petroleum products.

## Restoration Project Implementation

The 2017 St. Louis River: Interlake/Duluth Tar settlement for \$8.2 million dollars provided funds for four restoration projects. The DNR is managing two of these projects one of which is completed, and the other is underway ([www.dnr.state.mn.us/st-louis-river-restoration/index.html](http://www.dnr.state.mn.us/st-louis-river-restoration/index.html)):

- Kingsbury Bay restoration project restored 70 acres of shallow, sheltered embayment habitat. Construction was completed in November 2021 and was part of the DNR Kingsbury Bay-Grassy Point Habitat Restoration Project. In addition, the DNR purchased and installed a new fishing pier in Kingsbury Bay; and
- Kingsbury Creek watershed project 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 27-year history of Minnesota's NRDA Program, from 1995-2022, the program has funded or supported 39 restoration projects, with a value of \$19.4 million across Minnesota (includes projects currently being implemented). Restoration projects typically provide multiple benefits to natural resources. The list below identifies the quantifiable benefits for projects completed and planned under Minnesota's NRDA Program, with some projects having more than one primary benefit:

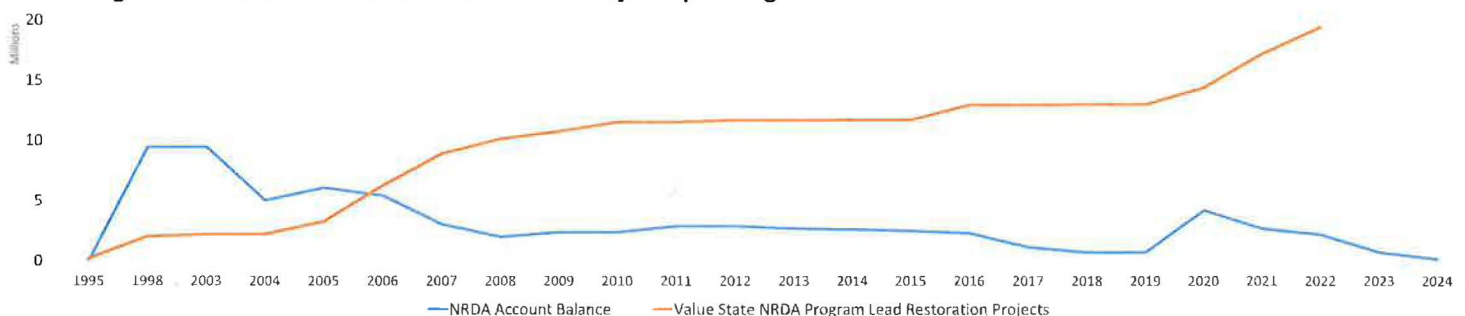
Project Types	#Projects	Benefits/Metrics
Habitat and Shoreland Protection	17	2489 Acres
Habitat Restoration for Improved Ecosystem Services	13	360 Acres
Debris Removal	1	114,000 Yds <sup>3</sup>
Stream Habitat Restoration	1	6200 Linear Feet
Air Emission Reduction	3	118,404 Pounds/yr.
Recreational/Cultural (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 Work

1. Injury Assessment:
  - DNR and MPCA will seek funding agreements with responsible parties for existing cases to continue assessment work. If a funding agreement cannot be achieved, the DNR and MPCA will begin the process to minimize state participation in formal trustee councils and state only cases; and
  - Enter into an anticipated funding agreement with US Steel to allow the state to participate in the injury assessment and restoration planning processes cooperatively with US Steel on the US Steel Duluth Superfund site case.
2. Restoration Project Implementation: For the St. Louis River Interlake/Duluth Tar Settlement (2017)
  - Monitor recovery of restored open water habitat and wild rice reestablishment in Kingsbury Bay (Project construction completed in November 2021);
  - Design and complete Kingsbury Creek restoration projects (2023, DNR lead); and
  - Contribute to on-going St. Louis River estuary restoration efforts of manoomin (wild rice) beds and implement cultural projects.
3. Explore long term funding options to support 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 NRDA settlement funds and interest that supports 1.5 FTE in 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 (see figure below). DNR and MPCA are currently evaluating potential options for continuing the important work of the NRDA program.

NRDA Program Account Balance and Restoration Project Spending\*



\*The value of projects is shown as inflation adjusted actual costs funded from the state NRDA account to implement projects (orange line) and the value of donated land or projects implemented by responsible parties. The NRDA account balance (blue line, operating budget) includes expenses for NRDA staff, restoration projects, assessment costs but does not include costs paid by others.

## Expenditures

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

Covering the period July 1, 2021 - June 30, 2022

<b>Balance as of July 1, 2021</b>	<b>\$2,158,453</b>
<b>Revenue</b>	<b>\$63,352</b>
<b>Expenditures (FY 2022)</b>	
<i>Injury/Damage Assessment and Restoration Planning-(\$40,000 payment from the account to MPCA for contractual expenditures occurred in FY2022). FY2022 MPCA contractual spending was \$63,285.</i>	<b>\$40,000</b>
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>	<b>\$1,298,561</b>
For the St. Louis River Interlake/Duluth Tar (SLRIDT) settlement, DNR completed implementing the Kingsbury Bay and is planning the Kingsbury Creek restoration projects in 2023 (total cost of \$5.5 million).	
<i>MPCA/DNR Payroll and Expenses</i>	<b>\$185,325</b>
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>	<b>\$1,523,886</b>
<b>Balance as of June 30, 2022</b>	<b>\$697,919*</b>

\*\$551,049 of the balance is dedicated to planning and construction for the Kingsbury Bay and Kingsbury Creek restoration projects. \$146,870 remains to support staff and assessment activities for general NRDA work.