

HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 91

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO NATURAL RESOURCES; AUTHORIZING THE NATURAL
RESOURCES TRUSTEE TO BRING SUIT FOR DAMAGES CAUSED BY RELEASE
OF AN INJURIOUS SUBSTANCE PURSUANT TO THE NATURAL RESOURCES
TRUSTEE ACT; PROVIDING LIMITATIONS; AMENDING THE NATURAL
RESOURCES TRUSTEE FUND; AMENDING AND ENACTING SECTIONS OF THE
NMSA 1978; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Natural Resources Trustee
Act is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Natural
Resources Trustee Act:

A. "assessment costs" means the costs of
restoration and the costs of collecting, compiling and
analyzing information, statistics or data to determine damages

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1 for injuries to natural resources;

2 B. "facility" means:

3 (1) a building, structure, installation,
4 equipment, pipe or pipeline, including a pipe into a sewer or
5 publicly owned treatment works, well, pit, pond, lagoon,
6 impoundment, ditch, landfill, storage container, motor vehicle,
7 rolling stock or aircraft; or

8 (2) a site or area where an injurious
9 substance has been deposited, stored, disposed of, placed or
10 otherwise come to be located;

11 C. "injurious substance" includes:

12 (1) a hazardous substance as defined in the
13 federal Comprehensive Environmental Response, Compensation and
14 Liability Act of 1980, as amended;

15 (2) a hazardous waste listed or identified by
16 the federal environmental protection agency pursuant to Section
17 3001 of the federal Resource Conservation and Recovery Act of
18 1976, as amended, or a hazardous waste listed or identified by
19 the environmental improvement board pursuant to the Hazardous
20 Waste Act;

21 (3) a hazardous constituent listed by the
22 federal environmental protection agency in:

23 (a) 40 C.F.R., Part 261, Subpart D;

24 (b) 40 C.F.R., Part 261, Appendix VIII;

25 or

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1 (c) 40 C.F.R., Part 264, Appendix IX;

2 (4) a substance meeting the definition of
3 "hazardous chemical" in the Hazardous Chemicals Information
4 Act;

5 (5) a water contaminant for which the water
6 quality control commission has promulgated a rule or standard,
7 including a narrative standard, pursuant to the Water Quality
8 Act; and

9 (6) per- and polyfluoroalkyl substances,
10 including their salts and structural isomers;

11 D. "natural resources" includes land; minerals;
12 soils; sediments; geologic resources; air; surface waters;
13 ground waters; drinking water supplies; aquifers; perennial,
14 seasonal and ephemeral drainage; arroyos; watersheds; biota;
15 fish; wildlife; supporting habitats; and vegetation;

16 E. "release" means any spilling, leaking, pumping,
17 pouring, emitting, emptying, discharging, injecting, escaping,
18 leaching, dumping or disposing of an injurious substance
19 directly into the environment, including the abandonment or
20 discarding of barrels, containers and other closed receptacles
21 containing any hazardous or deleterious substance, but excludes
22 releases that are permitted or authorized by law;

23 F. "restoration" means the actions necessary to
24 return an injured natural resource to baseline condition as
25 measured in terms of the injured natural resource's physical,

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1 chemical or biological properties and the services it
2 previously provided; and

3 G. "services" means the physical, chemical and
4 biological functions performed by the natural resource,
5 including the human uses of those functions, that are the
6 result of the physical, chemical or biological quality of the
7 resource."

8 SECTION 2. Section 75-7-2 NMSA 1978 (being Laws 1993,
9 Chapter 292, Section 2, as amended) is amended to read:

10 "75-7-2. NATURAL RESOURCES TRUSTEE--OFFICE OF NATURAL
11 RESOURCES TRUSTEE.--

12 A. The "natural resources trustee" is created. The
13 trustee is appointed by and serves at the pleasure of the
14 governor pursuant to the provisions of:

15 (1) the Natural Resources Trustee Act and
16 other applicable state law; and

17 (2) the federal Comprehensive Environmental
18 Response, Compensation, and Liability Act of 1980, as amended
19 by the federal Superfund Amendments and Reauthorization Act of
20 1986, the Federal Water Pollution Control Act and any other
21 applicable federal law.

22 B. The natural resources trustee shall act on
23 behalf of the public as trustee of natural resources within the
24 state or belonging to, managed by, controlled by or
25 appertaining to the state, including protecting and

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1 representing the state's interest under applicable state and
 2 federal laws regarding injury to, destruction of or loss of
 3 natural resources in the state.

4 ~~[B.]~~ C. The "office of natural resources trustee"
 5 is created. The office shall be administratively attached to
 6 the department of environment. The administrative head of the
 7 office of natural resources trustee is the natural resources
 8 trustee. ~~[For purposes of this subsection, the term~~
 9 ~~"administratively attached" means the same as specified in~~
 10 ~~Section 9-1-7 NMSA 1978.]"~~

11 SECTION 3. Section 75-7-3 NMSA 1978 (being Laws 1993,
 12 Chapter 292, Section 3, as amended) is amended to read:

13 "75-7-3. NATURAL RESOURCES TRUSTEE POWERS AND DUTIES.--

14 A. The natural resources trustee shall take all
 15 actions necessary to carry out the responsibilities of the
 16 natural resources trustee as provided in the federal
 17 Comprehensive Environmental Response, Compensation, and
 18 Liability Act of 1980, as amended by the Superfund Amendments
 19 and Reauthorization Act of 1986, the Federal Water Pollution
 20 Control Act and any other applicable state and federal law,
 21 including the responsibility to:

22 (1) act on behalf of the public to protect New
 23 Mexico's natural resources by recovering damages for injury to,
 24 destruction of or loss of those resources, including for past
 25 releases with a continuing and present injury to natural

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1 resources;

2 (2) investigate injury to, destruction of or
3 loss of natural resources;

4 (3) determine the amount and cause of injury
5 to, destruction of or loss of natural resources;

6 (4) determine the liability of any person for
7 injury to, destruction of or loss of natural resources;

8 (5) assess and collect damages for injury to,
9 destruction of or loss of natural resources, including bringing
10 legal actions and collecting the costs of assessing and
11 collecting the damages; and

12 (6) expend money for the purposes set forth in
13 the Natural Resources Trustee Act.

14 B. The natural resources trustee may:

15 (1) hire staff, in accordance with the
16 Personnel Act, to carry out the provisions of the Natural
17 Resources Trustee Act;

18 (2) contract with economists, consultants and
19 other experts; and

20 (3) accept gifts and grants to carry out the
21 provisions of the Natural Resources Trustee Act. Gifts and
22 grants accepted by the natural resources trustee shall be
23 deposited in the natural resources trustee fund.

24 C. The attorney general shall provide legal counsel
25 and representation to the natural resources trustee and the

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1 office of [the] natural resources trustee."

2 SECTION 4. Section 75-7-4 NMSA 1978 (being Laws 1993,
3 Chapter 292, Section 4) is amended to read:

4 "75-7-4. NATURAL RESOURCES DAMAGE--LIABILITY--AWARDS FOR
5 DAMAGES.--~~[Awards for damage to natural resources in the state
6 shall consist of those amounts calculated in accordance with
7 federal law, including:~~

8 ~~A. The cost of restoration, replacement or
9 acquisition of equivalent resources, plus compensation for the
10 loss of use or enjoyment of the natural resources; and~~

11 ~~B. Compensation for the state's expenses in
12 investigating, assessing and collecting damages and enforcing
13 the state's rights.]~~

14 A. The natural resources trustee, represented by
15 the attorney general, may bring a suit on behalf of the state
16 for damages caused by a release of an injurious substance
17 pursuant to the provisions of the Natural Resources Trustee
18 Act.

19 B. Before initiating a suit under this section, the
20 natural resources trustee shall make reasonable efforts to
21 conduct a cooperative assessment of the nature and extent of
22 the damages and of methods to achieve resolution of the natural
23 resources trustee's claim in cooperation with the responsible
24 party and, upon initiating suit, shall certify that, in the
25 natural resources trustee's judgment, the efforts have not or

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1 shall not succeed in resolving the claim.

2 C. Venue for a claim brought under this section
3 shall be in the district court for Santa Fe county or in the
4 district court for a county in which damages were sustained.

5 D. With respect to a facility from which there is
6 an intentional or unintentional release of an injurious
7 substance into the environment, including a release within the
8 facility, the following persons shall be jointly and severally
9 liable for all damages resulting from the release:

10 (1) the owner or operator of the facility at
11 the time of the release;

12 (2) a person who previously owned or operated
13 the facility during a time in which the injurious substance was
14 released, placed, disposed of or treated; and

15 (3) a person who by agreement or otherwise
16 arranged for the storage, transport, placement, disposal or
17 treatment of the injurious substance at the facility from which
18 there is a release.

19 E. Damages owed to the state under this section may
20 include:

21 (1) the cost of:
22 (a) restoration or rehabilitation of the
23 injured natural resources to the condition before the release
24 of the injurious substance; or

25 (b) the cost of replacing or acquiring

1 equivalent natural resources;

2 (2) the value of the services and resources
3 lost to the public from the time of release through the
4 completion of restoration, rehabilitation, replacement or
5 acquisition of equivalent natural resources;

6 (3) the cost of investigating, assessing and
7 collecting damages and enforcing the state's rights; and

8 (4) the cost of implementing restoration
9 activities.

10 F. Damages owed to the state under this section may
11 be recovered regardless of prospective or ongoing remediation
12 efforts.

13 G. There is no liability under this section for a
14 release of an injurious substance if the release is made by:

15 (1) the state or a political subdivision of
16 the state;

17 (2) an Indian nation, tribe or pueblo located
18 within the boundaries of the state;

19 (3) a publicly owned treatment works that is
20 owned by the state or a political subdivision of the state; or

21 (4) a person entitled to a defense under
22 Sections 9601(35) and 9607(b) of the federal Comprehensive
23 Environmental Response, Compensation and Liability Act of
24 1980."

25 SECTION 5. A new section of the Natural Resources Trustee

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1 Act is enacted to read:

2 "[NEW MATERIAL] LIMITATION ON ACTIONS.--Unless federal law
3 provides for a longer period of time, a claim for damages under
4 the Natural Resources Trustee Act shall be brought no later
5 than five years after the later of the following:

6 A. the date that the natural resources trustee
7 became aware of the nature and extent of the injury;

8 B. the date of completion of a remedial action at
9 the site of the injury; or

10 C. the date the natural resources trustee had the
11 legal authority to bring the claim."

12 SECTION 6. Section 75-7-5 NMSA 1978 (being Laws 1993,
13 Chapter 292, Section 5, as amended) is amended to read:

14 "75-7-5. NATURAL RESOURCES TRUSTEE FUND.--

15 A. The "natural resources trustee fund" is created
16 in the state treasury. Money appropriated to the fund or
17 accruing to it through gifts, grants, fees, penalties, bequests
18 or any other source shall be delivered to the state treasurer
19 and deposited in the fund. Money recovered for the state by or
20 on behalf of the natural resources trustee shall be deposited
21 in the natural resources trustee fund. The fund shall be
22 administered by the natural resources trustee as a separate
23 account and may consist of subaccounts that the natural
24 resources trustee deems necessary to carry out the purposes of
25 the fund. Disbursements from the fund shall be made upon

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1 warrants drawn by the secretary of finance and administration
 2 pursuant to vouchers signed by the natural resources trustee or
 3 the trustee's designated representative. Money in the fund
 4 shall not revert to the general fund at the end of a fiscal
 5 year.

6 B. Pursuant to the following criteria, money in the
 7 natural resources trustee fund shall be used to carry out the
 8 provisions of the Natural Resources Trustee Act by restoring,
 9 replacing or acquiring natural resources [~~in an area where~~
 10 ~~natural resources have been injured, destroyed or lost,~~
 11 ~~provided that money deposited in the fund because of injury to,~~
 12 ~~destruction of or loss of natural resources in an area shall be~~
 13 ~~disbursed to restore, replace or acquire natural resources in~~
 14 ~~that same area~~]:

15 (1) if an expenditure from the fund is
 16 necessary to comply with a court order or court-approved
 17 settlement or to match federal funds, then, pursuant to
 18 Sections 6-3-23 through 6-3-25 NMSA 1978, the natural resources
 19 trustee may request a budget increase and, if approved, the
 20 amount of the expenditure is appropriated;

21 (2) [~~if money is received for reimbursement of~~
 22 ~~assessment costs, then the natural resources trustee may expend~~
 23 ~~money for injury assessment, and money is appropriated in that~~
 24 ~~amount for that purpose; and] money received for past or future
 25 assessment costs shall be placed in an assessment costs~~

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1 subaccount and is appropriated for that purpose;

2 (3) money deposited in the fund from injury
3 to, destruction of or loss of natural resources in an area
4 shall only be expended to restore, replace or acquire natural
5 resources in that same area; provided that the natural
6 resources trustee may undertake a restoration action outside
7 the area where the natural resources were injured, destroyed or
8 lost if, in the natural resources trustee's judgment, action
9 within the area would be infeasible or ineffective;

10 (4) money deposited in the fund from injury,
11 destruction of or loss of natural resources in an area shall
12 only be expended to restore, replace or acquire natural
13 resources; and

14 [~~3~~] (5) any other expenditures from the fund
15 shall be made only pursuant to appropriation by the
16 legislature.

17 C. In addition to expenditures made pursuant to
18 Subsection B of this section, money shall be appropriated
19 annually by the legislature from the general fund for the
20 purpose of providing for necessary personnel and other costs of
21 the natural resources trustee, the attorney general and the
22 office of natural resources trustee in carrying out the
23 provisions of the Natural Resources Trustee Act, including the
24 cost of investigation, assessment, collection or enforcement.

25 [~~D. For purposes of this section, "assessment~~

1 ~~costs" means the costs of restoration and the costs of~~
2 ~~collecting, compiling and analyzing information, statistics or~~
3 ~~data to determine damages for injuries to natural resources~~
4 ~~pursuant to the Natural Resources Trustee Act.~~

5 ~~E.]~~ D. Money in the natural resources trustee fund
6 shall be invested as other state funds are invested, and
7 interest and earnings from the fund shall not revert to the
8 general fund but shall be credited to the natural resources
9 trustee fund."

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