

# Natural Resources Damage Assessments



Natural Resource Damage Assessments (NRDAs) identify potentially large economic liabilities at hazardous waste sites that have impacted the environment.

O'Brien & Gere uses a combination of techniques to minimize the potential for and implications of Natural Resource Damage Claims (NRDCs).

First, it must be established early in a project if there is potential for an NRDC. Determining this often includes the consideration and participation of natural resource trustees in scoping meetings. These meetings help outline concerns and evaluate the trustees' levels of interest so an appropriate work plan can be developed and accepted.

Next, O'Brien & Gere, in conjunction with our client, establishes an NRDA strategy. Where an NRDC is likely, the strategy allows the client to take a proactive role in the process, which often is a cost-effective and more practical position.

To counter unreasonable claims, it is necessary to consider and review key issues:

- Is the regulatory injury determination appropriate?
- What is the basis for quantifying injury for each resource?
- What is the appropriateness of the damage determination for each injury?

## NRDA PROCESS ELEMENTS



## THE PROCESS

The NRDA process may comprise several phases. The process may include the following:

- Pre-assessment phase (screening – significant injury identified)
- Assessment plan phase (investigation – includes a draft scope at trustee's discretion)
- Assessment phase (determination – injury, damage, remediation, and restoration)
- Post assessment phase (implementation of NRDA settlement)

Settlements based on restoration of the impacted resources and provision of substitute resource services are growing in acceptance by regulators and natural resource trustees. Although a variety of resource restoration actions can be implemented, NRDA restoration-based actions may be given priority from most favored to least favored alternatives, according to the following hierarchy:

- *In situ* restoration of the impacted resource (on-site, in-kind projects)
- Replacement with equivalent resources (off-site, in-kind projects)
- Enhancement of the impacted resource (on-site, out-of-kind projects)
- Replacement with alternative resources (off-site, out-of-kind projects)

## CONTACT US

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Activities involving natural resource enhancement or replacement utilizing equivalent resources or alternative resources have been accepted, in some settlements, *in lieu* of monetary damages. Justification for proposing equivalent-resource and alternative-resource projects may cover these considerations:

- Actions aimed at full *in situ* restoration of the impacted resources (on-site, in-kind restoration projects) may not be economically or technologically feasible. Furthermore, the ability to provide enhancements of each impacted resource (on-site, out-of-kind projects) may be limited.
- When on-site restoration actions are not feasible, replacement of impacted resources with non-impact equivalent resources (off-site, in-kind projects) or replacement with alternative resources (off-site, out-of-kind projects) can be proposed to regulators and trustees as acceptable settlements.

