

SLO RULE ORDER 2017-1

FINAL RULEMAKING ORDER APPROVING NEW RULE (19.2.23 NMAC) RELATING TO STATE TRUST LANDS RESTORATION AND REMEDIATION FUND

The Commissioner of Public Lands ("Commissioner"), in accordance with law and a previously published Notice of Proposed Rulemaking and Hearing, hereby promulgates and approves the rule attached to this Order as Exhibit 1 and incorporated herein and effective October 31, 2017.

1. Procedure. In accordance with applicable laws and regulations, the Commissioner published a Notice of Proposed Rulemaking and Hearing in the New Mexico Register on August 29, 2017 and in the Albuquerque Journal newspaper on August 29, 2017. At the time the Notice was published, the New Mexico Sunshine Portal had not yet developed its own web page to post notices of rulemaking; however, the Sunshine Portal provided a link to the New Mexico Press Association public notices search page, where the notice was available on August 29, 2017. On August 28, 2017, SLO posted on its webpage the Notice and proposed new rule, and copies of the Notice and proposed rule were also made available at the State Land Office's district offices on August 29, 2017. The Notice and proposed rule were provided by email to the Legislative Council Service on August 29, 2017, and to parties that participated in the rulemaking on September 7, 2017.

The Notice informed the public of a proposed new rule (19.2.23 NMAC) that would provide for the orderly, lawful, and appropriate expenditure of funds from the State Trust Lands Restoration and Remediation Fund created under Section 19-1-11, NMSA 1978. The Notice informed the public where and how copies of the proposed rule could be obtained and stated that written comments regarding the rule could be submitted until 5pm on October 3, 2017. The Notice also informed the public of the Commissioner's hearing to receive public comments, which was held on Thursday, October 5, 2017, at 9:00 a.m.

2. Legal Authority. Under NMSA 1978, Section 19-1-11, the State Trust Lands Restoration and Remediation Fund was created in the state treasury, to be administered by the State Land Office, consisting of (i) one percent of the income derived from any state trust lands granted or confirmed by the Enabling Act or otherwise under the management, care, custody and control of the commissioner of public lands, provided that such funds would not include money required to be transferred to any permanent fund created in Chapter 19 NMSA 1978; and (ii) income from investment of the fund and money otherwise accruing to the fund. Money in the fund that exceeds five million dollars (\$5,000,000) is distributed to the trust beneficiaries in the same manner that surpluses in the state lands maintenance fund are distributed. Subject to legislative appropriation, expenditures may be made from the fund upon vouchers signed by the Commissioner or the Commissioner's authorized representative and issued by the Secretary of New Mexico Department Finance and Administration to administer contractual surface damage and watershed restoration and remediation projects on state trust lands. For any expenditure made, the Commissioner must attempt to recover the costs of remediation projects from any person who may otherwise bear liability for that remediation project under the Voluntary

Remediation Act, the New Mexico Mining Act, the Surface Mining Act, the Oil and Gas Act, the Water Quality Act, the Solid Waste Act or the Hazardous Waste Act. Under NMSA 1978, Section 19-1-2, the Commissioner has authority to make rules and regulations for the control, management, disposition, lease and sale of state lands and perform such other duties as may be prescribed by law.

3. Written testimony presented at the hearing. The Commissioner did not receive any written testimony presented at the hearing.

4. Comments and Responses.

A. Written comments received prior to the proposed rule. Although not required by law or regulation, SLO reached out to stakeholders in the summer of 2017, and sent out a Pre-Publication Draft Rule to vendors, land and natural resource management agencies, environmental organizations, industry groups, and legislative committee members. SLO received comments on the Pre-Publication Draft Rule from two parties, which comments were considered and some of which were incorporated into the rule presented at the October 5, 2017 hearing.

B. Written comments received prior to the hearing.

The Commissioner did not receive any comments during the 30-day comment period prior to the hearing.

C. Oral comments at the hearing.

The Commissioner did not receive any oral or written comments at the hearing.

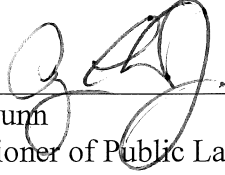
5. Reasons for Adoption of the Proposed Rule.

- A. SLO received no negative comments or objections to the proposed rule.
- B. SLO went above and beyond notice requirements in 19.2.16 NMAC and the State Rules Act (NMSA 1978, 14-4-5.2) to provide notice of, and solicit comments on, the proposed rule.
- C. The proposed rule will facilitate the efficient administration of the Restoration and Remediation Fund to respond to surface damage and watershed restoration and remediation projects on State Trust Lands.
- D. The proposed rule provide limits and direction for the selection of projects to be funded by the Restoration and Remediation Fund.
- E. It is in the best interests of the Trust and SLO's beneficiaries that the proposed rule be adopted and implemented.

Final Rule. The final Rule incorporates all stylistic and formal requirements of the State Records Administrator in 1.24.10 NMAC.

FOR THE ABOVE REASONS, AND IN ACCORDANCE WITH LAW, IT IS HEREBY ORDERED:

1. New rule 19.2.23 NMAC relating to the State Trust Lands Restoration and Remediation Fund is adopted as shown in Exhibit 1 attached to this Order and is effective October 31, 2017.



Aubrey Dunn
Commissioner of Public Lands

Dated: 10-5-2017