

DRAFT RULE FOR PUBLIC COMMENT

TITLE 19 NATURAL RESOURCES & WILDLIFE
CHAPTER 2 STATE TRUST LANDS
PART 23 STATE TRUST LANDS RESTORATION AND REMEDIATION FUND

19.2.23.1 ISSUING AGENCY: Commissioner of Public Lands - New Mexico State Land Office - 310 Old Santa Fe Trail - P. O. Box 1148 - Santa Fe, New Mexico 87501.
[19.2.23.1 NMAC - N, XX/XX/XXXX]

19.2.23.2 SCOPE: This part pertains to the expenditure of funds from the state trust lands restoration and remediation fund created under Section 19-1-11 NMSA 1978.
[19.2.23.2 NMAC - N, XX/XX/XXXX]

19.2.23.3 STATUTORY AUTHORITY: The state land office’s authority to administer the state trust lands restoration and remediation fund is found in Section 19-1-11 NMSA 1978. Under Section 19-1-1 NMSA 1978, the commissioner is the executive officer of the state land office. The commissioner’s authority to manage the state trust lands is found in N.M. Const., art. XIII, Section 2, and in Section 19-1-1 NMSA 1978. The authority to promulgate this Rule is found in Section 19-1-2 NMSA 1978.
[19.2.23.3 NMAC - N, XX/XX/XXXX]

19.2.23.4 DURATION: Permanent.
[19.2.23.4 NMAC - N, XX/XX/XXXX]

19.2.23.5 EFFECTIVE DATE: [DATE], unless a later date is cited at the end of a section.
[19.2.23.5 NMAC - N, XX/XX/XXXX]

19.2.23.6 OBJECTIVE: The objective of this part is to provide for the orderly, lawful, and appropriate expenditure of funds from the state trust lands restoration and remediation fund to administer contractual surface damage and watershed restoration and remediation projects on state trust lands, which are under the care, custody and control of the commissioner.
[19.2.23.6 NMAC - N, XX/XX/XXXX]

19.2.23.7 DEFINITIONS: As used in 19.2.23 NMAC, the following terms have the meaning set forth in this section unless otherwise indicated in the text of this rule:

- A. “clearance and compliance requirements”** means biological and archeological surveys, or site delineation surveys, or any other state or federal regulatory requirement that may be needed to proceed with a restoration or remediation project.
- B. “commissioner”** means the New Mexico commissioner of public lands, and his appointees under Section 19-1-7 NMSA 1978 acting within the scope of their authority. The commissioner may delegate to state land office staff the performance of functions required of the commissioner under this part.
- C. “contaminant”** means solid waste, hazardous materials, or any other state- or federally-regulated substance that threatens, or could threaten, public health or the environment.
- D. “contractual surface damage and watershed restoration and remediation projects”** means projects performed by vendors or service providers through contracts with the state land office to repair surface damage on, restore or remediate state trust lands.
- E. “in-kind contribution”** means a contribution of labor, materials, or other non-monetary resources by an individual or entity other than the state land office.
- F. “matching contribution”** means a monetary contribution by an individual or entity other than the state land office.
- G. “reclamation”** means returning land that has been rendered unusable by human activities or natural processes to a usable state.
- H. “remediation”** means actions necessary to investigate, prevent, minimize, remove, or mitigate threats to the public health or to the environment that may otherwise result from a release or threat of release of contaminants.
- I. “restoration”** means repairing or treating a site to return it to a desired previously existing condition or to achieve native plant cover and diversity levels equal to or exceeding the natural potential levels in undisturbed soils adjacent to the project area.

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J. “**restoration and remediation fund**” means the state trust lands restoration and remediation fund.

K. “**state land office**” means the New Mexico state land office established under Section 19-1-1 NMSA 1978, the executive officer of which is the commissioner.

L. “**surface damage**” means the removal of, mechanical disturbance to, or introduction of hazardous materials to, the ground surface, vegetation, or soils in a given location.

M. “**trust lands**” means those lands, their natural products and all assets derived from them, which are under the care, custody and control of the commissioner.

[19.2.23.7 NMAC - N, XX/XX/XXXX]

19.2.23.8 PERMISSIBLE FUND EXPENDITURES:

A. Expenditures made from the state trust lands restoration and remediation fund shall be used to implement the following categories of projects:

- (1) surface damage remediation and restoration;
- (2) watershed, forest, or grassland restoration;
- (3) illegal dump site remediation and restoration; and
- (4) contaminated site remediation.

B. The restoration and remediation fund shall not be expended for:

- (1) any project or portion thereof that is not located on state trust lands;
- (2) any internal state land office operation cost, administration expense, overhead, or salary; or
- (3) any other land office expense that is not related to trust land restoration or remediation or is not part of a commissioner-approved project proposal.

C. The restoration and remediation fund shall not be used to make improvements to trust lands, unless such improvements are necessary to protect the land or ensure the success of the restoration or remediation project.

D. The restoration and remediation fund shall not be used for project clearance and compliance requirements, as defined in this rule. Other funding sources, including in-kind contributions, matching contributions, or other state land office funds, may be used to pay for clearance and compliance requirements.

E. The commissioner’s prior written approval of a project proposal is required for all expenditures from the restoration and remediation fund.

[19.2.23.8 NMAC - N, XX/XX/XXXX]

19.2.23.9 PROJECT PROPOSALS:

A. Land restoration or remediation project proposals may be initiated by the commissioner or by outside individuals or entities, as follows:

- (1) the commissioner may direct state land office staff to prepare proposals for state trust land restoration or remediation projects; or
- (2) individuals or entities that wish to partner with the state land office on a restoration or remediation project involving state trust lands may submit a written request to the commissioner using guidelines provided by the land office. If, in the commissioner’s judgment, the requested project should be considered for funding from the land restoration and remediation fund, the commissioner shall direct land office staff to prepare a project proposal in consultation with the requestor.

B. Project proposals shall provide information necessary for the selection and prioritization of projects and shall include:

- (1) a statement of need, including how the project addresses land office priorities in Section 19.2.23.10 NMAC;
- (2) the project category (see Subsection A of 19.2.23.8 NMAC);
- (3) a detailed estimated total project cost, including a description of project clearance and compliance requirements, an estimate of the cost and time needed for clearance and compliance, an explanation of how clearance and compliance requirements will be funded, and, if applicable, a list of partners or collaborators and their anticipated contributions to the total project cost;
- (4) a location description by section, township and range;
- (5) a map outlining the treatment area;
- (6) an estimate of the acres to be treated or restored;
- (7) a description of the current site conditions, including terrain, existing plant communities, and native plant communities adapted to the project location;

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(8) a description of the treatment type and specifications, to include project objectives and desired outcomes, a detailed description of the materials to be used, the machinery and labor requirements, and project timing;

(9) a list of current land office lessees within the treatment area, with contact information;

(10) a description of potential impacts to biological and cultural resources; and

(11) a description of the procurement requirements for the project, such as contracting or bidding requirements.

[19.2.23.9 NMAC - N, XX/XX/XXXX]

19.2.23.10 SELECTION OF PROJECTS: In considering which projects to fund, the commissioner will give consideration to the following priorities:

A. emergency treatments requiring a timely response to any situation that presents an imminent and substantial danger to life, public health, property, or the environment;

B. projects that:

(1) protect communities by reducing the risk of wildfire or the risk of harm to water quality and quantity;

(2) restore or remediate threats to forests, grasslands, or watersheds that have been identified by the commissioner as priority resources;

(3) involve in-kind or matching contributions for twenty percent or more of the total project cost;

(4) provide an equitable, statewide geographic distribution of funds;

(5) build on previous expenditures or leverage resources;

C. projects that have a high probability of successful implementation, including the following considerations:

(1) ability to meet procurement requirements;

(2) time required for and availability of other sources of funding to complete clearance and compliance requirements; and

(3) total project cost, including matching and in-kind contributions.

[19.2.23.10 NMAC - N, XX/XX/XXXX]

19.2.23.11 COST RECOVERY:

A. For any expenditure made from the restoration and remediation fund, the commissioner shall attempt to recover the project costs from any person or entity that may bear liability for that project under any lease, easement, or other agreement with the state land office, or by statute, including the Voluntary Remediation Act (Chapter 74, Article 4G NMSA 1978), the New Mexico Mining Act (Chapter 69 Article 36 NMSA 1978), the Surface Mining Act (Chapter 69, Article 25A NMSA 1978), the Oil and Gas Act, (Chapter 70, Article 2 NMSA 1978), the Water Quality Act (Chapter 74, Article 6 NMSA 1978), the Solid Waste Act (Chapter 74, Article 9, Sections 1-42, 72-73 NMSA 1978), or the Hazardous Waste Act (Chapter 74, Article 4 NMSA 1978).

B. Prior to making an expenditure from the restoration and remediation fund for which the commissioner will seek to recover project costs, the commissioner shall send written notice notifying the person or entity, if known, that the commissioner may initiate an action to recover project costs. Notwithstanding the foregoing, lack of written notice does not waive the commissioner's right to recover project costs from any person or entity that may bear liability for the project.

[19.2.23.11 NMAC - N, XX/XX/XXXX]

HISTORY of 19.2.23 NMAC: [RESERVED]