

HELPING BUSINESSES RESOLVE COMPLEX NRD ISSUES

Bick Law is committed to helping businesses resolve potential Natural Resource Damages (NRD) liability. Our attorneys are environmental lawyers who have decades of experience counseling and defending companies in NRD claims. We provide skilled assistance at all stages of the case, such as advising clients on Natural Resource Damage Assessments, negotiating settlements with trustees, and litigating NRD liability before courts and administrative bodies.

The attorneys at our firm appreciate the sophisticated and diverse legal issues that arise in connection with natural resource damages cases. We work closely with our clients and experts to execute strategies that effectively address these issues while protecting and promoting their important business interests and objectives.

Overview of Natural Resource Damages

Federal statutes such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Oil Pollution Act, and the Clean Water Act as well as various state laws impose liability on responsible parties for natural resource damages. Natural Resource Damages arise when a spill or release of contaminants harms or destroys natural resources in the environment. NRD liability is different from liability for clean-up costs; when environmental contamination occurs the responsible parties can be held liable for both natural resource damages and the costs associated with clean-up efforts.

NRDs are meant to compensate for the injury to, destruction of, or loss of natural resources such as land, water, air, fish and wildlife. The measure of damages includes the cost of restoring the injured resources to their baseline condition and compensation for the period of time in which the natural resources were lost or damaged, along with the reasonable cost of assessing the damages through a Natural Resource Damages Assessment.

NRD actions can only be brought by a Trustee. Trustees include federal trustees appointed by the President of the United States, state trustees, and tribal trustees. Under CERCLA §107(f)(2)(A), the President designates in the National Contingency Plan (NCP) the Federal officials who are to act on behalf of the public as Trustees for natural resources under Federal trusteeship, including the Secretaries of the following departments: Department of Agriculture (USDA); Department of Commerce (DOC); Department of Defense (DOD); Department of Energy (DOE); Department of the Interior (DOI). Trustees often have information and technical expertise about the biological effects of hazardous substances, as well as the location of sensitive species and habitats that can assist EPA in characterizing the nature and extent of site-related contamination and impacts. Coordination at the investigation and planning stages provides the Trustees early access to information they need to assess injury to natural resources. This assists Trustees in making early decisions about whether restoration is needed in light of the response actions, and should generally result in more efficient settlement negotiations and an opportunity to address all liabilities at the site simultaneously.

State Trustees act on behalf of the public for natural resources, including ground and surface water, and the resources' supporting ecosystems, that are: (1) within the boundary of the State; or (2) belonging to, managed by, controlled by, or appertaining to the State. Examples of resources under the trusteeship of individual State officials include: (1) State forestlands; (2) State-owned minerals; (3) State parks and monuments; (4) State rare, threatened, and endangered species; and (5) State wildlife refuges and fish hatcheries.

Tribal Trustees include Tribal Chairmen (or heads of the governing bodies of Indian Tribes), or persons designated by Tribal officials. The Secretary of the Interior may act as Trustee on behalf of a Tribe at the Tribe's request. Indian Tribe Trustees act on behalf of the Indian Tribe for natural resources, including their supporting ecosystems, that are: (1) belonging to, managed by, controlled by, or appertaining to such Tribe; (2) held in trust for the benefit of the Tribe; or (3) belonging to a member of the Tribe, if such resources are subject to a trust restriction on alienation. Examples of such resources include: Tribal-owned minerals; ground and surface water resources on Tribal lands; and any other natural resources found on Tribal land.

Skilled Representation in NRD Claims

NRD cases can be highly technical and complex. When hazardous chemicals and substances leak or spill into the environment, responsible parties can face a costly clean-up effort along with potential liability for natural resource damages. Our lawyers have extensive experience retaining and working jointly with NRD experts and consultants to evaluate assessments and prepare studies in advance of assessments. We collect information during remedial investigations that will be useful in the

subsequent defense of NRD litigation. Our firm also works cooperatively with the natural resource trustees, including tribal entities, to mitigate damages. Getting in front of the NRD issue as early as possible is the best way to minimize the damages assessment. No matter how complex or difficult the NRD matter may be, each California natural resources lawyer at our firm thinks creatively and acts strategically in the best interest of our clients.