



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

MEMORANDUM

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To: **NRDAR Executive Board**

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Kristin Bail, Bureau of Land Management
David Raff, Bureau of Reclamation
Gary Frazer, US Fish and Wildlife Service
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Michaela Noble, Office of Environmental Policy and Compliance
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From: 
Steve Glomb, Director
Office of Restoration and Damage Assessment

Subject: Past Assessment Cost Documentation and Use of Recovered Assessment Costs

The purpose of this memorandum is to describe the various costs that should be included when preparing Department of the Interior (DOI) cost documentation packages for Natural Resource Damage Assessment and Restoration (NRDAR) claim resolution. Additionally, it describes the use of recovered assessment costs by the Office of Restoration and Damage Assessment (ORDA) and the bureaus with natural resource trustee responsibilities. Furthermore, this policy helps to clarify the components included in the DOI Headquarters Indirect Rate described in the memorandum "Policy on Recovering Indirect Costs" issued on August 4, 2000, as well as rescinds portions of the memorandum "Revised Policy on Recovered Assessment Costs" issued on August 23, 2000.

The focus of the NRDAR Program is to develop claims for injury and loss of natural resources and resource services related to oil spills and releases of hazardous substances, to seek compensation for those injuries, and to restore the injured resources and lost resource services. In addition to seeking compensation for restoration of natural resources, DOI has the authority and the responsibility to recover reasonable costs of assessment, both direct and indirect, by bringing claims for natural resource injuries¹. NRDAR claims are developed and resolved through the work of DOI case teams that involve technical, economic, scientific, and legal support.

¹ See 42 U.S.C. 9607(a)(4)(C); 43 C.F.R. § 11.15(a)(3)

I. Components of a past assessment cost documentation package

All DOI bureaus with natural resource trustee responsibilities (U.S. Fish and Wildlife Service (FWS), National Park Service (NPS), Bureau of Land Management, Bureau of Indian Affairs, and Bureau of Reclamation) as well as the DOI Office of Policy Analysis, Restoration Support Unit (RSU), U.S. Geological Survey (USGS), and Office of the Solicitor (SOL) are eligible to submit cost documentation packages. For purposes of cost recovery, all entities working on NRDAR cases should keep thorough records of all case costs, including direct and indirect costs, including labor and non-labor costs, e.g., timesheets, travel receipts, contracting invoices. Additionally, specific cost documentation practices for bureaus and offices should be followed.

Case managers must maintain complete and accurate records to document the assessment costs incurred. All bureaus and offices should submit cost documentation for each fiscal year on an annual basis to the case manager. The frequency of internal cost documentation is at the discretion of individual bureaus and offices.

Direct Costs

Direct costs are any cost that can be specifically identified with an individual NRDAR case. Direct costs include labor/payroll costs (salary and benefits) for all staff that work on the case, as well as costs for case-related travel, supplies, equipment, and contracts. Direct costs include costs for any DOI bureau or office staff that work directly on the assessment for the case such as case managers; biologists; budget, administrative, management and contracting staff; DOI economists (the DOI Office of Policy Analysis, the FWS Division of Economics, and the NPS Environmental Quality Division, as well as equivalent economists in other DOI bureaus and offices); case attorneys (SOL); science support staff in the USGS; and ORDA's RSU. Case teams should make best efforts to fully recover all relevant costs from all bureaus and offices that are reasonably attributable to the case.

Indirect Costs – Bureaus/Offices

Indirect costs are costs that are incurred to support NRDAR staff and NRDAR activities, but that are not directly attributable to an individual case (e.g., general administrative support, performance reporting and tracking, rent, utilities); these costs are generally applied to direct labor costs. Indirect costs are calculated for all involved personnel from DOI bureaus and offices. Bureaus and offices should follow their specific bureau/office methodology for calculating and recovering indirect costs. These methodologies must conform to generally accepted accounting principles. To apply an indirect cost to a claim package, all direct charges for specific tasks must be documented.

Indirect Costs – DOI Headquarters

In addition to the bureau/office-specific rates, described above, there is a DOI Headquarters indirect rate that represents the corporate, non-programmatic functions and services of DOI that support the NRDAR Program. This rate supports the work done for the NRDAR program by DOI entities². The indirect rate should only be applied to all direct labor costs from the bureaus and offices involved in the case - including DOI economists, DOI solicitors, USGS scientific support, and/or the RSU - and then added to the overall past assessment costs. The indirect rate should not be applied to any non-labor related direct costs such as travel, contracts, or supplies. This indirect rate should be applied to all cases, regardless of the source of funding.

II. Recovery and use of past assessment costs

DOI Office of Restoration and Damage Assessment

Recoveries of past assessment costs originally funded by ORDA are made available exclusively to ORDA for re-allocation towards NRDAR cases. For past assessment cost recoveries originally funded from a combination of both bureau and office funds and ORDA assessment funds, funds provided by ORDA will be repaid first. Funds remaining after ORDA has been repaid in full are to be available to the respective bureau or office to support NRDAR activities, and are limited to the uses described below. If the past assessment cost recovery is insufficient to fully repay ORDA and all involved bureaus and offices, any funding provided by ORDA will be repaid first and the ORDA Director, in consultation with the Authorized Official and SOL, will decide the distribution of remaining available funds.

Bureaus/Offices

Once the initial deposit of settlement funds has occurred, any bureau/office may request the release of its recovered assessment funds (direct and indirect) through a written request to ORDA in coordination with their NRDAR Workgroup member.

Recovered funds must be used within DOI bureaus or offices by their NRDAR program or to otherwise support the requesting bureau or office's NRDAR program. All recovered funds are "no-year" funds that may be carried across fiscal years until expended. Bureaus and offices must establish an account or project code within their respective accounting systems for allocation and tracking purposes.

² Currently, the DOI Headquarters indirect rate is 16.84% and includes the following DOI components: Office of the Secretary, Office of the Solicitor, Office of Inspector General, Interior Business Center.

The following provides examples of uses of bureau/office recovered funds (direct/indirect):

- Direct cost recoveries can be used for site-specific NRDAR assessment activities under the Program's relevant statutory authorities (Comprehensive Environmental Response, Compensation, and Liability Act, Oil Pollution Act, Clean Water Act). The written request shall identify the incident, release, or site for which funds are being used. These funds may also be used to supplement other funding sources or support NRDAR assessment activities and to make up shortfalls in existing assessment case funding to cover damage assessment activities. Funds may be directed to any other bureau or office for this purpose.

Examples of possible uses of recovered funds for NRDAR assessment activities include:

- preparation of the Preliminary Assessment Screen and the Notice of Intent to conduct a natural resource damage assessment pursuant to 43 C.F.R. §§ 11.23-11.25, § 11.32(a)(2)(iii)
 - preparation of the determination to conduct restoration planning and Notice of Intent to Conduct Restoration Planning pursuant to 15 C.F.R. §§ 990.42, 990.44
 - preparation of a claim, including interim or partial claims for assessment costs, to submit to the National Pollution Funds Center pursuant to 33 C.F.R. §§ 136.103, 136.105, 136.207-136.211
 - negotiation of a Memorandum of Understanding (MOU) between trustees
 - collection or analysis of data, field work
- Direct cost recoveries can be used for restoration activities at sites chosen by the bureau or office. The site of the restoration activities shall be identified in the written request. Funds may be directed to any other bureau or office for this purpose.

Examples of possible uses of recovered funds for NRDAR restoration activities include:

- preparation of a Restoration Plan, pursuant to 43 C.F.R. § 11.93 or 15 C.F.R. § 990.55
 - environmental compliance analyses, such as National Environmental Policy Act, (42 U.S.C. § 4321 et seq.) or the Endangered Species Act (16 U.S.C. § 1531 et seq.)
 - tribal consultations
 - trustee council interactions
 - on-the-ground restoration costs, such as easements, land purchases, or monitoring activities
- Indirect cost recovery can be used to indirectly support NRDAR activities (e.g. general administrative support, performance reporting and tracking, rent, utilities) for the purposes above as well as non-site-specific NRDAR activities, provided that the activity is in support of their respective damage assessment and restoration programs. Such activities include, but are not limited to: payroll expenses or travel in support of damage

assessment, restoration, and monitoring activities; development of new policies or revisions to existing policies, including guidelines and handbooks; and education and outreach, and professional development and training related to NRDAR. These funds may be used at the bureau or office's discretion provided the uses are directly related to its damage assessment and restoration program. This replaces the former policy's restriction on the use of recovered funds for non-site specific activities, as commonly called the "80/20" rule from the Revised Policy on Recovered Assessment Costs (August 23, 2000).

If you have any questions on this policy, you or your staff may call me on 202-208-4863, Emily Joseph, Assistant Office Director for Operations on 202-208-4438, or Bruce Nesslage, NRDAR Fund Manager on 202-208-4093. For any questions related to preparing cost documentation packages and applying a bureau's indirect rate, please contact your respective NRDAR Workgroup member and/or your FWS NRDAR Regional Coordinator as appropriate.

cc: NRDAR Workgroup