

Natural Resource Damages

Defending some of the largest natural resource damages claims in the country to securing landmark rulings for our clients, we take measured risks others won't.

As a rapidly expanding area of law where the stakes can be significant, the complexity and cost of natural resource damages (NRD) cases have continued to grow. Hollingsworth LLP has successfully defended some of the largest natural resource damages claims in the country and supported our clients in securing landmark rulings rejecting aggressive efforts by contingency-fee private attorneys general to use NRD theories in an effort to secure billion-dollar recoveries. Our work in litigating NRD claims has taken us from the Rio Grande in New Mexico to central South Carolina to the Amazon Basin in Ecuador. We also assist our clients in long-term planning in anticipation of potential NRD claims at CERCLA remediation sites.

Through our work on NRD matters, we have built longstanding relationships with leading experts in the fields of geology and hydrogeology, land and marine biology, toxicology, geochemistry, metallurgy, chemical fate and transport, and natural resource economics. Successfully presenting these experts' testimony in court, we have confronted the most aggressive NRD plaintiff experts in the country and secured exclusion of their expert testimony following extensive *Daubert* evidentiary hearings.

Our clients also have established important legal protections for NRD defendants through seminal rulings on CERCLA preemption, standing, identification of protected resources, proper measure of NRD damages, and restrictions against the payment of contingent-fee attorneys through NRD proceeds.

Outside of our work for individual clients, we have served for many years as faculty at legal education seminars on NRD issues, as well as Co-Chairing an annual Law Seminars International NRD conference in Santa Fe, New Mexico. We also support defendants through publications on key defenses in NRD litigation.

DEFENDING HIGH-STAKES CASES

Clients have repeatedly engaged us to defend them in high-stakes NRD claims. Some of our most significant representations include:

- Serving as lead *Daubert* and appellate counsel in opposition to a \$4 billion NRD claim brought by New Mexico's attorney general for an alleged loss of drinking water in the Middle Rio Grande aquifer from a Superfund Site being successfully remediated under the supervision of the EPA and state regulators. The litigation culminated in more than fifty motions to clarify the state's

claims and set the stage for summary judgment and an extensive multi-week pretrial conference and evidentiary *Daubert* hearing. The district court issued a series of lengthy rulings dismissing all the attorney general's claims. Our attorneys then successfully defended the judgment on appeal.

- Serving as lead counsel in defending a nine-figure NRD claim in the Virgin Islands, where we built upon and clarified many of the principles established in the New Mexico litigation, including the limitation on permissible recovery by contingency-fee lawyers, as well as the distinction between claims that may be made by a sovereign under its *parens patriae* capacity as opposed to the statutory authority of the sovereign's trustee for natural resources.
- Successfully defending a \$555 million *parens patriae* claim brought in federal district court in Washington, DC by three provincial governments in Ecuador for alleged natural resource and public health damages purportedly caused by aerial herbicide spraying of illicit coca crops in southern Colombia. The federal district court dismissed the government's claims in their entirety for lack of standing and the dismissal was affirmed by the D.C. Circuit.
- Currently defending Sherwin-Williams in NRD litigation in New Jersey, arising from the same site at which we successfully defended a putative personal injury/property damages class action in 2018. In the class action, we secured a complete dismissal at the motion-to-dismiss stage without any discovery, and we built upon our success in the GE-New Mexico litigation in prevailing on preemption grounds. In the pending NRD case, the State of New Jersey is seeking primary and compensatory NRD for alleged discharges from historical manufacturing operations dating back more than 170 years. The trustees claim that wetlands, surface and ground waters, soils, sediments, biota, and air have been impacted by these alleged discharges and seek damages under various theories of liabilities under New Jersey statutory and common law.

NRD COUNSELING

In addition to defending NRD claims in court, we also help clients prepare for potential NRD claims by working with regulatory counsel in connection with cooperative remediation operations and assembling teams of experts to assess potential past or ongoing impacts on natural resource services. Having done this at some of the largest, most complex federal Superfund and state sites in the country, we typically engage with trustees during the NRD assessment process on behalf of our clients, providing input to the assessment studies, sometimes collaborating, and other times advising with respect to independent research efforts. While a negotiated resolution is nearly always the goal, preparation for litigation remains a key driver in our approach.

We have also successfully resolved government CERCLA cost recovery actions that included NRD claims. For example, we were able to settle on favorable terms two cases brought by the State of South Carolina alleging CERCLA compensatory and NRD claims arising from chlorinated solvent contamination in groundwater.