December 2017

Buffalo River

Natural Resource Damage Assessment and Restoration

Trustee Council

Notice of Intent to prepare a draft Restoration Plan and Environmental Assessment for the Buffalo River, New York

The U.S. Fish and Wildlife Service, the Tuscarora Nation, and the State of New York Department of Environmental Conservation (collectively the Trustees) are issuing this notice of intent to prepare a draft Restoration Plan and Environmental Assessment for Buffalo River natural resource restoration pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Natural Resource Damage Assessment and Restoration (NRDAR) regulations. As described in more detail below, a Restoration Plan establishes goals for using settlement monies and/or injunctive relief from responsible parties to restore, replace, or acquire the equivalent of the injured or lost natural resources and services. The Trustees are requesting public input in identifying specific restoration project ideas from the categories described below to assist the Trustees in the development of the draft Restoration Plan and Environmental Assessment for the Buffalo River, in Buffalo, New York. In addition to ideas for feasible restoration projects, the draft Restoration Plan will provide criteria and guidance for the Trustees to use in the selection of feasible natural resource restoration projects; it will also identify and evaluate the environmental impacts associated with restoration actions that may be implemented. This notice briefly explains the NRDAR process and how the Trustees will use input from the public in development of the Buffalo River draft Restoration Plan. Public input is being solicited through February 9th, 2018. More information on the Buffalo River NRDAR and the draft Restoration Plan can be found at: https://www.fws.gov/northeast/nyfo/ec/buffalo.htm

NRDAR Process: Under CERCLA, parties responsible for releasing hazardous substances into the environment are liable both for the costs of responding to the release (by cleaning up, containing, or otherwise remediating the release) and for damages arising from injuries to publicly owned or managed natural resources resulting from the release. The NRDAR regulations (43 Code of Federal Regulations Part 11) prescribe the process of assessing the nature and extent of the injury, destruction, or loss of natural resources and the compensation required to make the public whole for such injuries, destruction, or loss. CERCLA authorizes certain Federal and State agencies and Indian tribes to act on behalf of the public as Trustees for affected natural resources. Under CERCLA, these agencies and tribes are authorized to assess natural resource injuries and to seek compensation, referred to as damages, from responsible parties. These agencies may also enter into agreements with responsible parties to undertake restoration projects as compensation for such natural resource injuries. The Trustees are required to use recovered damages for the following purposes only: to restore, replace, or acquire the equivalent of the injured or lost natural resources and services. CERCLA requires that, before settlement monies can be used for restoration activities, the Trustees must develop and adopt a restoration plan and provide for adequate public notice, opportunity for hearing, and consideration of all public comments.

Buffalo River NRDAR: In January 2009, the Trustees published a notice of intent to pursue a NRDAR claim against potential responsible parties. The Trustees determined that concentrations of contaminants in sediment (polycyclic aromatic hydrocarbons, polychlorinated biphenyls, and metals such as lead and mercury) of the Buffalo River have injured fish, wildlife, and their habitat. In making this determination as part of the Buffalo River NRDAR process, the Trustees assessed contaminant-related injuries to natural resources such as benthic invertebrates and fish and quantified the lost use of natural resources to the public, such as fishing.

The **Buffalo River draft Restoration Plan** will include criteria and guidance for Trustees to use in selecting, with public input, specific feasible restoration projects that might be included in or funded by future settlements and that will maximize the benefits to the affected resources in the Buffalo River. As part of such criteria and guidance, the Trustees are required to ensure that the selected restoration actions are feasible, safe, and cost-effective, and that they addresses injured natural resources, consider actual and anticipated conditions, have a reasonable likelihood of success, and are consistent with applicable laws and policies. The selected restoration actions also must not conflict with the ongoing cleanup projects. Additional criteria for evaluation of suggested projects include proximity to injured natural resources within the Buffalo River, increased habitat connectivity, and relationship to local or regional restoration plan.

The Trustees are requesting public input in the identification of potential specific restoration projects to be considered for inclusion in the Buffalo River draft Restoration Plan that fall under one or more of the following proposed categories of restoration action: Instream and Stream Bank Enhancement/Restoration; Wetland Enhancement/Restoration; Upland Enhancement/Restoration; Avian, Fisheries, Amphibian and Reptile Enhancement/Restoration; Land Acquisition; and Natural Resource-Based Public Use Enhancement. Examples of specific potential restoration projects include: stream bank and wetland restoration, fish passage projects, and public use projects such as enhanced recreational opportunities along the Buffalo River or environmental education and outreach projects which can be demonstrated to generate engagement in restoration and stewardship of Buffalo River natural resources.

As restoration planning proceeds, the Trustees hope to have opportunities to settle Buffalo River NRDAR claims with willing parties. The development of the draft Restoration Plan and implementation of specific restoration projects build on the tremendous remedial and restoration efforts currently underway within the Buffalo River under the Great Lakes Restoration Initiative. More information on the Buffalo River GLRI funded remediation and restoration can be found at: http://www.dec.ny.gov/chemical/54166.html

Public Input: The Trustees are soliciting comments and restoration project ideas, to assist the Trustees in the development of the Buffalo River draft Restoration Plan, **through February 9th, 2018**. Comments may be submitted by mail to Amy Roe, U.S. Fish and Wildlife Service, 3817 Luker Road, Cortland, New York 13045 and by email to amy_roe@fws.gov.