

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	916067-0001
<b>Claimant:</b>	Tahoe Keys Property Owners' Association
<b>Type of Claimant:</b>	Private
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	██████████
<b>Amount Requested:</b>	\$35,789.10

### **FACTS:**

On April 11, 2016 at approximately 9:33am the Tahoe Keys Property Owners' Association (TKPOA) received a report of a spill in the Tahoe Keys Marina – East Cove. TKPOA staff investigated and observed the spill. TKPOA staff deployed absorbent boom and pads. They contacted Clean Harbors Environmental Services (Clean Harbors) to clean up the spill and dispose of the oil and contaminated materials. No responsible parties have been identified.

### **CLAIMANTS AND CLAIM:**

The Claimant is the Tahoe Keys Property Owners' Association. The TKPOA manages a common interest development located in South Lake Tahoe, California. The Association provides management, maintenance and architectural control of the individual units and the common area property including 11 miles of lagoons.<sup>1</sup>

The TKPOA provided personnel and materials, and paid an oil spill removal organization to clean up a mystery spill of cooking oil into the Tahoe Keys Marina's East Cove. The TKPOA seeks reimbursement of \$35,789.10 for amounts spent on its own personnel and materials and amounts paid to Clean Harbors Environmental Services to contain and remediate the sheen in the marina.

### **APPLICABLE LAW:**

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident".

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the

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<sup>1</sup> Information taken from the Claimant's website.

claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.”

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, “a claimant must establish -

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

#### **DETERMINATION:**

##### **A. Overview:**

1. The NPFC determined that the response was consistent with the National Contingency Plan (NCP). 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. In accordance with 33 CFR § 136.105(e)(12), the claimant certified that it has not filed an action in court for the claimed costs;
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which of the removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

##### **B. Analysis:**

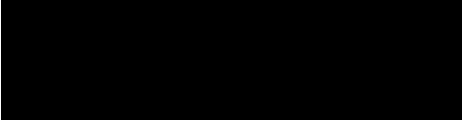

NPFC CA reviewed the cost invoices and supporting documentation to confirm that the claimant had incurred the costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC confirmed that the actions undertaken were reasonable and that the services were billed in accordance with the appropriate rate schedules and work records. Through its delegated authority, the NPFC has determined that the response actions undertaken were consistent with the NCP.

On that basis, the Claims Manager hereby determines that most of the removal costs documented in the invoices are compensable. TKPOA incurred \$35,525.13 in properly documented reasonable oil spill removal costs. NPFC has determined that \$35,525.13 is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #916067-0001. This amount includes all of TKPOA's own costs plus all but \$263.97 of the amount paid to Clean Harbors. \$263.97 of the claimed costs paid to Clean Harbors must be denied. The denied costs include the unjustified purchase of a spray gun (or air adjustment valve with gauge and couplers) and accessories, and part of the costs for boom disposal on May 11, 2016, an instance of double billing for a utility trailer, and a reduction of the recovery fees resulting from the line-item deductions due to denied costs. See the attached spreadsheet which details the denied costs.

**C. Determined Amount:**

The NPFC hereby determines that the OSLTF will offer \$35,525.13 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 916067-0001. All costs offered are for charges incurred by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.


Claim Supervisor: 
Date of Supervisor's review: <i>2/23/17</i>
Supervisor Action: <i>Approved</i>