

CLAIM SUMMARY / DETERMINATION on RECONSIDERATION

Claim Number:	920007-0001
Claimant:	Tahoe Keys Property Owners Association
Type of Claimant:	Private (US)
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$9,822.25
Action Taken:	Offer in the amount of \$9,172.00

EXECUTIVE SUMMARY:

On July 20, 2019, a vessel was illegally launched at the Tahoe Keys Property Owners Association, (“Claimant” or “TKPOA”) Slalom Court service ramp. Three men backed a vessel into Lake Tahoe via TKPOA’s ramp then moored it off to the west side of the TKPOA Slalom ramp.¹ On July 21, 2019, TKPOA Security arrived at the launch site to find the vessel partially underwater. TKPOA Water Quality and Security Staff initiated its spill response protocols by isolating the area using absorbent pads and absorbent boom.² After several failed attempts of removing the boat from the water, TKPOA Security called Tow Boat U.S. Tahoe Keys to remove the sunken vessel.³ The responsible party (“RP”) and boat owner was identified as Mr. (b) (6) who indicated that he does not have the resources to pay the costs incurred by TKPOA to remove the illegally launched vessel from the water.⁴

TKPOA presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$9,822.25 on December 27, 2019. However, upon review of the claim submission, the NPFC determined that TKPOA’s uncompensated removal costs had not been properly presented to the RP.⁵ Therefore, the claim submission was held as a preclaim⁶ until TKPOA was able to make proper presentment to the RP. On January 16, 2020, TKPOA presented its invoices to the RP, Mr. (b) (6) via USPS.⁷ On February 10, 2020, TKPOA’s presentment letters were returned and marked, “Return to Sender.”⁸ Upon receipt of evidence demonstrating proper presentment had been attempted, the NPFC then issued TKPOA’s claim submission claim number 920007-0001. TKPOA obtained after-the-fact Federal On-Scene Coordination (“FOSC”) from the United States Environmental Protection Agency (“US EPA”) on March 10, 2020.⁹ After a comprehensive review of the record, the applicable law and regulations, the NPFC offered TKPOA \$2,797.00 as full compensation of this claim¹⁰ under the Oil Pollution Act (OPA). On April 15, 2020, the NPFC received the TKPOA’s timely request for reconsideration.¹¹

Requests for reconsideration are considered *de novo*. The NPFC has thoroughly reviewed the original claim, the request for reconsideration, all information provided by TKPOA, information it obtained independently, and the applicable law and regulations. Upon reconsideration, the NPFC concludes that

¹ Claimant’s letter to the NPFC, dated December 13, 2019.

² Claimant’s letter to the NPFC, dated December 13, 2019.

³ Claimant’s letter to the NPFC, dated December 13, 2019.

⁴ Claimant’s letter to the NPFC, dated December 13, 2019.

⁵ 33 CFR§ 136.103 Order of Presentment.

⁶ PRE-00015377

⁷ Letter from Tahoe Keys Property Owners Association to Mr. (b) (6), dated January 16, 2020.

⁸ Email from Mr. (b) (6) to NPFC with returned letters attached, dated February 10, 2020

⁹ Email from Mr. (b) (6), US EPA On-Scene Coordinator to NPFC, dated March 10, 2020.

¹⁰ 33 CFR 136.115.

¹¹ Letter from TKPOA to the NPFC dated April 14, 2020, requesting reconsideration of the NPFC’s determination dated March 31, 2020.

the facts established with the NPFC's initial determination as well as information provided by TKPOA within their request for reconsideration support TKPOA's request for reconsideration and offers \$9,172.00 for its uncompensated removal costs incurred as a result of the oil spill incident, as outlined below.

I. CLAIM HISTORY:

On December 27, 2019, the NPFC received a submission for uncompensated removal costs from TKPOA, dated December 13, 2019.¹² The NPFC thoroughly reviewed the original claim, all information provided by TKPOA or obtained independently, and ultimately determined that \$2,797.00 of the \$9,822.25 was compensable and denied the remainder of the claimed costs.¹³ On April 15, 2020, the NPFC received TKPOA's timely request for reconsideration.¹⁴

II. REQUEST FOR RECONSIDERATION

The regulations implementing OPA require requests for reconsideration of an initial determination to be in writing and include the factual or legal grounds for the relief requested, along with any additional support for the claim. The claimant has the burden of providing all evidence, information, and documentation deemed necessary by the NPFC to support the claim. When analyzing a request for reconsideration, the NPFC performs a *de novo* review of the entire claim submission, including any new information provided by TKPOA in support of its request for reconsideration. The written decision by the NPFC is final.

On April 15, 2020, TKPOA submitted a timely request for reconsideration and provided information in support of costs denied by the NPFC totaling \$7,045.60.¹⁵ In its reconsideration request, TKPOA requested that the NPFC reconsider the \$6,500.00 in denied Tow Boat US costs and provided a letter from Tow Boat U.S. Tahoe Keys in support of its costs. TKPOA also requested the NPFC reconsider the denied \$69.90 for 30-feet of chain and provided a receipt in support of its costs, \$20.35 in denied costs for a set of padlocks and provided a receipt for its costs. TKPOA explained in its reconsideration letter that the NPFC denied \$40.70 for two sets of padlocks but explained that there was only one set of padlocks thereby amending its requested amount on reconsideration in the amount of \$20.35. Lastly, TKPOA asked that the NPFC reconsider the \$435.00 in denied TKPOA personnel and labor costs.¹⁶

III. ANALYSIS ON REQUEST FOR RECONSIDERATION:

The regulations implementing OPA require requests for reconsideration of an initial determination to be in writing and include the factual or legal grounds for the relief requested, along with any additional support for the claim in accordance with governing claims regulations at 33 CFR 136.115(d).

The NPFC has thoroughly reviewed and considered TKPOA's request for reconsideration. All approved costs are supported by adequate documentation and because TKPOA has met its burden for certain costs, the amount of compensable costs are determined to be **\$9,172.00**, while \$650.25 in requested costs remain denied and are deemed not compensable, as described below.

¹² Claim submission dated December 13, 2019 with a sum certain identified as \$9,822.25. *See also*, Optional OSLTF Claim Form, signed and dated December 13, 2019.

¹³ NPFC determination issued to TKPOA dated March 31, 2020.

¹⁴ Email from TKPOA to the NPFC dated April 15, 2020.

¹⁵ Within their request for reconsideration, TKPOA seek reconsideration of certain costs denied by the NPFC.

¹⁶ TKPOA letter to the NPFC dated April 14, 2020.

1. NPFC Initial Determination – Charges in the amount of \$6,500.00 were denied as these costs were not supported by a Towboat Marine U.S. rate schedule.¹⁷

TKPOA's Response – Charges totaling \$6,500.00 should be approved. Mr. (b) (6) explained that he obtained a letter from Mr. (b) (6) of Tow Boat US which states Tow Boat U.S. does not have a standard published rates document. The letter from Mr. (b) (6) also addresses the charge for damaged salvage equipment¹⁸

NPFC Determination Upon Reconsideration – Charges of \$6,500.00 for response and salvage services provided by Tow Boat US are approved in the amount of \$6,300.00. TKPOA provided a letter from Mr. (b) (6) dated April 10, 2020 providing a detailed explanation regarding the pricing structure and basis for which he invoiced response and salvage costs. With respect to charges associated with damaged salvage equipment, the letter only stated that Mr. (b) (6) charged a nominal fee of \$200.00 for damaged salvage equipment with no additional information or details. As such, the NPFC denies \$200.00 for the unidentified damaged salvage equipment as not supported by the record.¹⁹

2. NPFC Initial Determination – Charges in the amount of \$69.90 for thirty (30) feet of damaged chain were denied on the basis that TKPOA failed to provide evidence of the existence of the chain claimed and documentation to demonstrate that the chain was damaged as a direct result of the oil spill incident.²⁰

TKPOA's Response – Charges for thirty (30) feet of damaged chain should be approved. Mr. (b) (6) provided a statement that the purpose of the chain was to deter vehicle access to the service ramp. Mr. (b) (6) further asserted that the RP backed his vehicle into the chain and broke the connection portion of the chain that connects to the fence. Mr. (b) (6) provided a purchase receipt for replacement chain.²¹

NPFC Determination Upon Reconsideration – Charges totaling \$69.90 associated with replacement chain is again denied. TKPOA's claim submission contains a typed Summary statement, author unknown, which provides very detailed information regarding the entire incident and response.²² Based on the evidence presented in the claim submission, TKPOA has failed to provide evidentiary documentation to support that the damaged chain resulted from the oil spill incident at hand. As such, the NPFC denies the alleged damage as unsubstantiated.

3. NPFC Initial Determination – Charges in the amount of \$40.70 were denied on the basis that TKPOA failed to provide a description of how the damage occurred as a result of oil spill incident and failed to provide documentary evidence in support of the padlock purchase.²³

¹⁷ NPFC determination issued to Tahoe Keys Property Owners Association dated March 31, 2020 page 7, IV (1).

¹⁸ TKPOA written request for reconsideration dated April 14, 2020 #2.

¹⁹ Tow Boat US letter dated April 10, 2020.

²⁰ NPFC determination issued to Tahoe Keys Property Owners Association dated March 31, 2020 page 7, IV (3).

²¹ TKPOA written request for reconsideration dated April 14, 2020 #3 and DIY Home Center Invoice #50471 dated July 2, 2019, attachment #2 to TKPOA request for reconsideration package dated April 14, 2020.

²² TKPOA claim submission, pages 24-29, contain a typed Summary report of the incident with a handwritten notation at the top indicating "El Dorado County Sheriff". The summary states that Deputy (b) (6) responded and during investigation of the incident, was unable to determine the status of the damaged chain prior to the incident due to the lack of visible damage and due to a response to questioning from TKPOA employee, (b) (6). When asked about the pad lock and chain, the statement indicates that Mr. (b) (6) examined the metal fence and informed Deputy (b) (6) that he was unaware if any damage occurred and that he did not know if a damaged weld to the fence was prior damage or a result of the incident. See page 25 of 39 of the TKPOA claim submission.

²³ NPFC determination issued to Tahoe Keys Property Owners Association dated March 31, 2020 page 7, IV (4).

TKPOA's Response – Charges totaling \$40.70 associated with the replacement of damaged padlocks is amended to \$20.35 and should be approved. Mr. (b) (6) stated that only one set of padlocks were damaged therefore they have reduced the amount requested on reconsideration and provided a copy of DIY Home Center Invoice # 50474 dated July 22, 2019 for one padlock in the amount of \$20.35.²⁴ Mr. (b) (6) further stated that the padlock was for the chain that was damaged along the connection to the fence.²⁵

NPFC Determination Upon Reconsideration – Charges totaling \$20.35 associated with the replacement of a padlock remains denied. TKPOA's claim submission contains a typed Summary statement, author unknown, which provides very detailed information regarding the entire incident and response.²⁶ Based on the evidence presented in the claim submission, TKPOA has failed to provide evidentiary documentation to support that the damaged chain resulted from the oil spill. Further, there is no evidence to support that the claimed padlock was also damaged as a result of the oil spill incident. The NPFC denies the alleged damage and requested replacement as unsubstantiated.

4. NPFC Initial Determination - Charges in the amount of \$435.00 were denied on the basis that TKPOA failed to provide documentary evidence to support the charge of seven (7) additional TKPOA personnel and labor charges that were requested over and above the four (4) primary TKPOA personnel that are referenced in the claim submission documentation and narratives.²⁷

TKPOA's Response – Charges totaling \$435.00 associated with the 7 additional TKPOA personnel and labor costs should be approved. Mr. (b) (6) provided a 2 part response on reconsideration identified as 5 and 5(a-c). Mr. (b) (6) provided specific names, dates and response activity performed to support the costs claimed.²⁸

NPFC Determination Upon Reconsideration – Charges in the amount of \$435.00 associated with TKPOA personnel and labor costs are approved in part. The NPFC has determined that \$75.00 associated with the labor cost for (b) (6) is approved. Mr. (b) (6) provided evidence that Mr. (b) (6) was the Security Officer on staff on July 21, 2019 and further confirmed his hours of operation. The NPFC has also been able to identify (b) (6) name in the TKPOA narrative and also referenced in the Lake Tahoe Police Department Event Record # 1907-2610. The additional 6 TKPOA personnel are denied because the personnel are not referenced in any narrative or law enforcement documentation and as such, the record is not clear that they were directly involved in the response to this oil spill incident or that their presence was warranted since there were 4 primary TKPOA personnel directly involved in the incident. As such, the NPFC again denies the TKPOA personnel and labor costs in the amount of \$360.00 for 6 additional TKPOA personnel as unsubstantiated.

²⁴ DIY Home Center Invoice # 50474 dated July 22, 2019 for a padlock.

²⁵ TKPOA written request for reconsideration dated April 14, 2020 #3 and DIY Home Center Invoice #50474 dated July 2, 2019, attachment #3 to TKPOA request for reconsideration package dated April 14, 2020.

²⁶ TKPOA claim submission, pages 24-29, contain a typed Summary report of the incident with a handwritten notation at the top indicating "El Dorado County Sheriff". The summary states that Deputy (b) (6) responded and during investigation of the incident, was unable to determine the status of the damaged chain prior to the incident due to the lack of visible damage and due to a response to questioning from TKPOA employee, (b) (6). When asked about the pad lock and chain, the statement indicates that Mr. (b) (6) examined the metal fence and informed Deputy (b) (6) that he was unaware if any damage occurred and that he did not know if a damaged weld to the fence was prior damage or a result of the incident. See page 25 of 39 of the TKPOA claim submission.

²⁷ NPFC determination issued to Tahoe Keys Property Owners Association dated March 31, 2020 page 7, IV (5).

²⁸ NPFC determination issued to Tahoe Keys Property Owners Association dated March 31, 2020 page 7, IV (5) (a-c).

IV. CONCLUSION:

The NPFC hereby determines that the OSLTF will pay **\$9,172.00** as full compensation for the reimbursable removal costs incurred by TKPOA and submitted to the NPFC under claim # 920007-0001. All costs claimed and approved by the NPFC are compensable removal costs, payable by the OSLTF as presented by the Claimant.²⁹

AMOUNT APPROVED: \$9,172.00

	(b) (6)
Claim Supervisor:	(b) (6)
Date of Supervisor's review:	<i>5/14/2020</i>
Supervisor Action:	<i>Revised offer on reconsideration approved</i>

²⁹ See NPFC Summary of Costs spreadsheet dated April 22, 2020.