

CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	920007-0001
<b>Claimant:</b>	Tahoe Keys Property Owners Association
<b>Type of Claimant:</b>	Private (US)
<b>Type of Claim:</b>	Removal Costs -
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$9,822.25
<b>Action Taken:</b>	Offer in the amount of \$2,797.00

**EXECUTIVE SUMMARY:**

On July 20, 2019 there was an illegal launch 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.<sup>1</sup>

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.<sup>2</sup> After several failed attempts of removing the boat from the water, TKPOA Security called Tow Boat US to remove the sunken vessel.<sup>3</sup> The responsible party (“RP”) and boat owner was identified as Mr. [REDACTED] 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.<sup>4</sup>

TKPOA presented its uncompensated costs 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 noticed that the TKPOA’s uncompensated costs had not been properly presented to the RP.<sup>5</sup> Therefore the claim submission was held as a preclaim<sup>6</sup> until TKPOA was able to make proper presentment to the RP. On January 16, 2020, TKPOA presented its invoices to the RP, Mr. [REDACTED] via USPS letter.<sup>7</sup> On February 10, 2020 TKPOA’s presentment letters were returned and marked, “Return to Sender.” TKPOA provided the evidence to the NPFC.<sup>8</sup> As such the NPFC then issued TKPO’s claim submission claim number 920007-0001.

TKPOA obtained after-the-fact Federal On Scene Coordination (“FOSC”) with the United States Environmental Protection Agency (“US EPA”) on March 10, 2020 via email after the US EPA FOSC reviewed its invoices.<sup>9</sup>

**I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:**

***Incident***

On July 20, 2019, TKPOA Security Supervisor [REDACTED] received a report of an illegal launch at the TKPOA Slalom Ramp. Upon the Security Officer’s arrival, he observed a partially sunken vessel

<sup>1</sup> Claimant’s letter to the NPFC, dated December 13, 2019.

<sup>2</sup> Claimant’s letter to the NPFC, dated December 13, 2019.

<sup>3</sup> Claimant’s letter to the NPFC, dated December 13, 2019.

<sup>4</sup> Claimant’s letter to the NPFC, dated December 13, 2019.

<sup>5</sup> 33 CFR§ 136.103 Order of Presentment.

<sup>6</sup> PRE-00015377

<sup>7</sup> Letter from Tahoe Keys Property Owners Association to Mr. [REDACTED], dated January 16, 2020.

<sup>8</sup> Email from Mr. [REDACTED] to NPFC with returned letters attached, dated February 10, 2020

<sup>9</sup> Email from Mr. [REDACTED], US EPA On-Scene Coordinator to NPFC, dated March 10, 2020.

(CF59025Z) which was leaking gasoline and oil products into the waters of Lake Tahoe, a navigable waterway of the United States. The Security Supervisor contacted South Lake Tahoe Police Department (“SLT PD”)<sup>10</sup> SLT PD contacted the El Dorado County Sheriff’s Department.<sup>11</sup> TKPOA also contacted California Fish and Wildlife and notified the U.S. EPA by phone but was not issued a report number and there was no onsite response by either the State On Scene Coordinator (SOSC) or the FOSC. TKPOA Security Supervisor, [REDACTED] contacted the National Response Center (“NRC”) via report # 1252726 dated July 21, 2019.<sup>12</sup>

At the time of the incident, the RP was unable to successfully remove the boat from the water. TKPOA hired Tow Boat US to remove the pollution threat from Lake Tahoe and TKPOA cleaned the gasoline and oil products from the water using their absorbent boom and absorbent mat pads.<sup>13</sup>

### ***Responsible Party***

Mr. [REDACTED] is identified as the responsible party since he is the owner and operator of the boat that discharged oil and is liable under OPA.<sup>14 15</sup>

On January 10, 2020, following receipt of TKPOA’s claim submission, the NPFC sent a Responsible Party Notification Letter via certified mail to Mr. [REDACTED].<sup>16</sup> On February 19, 2020 the NPFC received its letter back marked as, “Return to Sender.”<sup>17</sup> A Responsible Party Notification letter notifies the owners and/or operators that a claim was presented to the National Pollution Funds Center (NPFC) seeking reimbursement of uncompensated removal costs incurred as a result of response services performed that resulted from a vessel or facility that was identified as the source of a discharge or substantial threat of a discharge of oil to navigable waters of the United States.

### ***Recovery Operations***

On July 21, 2019, TKPOA deployed two oil booms and absorbent pads to soak up the gasoline and oil product.<sup>18</sup> TKPOA (claimant) hired Towboat US for vessel removal after the RP’s failed attempts. Tow Boat US arrived on-scene and observed the vessel submerged and leaking gasoline and oil products.<sup>19</sup> Tow Boat US’ diver inflated and attached a lift bag to the boat’s tow eye and secured lift straps around the drive shaft of the vessel because the vessel had no stern eyes or cleats.<sup>20</sup> Additionally, Tow Boat US attached flexible straps and air bags to the gunnels above the water line and then dewatered the vessel for towing out.<sup>21</sup> The RP conveyed to TKPOA Security Officer that he did not have the means to pay the bill for Towboat US’ services.<sup>22</sup>

## **II. CLAIMANT AND RP:**

---

<sup>10</sup> SLT PD Event # 1907-2610.

<sup>11</sup> El Dorado Sherriff’s Office Event # EG-19-6248.

<sup>12</sup> NRC Report # 1252726 dated July 21, 2019.

<sup>13</sup> TKPOA Work Order # WQ-19-01, dated August 1, 2019.

<sup>14</sup>SLT PD Event Report # 1907-2610 dated 7/20/2019 and TKPOA Incident Report # 201907026 dated 7/21/2019, see page 3 of 29.

<sup>15</sup> See, H.R. Rep. No 101-653, at 102(1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

<sup>16</sup> NPFC RP Notification Letter to [REDACTED] dated January 10, 2020.

<sup>17</sup> NPFC RP Notification Letter to [REDACTED] marked, “Return to Sender.”

<sup>18</sup> Tow Boat US Invoice # 510, dated August 1, 2019 under comments section of invoice document.

<sup>19</sup> Tow Boat US Invoice # 510, dated August 1, 2019.

<sup>20</sup> Tow Boat US Invoice # 510, dated August 1, 2019.

<sup>21</sup> Tow Boat US Invoice # 510, dated August 1, 2019.

<sup>22</sup> El Dorado County Sherriff’s Summary.

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)<sup>23</sup> require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from NPFC.<sup>24</sup>

TKPOA indicated in its initial claim submission to the NPFC that it had presented a claim to the RP but did not indicate on which day.<sup>25</sup> During the initial review of the claim, the supporting documentation did not substantiate that proper presentment had occurred as stated on the OSLTF claim form. Therefore the NPFC placed the claim in a preclaim status until TKPOA made proper presentment of its invoices to the RP. After TKPOA sent its removal costs to the RP, the claimant's letter was returned to the claimant marked, "Return to Sender." At this point presentment was initiated by the claimant and on February 11, 2020, the NPFC was able to assign TKPOA's claim submission an OPA claim number and begin adjudication of its costs.

### **III. CLAIMANT AND NPFC:**

When an RP has not settled a claim after 90 days, a claimant may elect to present its claim to the NPFC.<sup>26</sup> On December 27, 2019, the NPFC received a submission for uncompensated removal costs from Tahoe Keys Property Owners Association dated December 13, 2019.

### **IV. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>27</sup> As a result, 5 U.S.C. § 555(e) requires the NPFC to provide a brief statement explaining its decision. This determination is issued to satisfy that requirement.

When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.<sup>28</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>29</sup> If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and makes its determination based on the preponderance of the credible evidence.

### **V. DISCUSSION:**

An RP is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.<sup>30</sup> An RP's liability is strict, joint, and several.<sup>31</sup> When enacting OPA, Congress "explicitly recognized that the existing federal and

---

<sup>23</sup> 33 U.S.C. § 2701 *et seq.*

<sup>24</sup> 33 CFR 136.103.

<sup>25</sup> OSLTF Claim Form dated December 13, question # 5.

<sup>26</sup> 33 CFR 136.103.

<sup>27</sup> 33 CFR Part 136.

<sup>28</sup> *See, e.g., Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011), "[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views." (Citing, *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010)).

<sup>29</sup> *See, e.g., Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

<sup>30</sup> 33 U.S.C. § 2702(a).

<sup>31</sup> *See*, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim's recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills."<sup>32</sup> OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred removal costs where the responsible party has failed to do so. 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."<sup>33</sup> The term "remove" or "removal" means "containment and removal of oil [...] from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches."<sup>34</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>35</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>36</sup> The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.<sup>37</sup>

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (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 directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.
- (d) That the removal costs were uncompensated and reasonable.<sup>38</sup>

Upon review and adjudication of the claim submission, the NPFC worked closely with the Claimant to ensure it made proper presentment of its costs to the RP. The NPFC also made several requests for additional supporting information to the claimant and worked with them to obtain US EPA FOSC coordination. On March 9, 2020, the Claimant provided its invoices to Mr. [REDACTED], US EPA On-Scene Coordinator, for his review, as it pertained to the response actions undertaken by the Claimant as well as the response contractor, Tow Boat US.<sup>39</sup> The US EPA FOSC responded to the Claimant via email on March 10, 2020 and provided a statement that based on his review of the Claimant's invoices combined with a conversation with the Claimant, led him to believe the costs were reasonable and consistent with the work performed.<sup>40</sup>

The NPFC obtained a copy of the Claimant's rate schedule in support of the costs claimed. The NPFC requested that the Claimant provide a Tow Boat US rate schedule, but the Claimant has failed to respond to that portion of the request. The Claimant provided proof of payment for the Tow Boat US costs. Upon adjudication of the costs claimed, the NPFC has determined that some of the costs claimed are

---

<sup>32</sup> *Apex Oil Co., Inc. v United States*, 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002) (citing S. Rep. No. 101-94 (1989), reprinted in 1990 U.S.C.C.A.N. 722).

<sup>33</sup> 33 U.S.C. § 2701(31).

<sup>34</sup> 33 U.S.C. § 2701(30).

<sup>35</sup> See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>36</sup> 33 CFR Part 136.

<sup>37</sup> 33 CFR 136.105.

<sup>38</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>39</sup> March 9, 2020 Claimant's email to the FOSC requesting his review of its costs.

<sup>40</sup> March 10, 2020 FOSC email to the Claimant and the NPFC.

OPA compensable and have been coordinated with the FOSC. The NPFC has determined that the approved TKPOA invoiced costs were billed in accordance with the rate schedule in place at the time services were rendered.

Based on the supporting documentation and information provided and/or obtained from various sources, the NPFC has determined which of the costs invoiced were billed in accordance with the quoted and/or billed rates between the parties. All costs approved for payment by the NPFC were verified as being invoiced at the appropriate pricing, including but not limited to, any approved third party or out of pocket expenses. All approved costs are supported by adequate documentation which include invoices, rate schedules, and were coordinated with the FOSC and determined to be reasonable, necessary.

The amount of compensable costs is **\$2,797.00**, while \$7,045.60<sup>41</sup> were deemed not compensable for the following reasons:

1. \$300.00 for vessel Recovery, Removal, and Transport of the vessel. A Towboat Marine US rate schedule was not provided to verify and support these costs. The NPFC requests that each of the response actions claimed be broken out into a personnel, materials and equipment category. Each section should then be further broken down by individual names of employees, position and rate, total hours claimed per person per day along with a description of duties performed. All equipment, materials and supplies should be itemized with the appropriate costs attributed to each item. Finally, details for the transport of the vessel portion of the claimed costs needs to be itemized so that the NPFC can determine how much of the incurred costs were incurred after the vessel was removed from the water;
2. \$200.00 for damaged equipment. Please provide the supporting documentation associated with the damaged costs claimed. Provide a detailed description of the nature of how the damage was incurred along with an itemization of what the \$200.00 cost is for;
3. \$69.90 for 30-feet of chain. Please provide a detailed explanation associated with the cost claimed. Provide evidence of the existence of the item and evidence that supports the damage was incurred as a direct result of the oil spill incident as;
4. \$40.70 for Pad Locks. Please provide a copy of the receipts for the purchase of claimed item(s) and provide a detailed description and evidence that the damage/loss claimed is related to the oil spill incident; and.
5. \$435.00 in personnel / labor costs. On August 2, 2019, The Claimant had 7 additional personnel listed without the appropriate supporting documentation to support their necessity in working this response incident. The NPFC acknowledges the four people listed in the incident reports. Anyone outside of the primary four employees, must be supported by documents that articulate the duties each were directly performing as part of this incident.

**Overall Denied Costs** = \$7,045.60<sup>42</sup>

## **VI. CONCLUSION:**


Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Tahoe Keys Property Owners Association's request for uncompensated removal costs is approved in the amount of **\$2,797.00**.

---

<sup>41</sup> Enclosure (1) NPFC Summary of Costs spreadsheet.

<sup>42</sup> Enclosure (1) Summary of Costs spreadsheet.

This determination is a settlement offer,<sup>43</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>44</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>45</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor: *D* 

Date of Supervisor's review: *3/31/2020*

Supervisor's Comments: *Approved*

---

<sup>43</sup> Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the uncompensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR § 136.115(a).

<sup>44</sup> 33 CFR § 136.115(b).

<sup>45</sup> 33 CFR § 136.115(b).