

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPA23022-URC002
Claimant:	City of Stockton Municipal Utilities Department (“City of Stockton”)
Type of Claimant:	Local Government
Type of Claim:	Removal Costs / Additional Public Services Damages
Claim Manager:	(b) (6)
Amount Requested:	\$921,550.96
Action Taken:	Offer in the amount of \$430,372.46

EXECUTIVE SUMMARY:

On September 4, 2023 at 0515 local time, United States Coast Guard (“USCG”) National Response Center (“NRC”) received notification of a tugboat that was sinking in Little Potato Slough with sheening on the water and a strong odor of fuel.² Later the same morning at 0807 local time, the USCG Sector San Francisco Command Center received notification of the sinking tugboat MAZAPETA.³ The MAZAPETA is a 94-foot steel-hull tug that was carrying approximately 1000 gallons of diesel and 600 gallons of oil.⁴ The MAZAPETA was listing 35° to starboard while tied alongside the cruise ship AURORA, within Little Potato Slough, a tributary of the San Joaquin River, a navigable waterway of the United States.⁵

USCG Sector San Francisco is the Federal On-Scene Coordinator (“FOSC”) for the incident.⁶ After several failed attempts at contacting the vessel owner and due to the amount of petroleum products that were discharging into the navigable waterway, the FOSC opened Federal Project Number (FPN) UCGPA23022 in response to the incident and issued a Notice of Federal Assumption.⁷ A Unified Command (“UC”) was established that included USCG, California Department of Fish and Wildlife Office of Spill Prevention and Response (“OSPR” or “SOSC”), San Joaquin County Sheriff’s Department, and the City of Stockton (“Claimant” or “City of Stockton”).⁸

¹ This determination is written for the sole purpose of adjudicating a claim against the Oil Spill Liability Trust Fund (OSLTF). This determination adjudicates whether the claimant is entitled to OSLTF reimbursement of claimed removal costs or damages under the Oil Pollution Act of 1990. This determination does not adjudicate any rights or defenses any Responsible Party or Guarantor may have or may otherwise be able to raise in any future litigation or administrative actions, to include a lawsuit or other action initiated by the United States to recover the costs associated with this incident. After a claim has been paid, the OSLTF becomes subrogated to all of the claimant’s rights under 33 U.S.C. § 2715. When seeking to recover from a Responsible Party or a Guarantor any amounts paid to reimburse a claim, the OSLTF relies on the claimant’s rights to establish liability. If a Responsible Party or Guarantor has any right to a defense to liability, those rights can be asserted against the OSLTF. Thus, this determination does not affect any rights held by a Responsible Party or a Guarantor.

² National Response Center (NRC) Report # 1378109 dated September 4, 2023.

³ Unified Command Mazapeta Decision Memorandum dated December 19, 2023, #2, P. 1/3.

⁴ *Id.*

⁵ *Id.*

⁶ See, Notice of Federal Interest (NOFI) issued to Mr. (b) (6) dated September 5, 2023. See also, USCG SITREP-POL One dated September 6, 2023.

⁷ See, Notice of Federal Assumption (NOFA) issued to Mr. (b) (6) on September 5, 2023. See also, FOSCR Statement Form dated April 25, 2024.

⁸ USCG SITREP-POL Three dated September 22, 2023.

In accordance with the Oil Pollution Act of 1990 (“OPA”),⁹ Mr. (b) (6) was initially identified by the FOSC as the Responsible Party (“RP”) and National Vessel Documentation Center (NVDC) records indicate that Mazapeta Research LLC (owned by Mr. (b) (6)) as the owner of the vessel; however, a viable address for Mr. (b) (6) has never been established.¹⁰ Initially, the FOSC and the State of California as the State On-Scene Coordinator (“SOSC”) suspected three potential responsible parties (RPs): (1) Mr. (b) (6) – FOSC attempted to contact Mr. (b) (6) but Mr. (b) (6) failed to respond, (2) Mr. (b) (6) – FOSC attempted to contact Mr. (b) (6) but never received a response, and (3) Mr. (b) (6) – owner of the vessel, AURORA. The FOSC pollution responders found several videos of Mr. (b) (6) making repairs to the MAZAPETA.¹¹ The FOSC states that the investigation by the SOSC quoted Mr. (b) (6) as saying that he put fuel and oil onto the MAZAPETA. Based on the foregoing, the FOSC determined that Mr. (b) (6) was considered a potential operator of the MAZAPETA tug.¹²

On July 31, 2024, the City of Stockton presented its claim to the National Pollution Funds Center (“NPFC”) for \$921,550.96.¹³ The claim sought compensation for costs and damages incurred by the City of Stockton for the dead-ship tow of the MAZAPETA to a shipyard in Vallejo, California for final disposition¹⁴ and to purchase 3,066.86 acre-feet¹⁵ of supplemental water from the Woodbridge Irrigation District.¹⁶

The NPFC thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$430,372.46 of the claimed costs are compensable and offers this amount as full and final compensation as detailed below.

I. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁷ 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

⁹ 33 U.S.C. § 2701(32).

¹⁰ See, Notice of Federal Interest and Notice of Federal Assumption issued to Mr. (b) (6) on September 5, 2023. See also, United States Coast Guard Situation Report (SITREP)-POL One dated September 6, 2023. A description of potential RPs and outcomes are addressed in detail under item II, Responsible Party section of this determination. The FOSC ultimately concluded at the time that the “Responsible Party could not be determined.” For the sole purpose of ensuring the claimant’s compliance with its presentment obligations under 33 CFR 136.103 for the continued adjudication of this claim, the NPFC adopts this position.

¹¹ Email from FOSC to NPFC dated April 30, 2024.

¹² Id. See also, Notice of Federal Interest (NOFI) issued to Mr. (b) (6) dated September 26, 2023.

¹³ See, City of Stockton Original Claim submission received July 31, 2024. See also, the signed OSLTF form that was received on August 26, 2024.

¹⁴ CORRECTION to SITREP-POL Seven and Final dated August 9, 2024.

¹⁵ 1 acre-foot of water is approximately 325,851 gallons.

¹⁶ City of Stockton Original Claim submission received on July 31, 2024.

¹⁷ 33 CFR Part 136.

evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.¹⁸ The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹⁹ 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.

II. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On September 4, 2023 at 0807 local time, United States Coast Guard (“USCG”) Sector San Francisco Command Center received a notification from of San Joaquin County Department of Environmental Health regarding a sinking tugboat, MAZAPETA, in Little Potato Slough near Stockton, California.²⁰ The MAZAPETA, a 94-foot steel-hull tug, was carrying approximately 1000 gallons of diesel and 600 gallons of oil.²¹ The MAZAPETA listed 35° to starboard while tied alongside the cruise ship AURORA,²² discharging petroleum products into Little Potato Slough, a tributary of the San Joaquin River, a navigable waterway of the United States.²³

The incident occurred less than a mile away from the City of Stockton’s Delta Water Supply Project Intake Pump Station (“IPS”).²⁴ The IPS provides the raw water supply for the water treatment plant, which serves 200,000 customers daily.²⁵ Once the City of Stockton was notified of the incident, operations staff shut down the IPS to prevent contamination of the water supply, intake, and water treatment plant infrastructure.²⁶ To ensure all customers maintained water service, the City of Stockton purchased an additional 3,066.86 acre-feet of water for the residents of the City.²⁷ Had the infrastructure shutdown, its many customers, who depend on water daily, would have been adversely affected.

¹⁸ 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)).

¹⁹ 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).

²⁰ National Response Center (NRC) Report # 1378109 dated September 4, 2023.

²¹ Unified Command Mazapeta Decision Memorandum dated December 19, 2023, #2, P. 1/3.

²² *Id.*

²³ United States Coast Guard Situation Report (SITREP)-POL One dated September 6, 2023.

²⁴ City of Stockton’s Chart showing the MAZAPETA Spill Location and the Stockton Intake Pump Station. P. 22/37 of City of Stockton Original Claim submission.

²⁵ Director of Municipal Utilities Memorandum to the City Manager dated October 18, 2023. P. 21 and 22/37 of City of Stockton Original Claim submission.

²⁶ *Id.* See also, SITREP-POL Three dated September 22, 2023.

²⁷ Email from City of Stockton to NPFC explaining the purchase of supplemental water dated September 12, 2024.

Responsible Party

In accordance with the Oil Pollution Act of 1990 (“OPA”),²⁸ Mr. (b) (6) was initially identified by the FOSC as Responsible Party (“RP”), however, a viable address for Mr. (b) (6) has never been established.²⁹

Initially, the FOSC and the State of California as the State On-Scene Coordinator (“SOSC”) suspected three potential responsible parties (RPs): (1) Mr. (b) (6) – FOSC attempted to contact Mr. (b) (6) but Mr. (b) (6) failed to respond, (2) Mr. (b) (6) – FOSC attempted to contact Mr. (b) (6) but never received a response, and (3) Mr. (b) (6) – owner of the vessel, AURORA. The FOSC pollution responders found several videos of Mr. (b) (6) making repairs to the MAZAPETA.³⁰ The FOSC states that the investigation by the SOSC quoted Mr. (b) (6) as saying that he put fuel and oil onto the MAZAPETA. Based on the foregoing, the FOSC determined that Mr. (b) (6) was considered a potential operator of the MAZAPETA tug.³¹

The City of Stockton presented a debris removal letter dated November 20, 2023 to Mr. (b) (6) with a Hawaii address as provided to them by the FOSC, however the letter was returned for an insufficient address.³² Based on the return mail, presentment of costs by the City of Stockton to Mr. (b) (6) could not be made in accordance with the statute for presentment of costs to the RP initially identified by the FOSC.³³ The City of Stockton then presented a Debt Demand Letter dated April 10, 2024 to Mr. (b) (6) in the amount of \$489,668.00.³⁴ On April 13, 2024, the City of Stockton received an email response from Mr. (b) (6) providing a picture of a notarized bill of sale dated July 27, 2016, transferring title from Mr. (b) (6) to Mazepeta Research, LLC [sic].³⁵

On April 23, 2024, the NPFC requested an Abstract of Title for the MAZAPETA from the USCG’s National Vessel Documentation Center (NVDC).³⁶ On April 25, 2024, the NPFC received a General Index and Abstract of Title package consisting of 8-pages via email.³⁷ The package included an Abstract of Title between (b) (6) as seller and Mazepeta Research LLC [sic] as buyer.³⁸ Upon receipt of the Abstract of Title, the NPFC performed a search of the State of California Corporation Commission to see if it could obtain a viable address for Mazepeta Research LLC and Mazapeta Research LLC, to no avail.

²⁸ 33 U.S.C. § 2701(32).

²⁹ See, Notice of Federal Interest and Notice of Federal Assumption issued to Mr. (b) (6) on September 5, 2023. See also, United States Coast Guard Situation Report (SITREP)-POL One dated September 6, 2023.

³⁰ Email from FOSC to NPFC dated April 30, 2024.

³¹ *Id.* See also, Notice of Federal Interest (NOFI) issued to Mr. (b) (6) dated September 26, 2023.

³² City of Stockton Marine Debris Removal Letter issued to Mr. (b) (6) dated November 20, 2023.

³³ 33 U.S.C. § 2713(a).

³⁴ City of Stockton Debt Demand Letter dated April 10, 2024, issued to Mr. (b) (6). P. 15 and 16/37 of City of Stockton Original Claim submission.

³⁵ Email response and copy of notarized bill of sale to Mazepeta Research, LLC dated July 27, 2016. P. 17 and 18/37 of City of Stockton Original Claim submission.

³⁶ Email from NPFC to NVDC dated April 23, 2024.

³⁷ Email from NVDC to NPFC dated April 25, 2024 with attachments.

³⁸ See, NVDC General Index or Abstract of Title package, Continuation Sheet No. 4 dated April 18, 2024, P. 7 of 8.

On November 15, 2024, the NPFC received an email from the FOSC providing amplifying information regarding Mazapeta Research LLC and Mr. (b) (6).³⁹ The email explained the FOSC issued the Notice of Federal Assumption (NOFA) to Mr. (b) (6), at his Hawaii address and was also sent via text message to the last known cell phone number the FOSC had on file. The email also contained two attachments.⁴⁰ The second attachment was a separate email dated October 11, 2024 between the FOSC and NPFC's Case Management Division. The email provided a response to the FOSC's subpoena seeking ownership information on Mazapeta Research LLC.

The October email contained two attachments: (1) subpoena issued to Harvard Business Services, Inc. as the registered agent for Mazapeta Research LLC dated October 9, 2024. The subpoena sought any and all records in the registered agent's possession, custody and/or control for Mazapeta Research LLC between the years of 2016 and 2024 and (2) Mazapeta Research LLC – info consisting of 10-pages of documentation in response to the subpoena.⁴¹ The subpoena results confirmed that Mr. (b) (6) was identified as the owner of Mazapeta Research LLC and the last known address listed for Mr. (b) (6) was a Stockton California address from July 27, 2016, which was no longer a viable address.

On November 18, 2024, the NPFC attempted to send an RP Notification letter to Mr. (b) (6) via an email address contained within the subpoena documents.⁴² The NPFC attempted to call Mr. (b) (6) however, the phone number contained within the subpoena documents was not in service. The NPFC then made one last attempt at contacting Mr. (b) (6) by way of a phone number the FOSC provided. The NPFC was able to leave a voicemail message and requested Mr. (b) (6) return the call and provide his contact information. To date, no response has been received.

The FOSC ultimately concluded that a responsible party could not be determined. For the sole purpose of ensuring the claimant's compliance with its presentment obligations under 33 CFR 136.103 and the continued adjudication of this claim, the NPFC adopts this position.

Recovery Operations

On September 4, 2023, the FOSC opened the FPN and activated Global Diving and Salvage to place absorbent and hard boom around the affected area.⁴³ The FOSC also hired Parker Diving to assist in the removal of both diesel and oil from the tug and for boom maintenance.⁴⁴

Weekly drone flights were conducted by San Joaquin County Office of Emergency Services (OES) to monitor the discharge that was coming from the tug MAZAPETA as it was being contained within the boom that was placed in the surrounding area.⁴⁵ The City of Stockton closed a nearby public drinking water intake as a safety precaution for residents of the City of

³⁹ Email from FOSC to NPFC containing Amplifying Information about the RP dated November 15, 2024.

⁴⁰ See, email from FOSC to NPFC dated November 15, 2024, with two attachments.

⁴¹ See, email from FOSC and NPFC Case Management Division dated October 11, 2024, with attachments identified as: (1) USCG subpoena dated October 9, 2024, and (2) 10-pages of documentary results to USCG subpoena.

⁴² Email from NPFC to Mr. (b) (6) with RP Notification Letter attached and dated November 18, 2024.

⁴³ SITREP-POL One dated September 6, 2023.

⁴⁴ *Id.* See also, FOSCR Statement Form dated April 25, 2024.

⁴⁵ SITREP-POL Three dated September 22, 2023.

Stockton.⁴⁶ National Oceanic and Atmospheric Administration (NOAA) Scientific Support Coordinator provided additional sheen modeling and impacts to the City of Stockton water intake.⁴⁷

On December 19, 2023, the Coast Guard and the City of Stockton reached an agreement as to the roles and responsibilities related to the vessel and further oil pollution removal actions.⁴⁸ The agreement, signed by each of the parties including the claimant, articulated that the Coast Guard would be the responsible agency for the removal of all petroleum products from the vessel, in accordance with the NCP and OPA. To successfully remove the largest amount of petroleum products, the Coast Guard determined that the vessel needed to be refloated and dewatered. The document states that “**once petroleum products are removed, the USCG and UC's actions will conclude. The USCG is under no obligation by [the NCP and OPA] to keep the vessel afloat.**” The record indicates that the City of Stockton wished to dispose and destroy the vessel. The agreement continued:

The City of Stockton will be the responsible agency for the destruction and disposal of the vessel. As per [a state assembly bill] California ordinance authorizes public agencies to remove and dispose of unseaworthy marine debris. To determine if the vessel is considered marine debris, the City of Stockton will have the vessel surveyed following the petroleum product removal. If classified as marine debris, the City of Stockton will submit a dead-ship tow plan to the USCG for approval as soon as possible, but not less than 96 hours prior to the movement of the vessel. The City of Stockton is hiring a private contractor to conduct the dead-ship tow under tug power to Mare Island, Vallejo, for final destruction. The City of Stockton and private contractor are responsible for conducting a safe tow. In addition, as per [the NCP and OPA], for any petroleum discharges during this phase, the City of Stockton is the responsible party. As such, the City of Stockton will be responsible for addressing the discharge and for petroleum removal actions.⁴⁹

The agreement also defined “responsible agency” as “the agency [that] will take lead in executing the [activities outlined above], **to include obtaining and expending necessary funding** and providing oversight for that function to the extent allowable under applicable law and policy.”⁵⁰

On December 31, 2023, City of Stockton purchased 3,066.86 acre-feet of water from Woodbridge Irrigation District for the residents of Stockton.⁵¹

⁴⁶ *Id.* See also, FOSCR Statement Form dated April 25, 2024.

⁴⁷ SITREP-POL Five dated April 29, 2023.

⁴⁸ See, “Tug MAZAPETA Response Concurrence Memorandum” dated December 19, 2023.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Woodbridge Irrigation District Invoice # 2284 dated December 31, 2023. Pages 34 – 35/37 of City of Stockton Original Claim submission.

T&T Marine Salvage, Inc., was hired for hydrographic survey in support of removing the tug MAZAPETA from the water.⁵²

Site monitoring and absorbent maintenance was performed until mid-January 2024.⁵³ Approximately 600 gallons of product was discharged into the waterway and approximately 26,000 gallons of oily water was removed from the tug.⁵⁴

On January 13, 2024, raising of the tug MAZAPETA began by pumping out water from the tug while applying righting pressure from the crane.⁵⁵ On January 14, 2024, the tug was refloated and kept stabilized with onboard pumps and pollution removal via vac truck which were conducted through January 16, 2024.⁵⁶ Removal actions as defined by OPA were completed on January 16, 2024, when all recoverable product was deemed removed from the MAZAPETA.⁵⁷ On January 17, 2024, control of the tug MAZAPETA was transferred to the City of Stockton who initiated a dead ship tow of the tug MAZAPETA to a shipyard in Vallejo, California for final disposition.⁵⁸

III. CLAIMANT AND NPFC:

On July 31, 2024, City of Stockton presented its removal costs claim to the National Pollution Funds Center (“NPFC”) for \$921,550.96.⁵⁹ The claim sought compensation for costs incurred by the City of Stockton for the dead-ship tow of the MAZAPETA to a shipyard in Vallejo, California for final disposition⁶⁰ and for costs incurred to purchase 3,066.86-acre feet of supplemental water from the Woodbridge Irrigation District.

The City of Stockton’s claim included the optional OSLTF Form,⁶¹ SITREP-POL One through Three, a City of Stockton letter to Mr. (b) (6) with envelope showing the letter was returned, a City of Stockton’s debt demand letter, emails between the City of Stockton and (b) (6), a picture of Mr. (b) (6) holding a Department of Homeland Security (“DHS”) USCG Bill of Sale, a USCG Maritime Information Exchange Port State Information Exchange document for tug MAZAPETA, emails between NPFC and the City of Stockton, Director of Municipal Utilities Department (“MUD”) Memorandum dated October 18, 2023, Lind Marine Invoice # 91189 dated February 26, 2024 with proof of payment via check # 20030675 dated March 6, 2024, Lind Marine Invoice # 90950 dated January 31, 2024 with proof of payment via check # 20030504 dated February 27, 2024, Lind Marine Invoice # 91654 dated April 1, 2024 with proof of payment via check # 20031810 dated April 24, 2024, Parking Diving Service Invoice # 20-817 dated January 26, 2024 with proof of payment via check # 20031368 dated April 2, 2024, K.D. Moore Associates, Inc. invoice # 2771 dated January 23, 2024 with proof of payment via check # 20031953 dated April 29, 2024, Woodbridge Irrigation Dist.

⁵² See, T&T Marine Salvage, Inc., Invoice # INV3351-TTMS2 signed by FOSCR dated December 31, 2023.

⁵³ CORRECTION to SITREP-POL Seven and Final dated August 9, 2024.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See, 33 U.S.C. § 2701(31). See also, CORRECTION to SITREP-POL Seven and Final dated August 9, 2024. This is also in accord with the UC Decision Memo dated December 19, 2023.

⁵⁸ *Id.*

⁵⁹ City of Stockton Original Claim submission received on July 31, 2024.

⁶⁰ CORRECTION to SITREP-POL Seven and Final dated August 9, 2024.

⁶¹ Claimant provided a signed OSLTF Claim Form on August 26, 2024.

Invoice # 2284 dated December 31, 2023 with proof of payment via check # 20031247 dated March 27, 2024 and City of Stockton's summary of costs for removing the M/V MAZAPETA for \$921,550.96.⁶²

IV. 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.⁶³ An RP's liability is strict, joint, and several.⁶⁴ When enacting OPA, Congress "explicitly recognized that the existing federal and 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."⁶⁵ 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."⁶⁶ 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."⁶⁷

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁶⁸ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁶⁹ 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.⁷⁰

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;

⁶² City of Stockton Original Claim submission received on July 31, 2024. The NPFC re-characterized the cost of the supplemental water as a damage under OPA.

⁶³ 33 U.S.C. § 2702(a).

⁶⁴ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

⁶⁵ *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).

⁶⁶ 33 U.S.C. § 2701(31).

⁶⁷ 33 U.S.C. § 2701(30).

⁶⁸ See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁶⁹ 33 CFR Part 136.

⁷⁰ 33 CFR 136.105.

- (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.⁷¹

The City of Stockton's claimed uncompensated removal costs in the total amount of \$491,178.50 are strictly associated with the destruction and disposal of the MAZAPETA. As discussed above, the Coast Guard clearly articulated in the agreement⁷² between the parties that its pollution response responsibilities would cease once the vessel was refloated, dewatered, and all petroleum products were removed. It also explained that neither the NCP nor OPA required it to keep the vessel afloat or take any other actions with respect to the vessel. Whether the City of Stockton wished to take further steps in accordance with state and local authority to do more, it left to its purview; but given that those actions were not directed by the FOSC, nor determined by the FOSC to be consistent with the NCP, make them non-compensable under OPA.⁷³ As an additional step, the Coast Guard indicated that any pollution associated with the City of Stockton's decision would be attributable to the City. This further supports the position that the Coast Guard deemed the response to the initial incident completed *before* the dead-ship tow and subsequent actions by the City were taken.

As such – and as specifically outlined below – the claimed removal costs in the amount of \$491,178.50, are denied.⁷⁴

Lind Marine Invoice # 91189⁷⁵

City of Stockton is seeking \$94,180.00 for 24/7 security vessel monitoring from January 19, 2024, through February 16, 2024, and includes wire rigging installation. The costs were incurred after the response was deemed complete and are denied without further analysis.

Lind Marine Invoice # 90950⁷⁶

City of Stockton is seeking \$69,000.00 for onsite abatement, a dead ship tow inspection by the salvage operations manager and the cost of the dead ship tow. The costs were incurred after the response was deemed complete and are denied without further analysis.

Lind Marine Invoice # 91654⁷⁷

⁷¹ 33 CFR 136.203; 33 CFR 136.205.

⁷² To be clear, the agreement itself is not dispositive. However, it clearly and accurately articulated the applicable law and regulations in OPA and NCP. To that extent, it is being relied on herein.

⁷³ See, 33 CFR 136.203. *See also, Gatlin Oil Co. v. United States*, 169 F.3d 207 (4th Cir. 1999)(“Moreover, Gatlin's theory that the federal coordinator is deemed to have directed all state and federal removal costs is contrary to 33 CFR § 136.205. The federal coordinator did not determine that the cleanup ordered by North Carolina authorities was consistent with the National Contingency Plan, and he did not direct Gatlin Oil to comply with North Carolina's directives. We conclude that the Fund is not liable for Gatlin's expenditures that were directed by North Carolina authorities.” *Id.* at 213.

⁷⁴ Enclosure Three Provides a Detailed Analysis of the Amounts Approved and Denied by the NPFC.

⁷⁵ Enclosure Three, tab 2.

⁷⁶ Enclosure Three, tab 3.

⁷⁷ Enclosure Three, tab 4.

City of Stockton is seeking \$316,688.00 for 24/7 Security Vessel Monitoring for February 18, 2024, through March 18, 2024, asbestos sampling, removal, and disposal, Final abatement of residual hazmat, non-metal disposal, dry docking, and demolition and scrapping of the tug MAZAPETA is denied because the costs were incurred after the response was deemed complete and are denied without further analysis.

Parker Diving Invoice # 20-817⁷⁸

City of Stockton is seeking \$2,800.00 for technicians to monitor the pumps on the tug MAZAPETA on January 17, 2024, and January 18, 2024. The costs were incurred after the response was deemed complete and are denied without further analysis.

K.D. Moore Associates Invoice # 2771⁷⁹

City of Stockton is seeking \$8,510.50 for a marine surveyor to produce a casualty investigation and report on January 14, 2024, through January 17, 2024. This invoice is denied because the activities associated with this invoice are neither removal costs nor damages as defined by OPA.

Overall Denied Costs: \$491,178.50⁸⁰

The claimed amount for supplemental water is properly characterized as an increased public services damages claim under 33 CFR 136.237. Before reimbursement can be authorized for increased public services damages, the claimant must establish:

- a) The nature of the specific public services provided and the need for those services;
- b) That the services occurred during or after removal activities;
- c) That the services were provided as a result of a discharge of oil and would not otherwise have been provided; and
- d) The net cost for the services and the methods used to compute those costs.⁸¹

The NPFC analyzed each of these factors and determined that the costs incurred and submitted by the City of Stockton and has determined that the purchase of raw water for 200,000 customers in the City is compensable as an increased public service damage based on the supporting documentation provided.⁸² The incident occurred less than a mile away from the City of Stockton's Delta Water Supply Project Intake Pump Station. The City of Stockton's Municipal Utilities Department shut down the IPS to prevent contamination of the water supply, intake, and water treatment plant infrastructure. The shutdown of the IPS caused the City of Stockton to purchase an additional 3,066.86-acre feet of water for the residents of the city. These damages were supported by adequate documentation.

V. CONCLUSION:

⁷⁸ Enclosure Three, tab 5.

⁷⁹ Enclosure Three, tab 6.

⁸⁰ Enclosure Three provides a detailed analysis of the amounts approved and denied by the NPFC.

⁸¹ 33 CFR 136.239.

⁸² 33 CFR 136.237.

After careful analysis of all the supporting documentation provided by the claimant and the entire administrative record, the NPFC finds that on September 4, 2023, the tug MAZAPETA was sinking in the Little Potato Slough, a tributary of the San Joaquin River, a navigable waterway of the United States, causing a visible sheen on the surface of the water. The incident occurred less than a mile away from the City of Stockton's Delta Water Supply Project Intake Pump Station (IPS). City of Stockton's Municipal Utilities Department had to shut down the IPS to prevent contamination of the water supply, intake, and water treatment plant infrastructure. The shutdown of the IPS caused the City of Stockton to purchase an additional 3,066.86 acre-feet of water for the residents of the city. As such, the NPFC finds the claimant's costs for the purchase of supplemental water are OPA compensable damages therefore, the OSLTF is available to pay these costs.

As to the City of Stockton's claim for uncompensated removal costs, the NPFC finds as a matter of fact, the City of Stockton's decision involving the removal and destruction of the vessel is not a removal action as defined by OPA because it was neither directed by the FOSC nor determined by the FOSC to be consistent with the NCP. All costs related, or attendant to, this activity are denied.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, City of Stockton's request for uncompensated removal costs and damages is approved in the amount of **\$430,372.46**.

This determination is a settlement offer,⁸³ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁸⁴ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁸⁵ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

	(b) (6)
Claim Supervisor:	(b) (6)
Date of Supervisor's review:	12/20/2024
Supervisor Action:	<i>Offer Approved</i>

⁸³ 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).

⁸⁴ 33 CFR 136.115(b).

⁸⁵ *Id.*