

U.S. Department  
of Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center

U.S. Coast Guard Stop 7100  
4200 Wilson Blvd, Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CN)



16480

April 3, 2013

**CERTIFIED MAIL Number: 7011 1570 0001 2445 2934**

Thomas O. Melius  
Regional Director, USFWS Midwest Region  
5600 American Boulevard West, Suite 990  
Bloomington, Minnesota 55437-1458

Re: Claim Number: E10527-OI02 - *Enbridge* Oil Spill Assessment

Dear Mr. Melius:

The National Pollution Funds Center (NPFC) has completed its review of the Department of the Interior's<sup>1</sup> (DOI) claim for costs to assess lost recreational use of natural resources resulting from the *Enbridge* oil spill (Claim Number E10527-OI02). We have determined that the claimed amount of \$636,479 is compensable under the Oil Pollution Act (OPA, 33 U.S.C. 2701 *et seq.*) and the OPA regulations (33 C.F.R. §136 and 15 C.F.R. 990 *et seq.*). The basis of our decision follows.

### **Summary of the Incident and Claim**

On or about July 26, 2010, a 30-inch diameter pipeline owned by Enbridge Energy, Limited Partnership (Enbridge) ruptured near Marshall, Michigan, discharging over 840,000<sup>2</sup> gallons of crude oil into a wetland adjacent to Talmadge Creek, which drains into the Kalamazoo River. On July 27, 2010, 2-miles of Talmadge Creek and 38-miles of the Kalamazoo River were closed by the Calhoun and Kalamazoo County Public Health Departments to allow cleanup activities to occur and to protect the public from potential exposure to the oil<sup>3</sup>. A small section of the impacted river was reopened in April 2012, with most of the remaining impacted sections reopened in mid-June 2012<sup>4</sup>. During the closure periods, all water-based recreation activities were prohibited, including fishing, boating, swimming, and boat-based hunting and trapping. On July 27, 2010, the U.S. Environmental Protection Agency identified Enbridge as the owner and/or operator of the

<sup>1</sup> The United States Fish and Wildlife Service (FWS) is the agency within DOI that is leading the natural resource damage assessment of impacts from the *Enbridge* oil spill. References to DOI in this determination will largely include activities and communication undertaken by FWS.

<sup>2</sup> <http://www.fws.gov/midwest/es/ec/nrda/MichiganEnbridge/>

<sup>3</sup> The Michigan Department of Community Health also issued health advisories informing the public to refrain from swimming in, touching, or eating fish from the impacted area.

<sup>4</sup> The entire river was reopened in late-summer 2012.

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facility, i.e., the pipeline, from which the discharge or substantial threat of a discharge took place<sup>5</sup>.

Following the spill, DOI, along with the National Oceanic Atmospheric Administration (NOAA), State of Michigan, and tribal representatives<sup>6</sup> initiated an assessment of natural resource damages resulting from the discharges and response to discharges of oil. Based on the prohibition of water-based activities, and initial assessment findings that indicated shoreline-based activities were negatively impacted by the spill<sup>7</sup>, DOI developed a plan to determine the nature and extent of lost recreational use of natural resources<sup>8</sup> resulting from the Enbridge oil spill incident.

On July 31, 2012, DOI presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund)<sup>9</sup> for \$731,950 to implement its lost recreational use assessment plan. On September 4, 2012, DOI reduced their claim sum certain to \$337,654, reflecting their decision to modify the scope of assessment activities<sup>10</sup>. DOI again amended their claim on December 6, 2012, revising the scope of work and sum certain to \$636,479<sup>11</sup>.

The remainder of this determination presents the NPFC's analysis and findings with respect to this claim and the claim requirements under OPA.

### **Jurisdictional Information**

The NPFC first considered whether the claimed damages arose from an incident as defined by OPA. 33 U.S.C. 2701 *et seq.* To be covered, the incident must involve a discharge of oil or a substantial threat of discharge of oil from a vessel or facility<sup>12</sup> into navigable waters of the United States after August 18, 1990. The Kalamazoo River is a navigable water of the United States. Based on the claim information summarized above, the NPFC finds that this claim is for natural resource damages resulting from an OPA incident.

### **Claimant Eligibility**

Federal natural resource trustees are designated by the President, pursuant to OPA (33 U.S.C. §2706 (b)(2)), with responsibility to assess damages to natural resources under their trusteeship. 33 U.S.C. §2706(c)(1)(A). Pursuant to 33 C.F.R. §136.207, natural resource trustees may present claims to the Oil Spill Liability Trust Fund (OSLTF) for

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<sup>5</sup> <http://www.epa.gov/enbridgespill/ar/enbridge-AR-0004.pdf>

<sup>6</sup> Nottawaseppi Huron Band of the Potawatomi and Match-E-Be-Nash-She-Wish Band of the Pottawatomi

<sup>7</sup> DOI 2012 Lost Recreational Use Assessment Plan, Section 1

<sup>8</sup> DOI 2012 Lost Recreational Use Assessment Plan

<sup>9</sup> The NPFC administers the Fund, including the adjudication of claims presented to the Fund.

<sup>10</sup> DOI responses to NPFC August 14, 2012 follow-up questions, received September 4, 2012

<sup>11</sup> DOI responses to NPFC September 19, 2012 follow-up questions, received December 6, 2012

<sup>12</sup> OPA provides that a "facility" means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. 33 USC § 2701(9). This includes pipelines.

uncompensated natural resource damages, which include the reasonable cost of assessing those damages. 33 U.S.C. §2712(a)(4); 33 U.S.C. §2706(d)(1)(A)-(C); 33 C.F.R. §136.207(b).

This claim for natural resource damage assessment costs was submitted by DOI. DOI, under the authority of the Secretary of the Interior, is an appropriate federal natural resource trustee pursuant to the President's designation of federal trustees under OPA, Executive Order 12777 (56 Fed. Reg. 54757, October 22, 1991), and Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan. 40 C.F.R. §300.600.

### **Claimant's Burden of Proof and Adherence to NRDA Regulations**

Under OPA, trustees bear the burden of proving all evidence, information, and documentation to support their claim for natural resource damages. 33 C.F.R. §136.105. Any determination or assessment of damages to natural resources for the purposes of OPA by a trustee in accordance with the regulations at 15 C.F.R. Part 990 shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act. 33 U.S.C. §2706 (e)(2), 15 C.F.R. §990.13.

After reviewing the claim and supporting documents, the NPFC finds that DOI followed 15 C.F.R. 990 *et seq.* Specifically, they coordinated actions with other trustees to ensure no double recovery of damages, issued a notice of intent to conduct restoration planning, invited Enbridge to participate in the natural resource damage assessment, prepared a plan that was reviewed by the public, and are maintaining an administrative record that is available for public review.

### **General Claim Presentment Requirements**

Claims to the OSLTF must be presented in writing to the Director, NPFC, within three years after the date on which the injury and its connection with the incident in question were reasonably discoverable with the exercise of due care, or within three years from the date of completion of the natural resource damage assessment under OPA (33 U.S.C. §2702(b)(2)(A), whichever is later. 33 U.S.C. §2712(h)(2), 33 C.F.R. §136.101(a)(1)(ii). This claim is for costs associated with the implementation of a plan to assess the nature and extent of lost recreational use of natural resources resulting from the incident. The assessment was not complete when the claim was received on July 31, 2012; therefore, the claim was received within the period of limitations for claims.

Natural resource damage claims presented to the Fund must be based on a plan that the public has had an opportunity to review. 33 U.S.C. §2706(c)(5). On June 25, 2012, DOI published its Lost Recreational Use Assessment Plan on the U.S. Fish and Wildlife Service's Enbridge Oil Spill Natural Resource Damage and Restoration webpage<sup>13,14</sup>, thereby meeting this requirement.

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<sup>13</sup> Email from Kim Mitchell (DOI) to Stephanie Millsap (DOI) on June 25, 2012 confirming plan was posted on website; this correspondence was provided to the NPFC via email from DOI to NPFC on January 16, 2013

## Claim Presentment to the Responsible Party

With certain exceptions, claims to the NPFC for damages must be presented first to the responsible party (RP). 33 U.S.C. §2713(a). If a claim is presented in accordance with §2713(a) and the claim is not settled by any person by payment within 90 days after the date upon which the claim was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. §2713(c)(2).

DOI states that they provided Enbridge with their initial lost use recreational assessment work plan on July 18, 2011<sup>15</sup>, discussed this plan with Enbridge by conference call on August 30, 2011<sup>16</sup>, and provided Enbridge with a revised work plan on September 9, 2011<sup>17,18</sup>. By letter dated November 11, 2011, Enbridge acknowledged the need to collect additional data on lost recreational uses and provided the trustees with an alternative assessment plan<sup>19</sup>. DOI and Enbridge continued to pursue a cooperative assessment plan, including correspondence and a phone call on December 5, 2011<sup>20</sup> and December 12, 2011<sup>21</sup>, respectively.

On April 4, 2012, DOI presented their claim to Enbridge, which included their final lost recreational use assessment plan and claim for implementation costs<sup>22</sup>. The plan identified potential types of recreational losses resulting from the incident, the overall approach to assessing and scaling injury, including an on-site count study, site-specific recreation survey, and the use of a site-specific travel cost model to estimate lost recreational value. The sum certain for the claim presented to Enbridge was \$636,479. On June 20, 2012, Enbridge wrote to the trustees that they do “not believe that implementation of the recreation study as presented is necessary. Rather, it is Enbridge’s belief that sufficient data have been collected to establish a recovery timeline, quantify lost use, and evaluate a compensation plan”<sup>23</sup>.

On July 31, 2012, more than 90 days after presenting Enbridge with its assessment plan and claim for implementation costs, and after Enbridge declined payment, DOI presented a claim to the Fund for funds to implement its Lost Recreational Use Assessment Plan.

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<sup>14</sup> <http://www.fws.gov/midwest/es/ec/nrda/MichiganEnbridge/pdf/EnbridgeRecUseAssessPlanBudget.pdf>

<sup>15</sup> Kalamazoo River Oil Spill Recreation Use Assessment Approach and Cost Estimate dated July 15 2011; in an email from DOI to NPFC on October 17, 2012, DOI stated that this plan was conveyed to Enbridge on July 18, 2011

<sup>16</sup> Phone conversation between DOI and Enbridge; DOI referenced this conversation in an email from DOI to the NPFC on October 17, 2012

<sup>17</sup> Email from DOI to NPFC dated October 17, 2012, explaining the cooperative process with Enbridge

<sup>18</sup> Memorandum from Trustee Council to Enbridge Energy dated September 9, 2011 transmitting the revised work plan

<sup>19</sup> Letter from Enbridge to DOI dated November 11, 2011 conveying revised 2012 NRDA Human Use Assessment Study Plan

<sup>20</sup> Memorandum from Trustee Council to Enbridge dated November 30, 2011

<sup>21</sup> Phone call between trustees and Enbridge on December 12, 2011, referenced in email from DOI to NPFC on October 17, 2012

<sup>22</sup> DOI 2012 Lost Recreational Use Assessment Plan

<sup>23</sup> Letter from Enbridge to DOI dated June 20, 2012

Based on the above facts, the NPFC finds that the claim presented to the Fund was presented to Enbridge in accordance with OPA and the claims regulations.

### **NPFC Review of Claim and Associated Costs**

DOI claims \$636,479 to implement its plan to assess the lost recreational use of natural resources resulting from the closures of Talmadge Creek and the Kalamazoo River in the 2010-2012 period and potential for continuing losses in 2013 due to oil and past and ongoing response efforts. The plan reflects preliminary assessment data<sup>24</sup> that identifies potential recreational losses associated with both water-based (i.e., fishing, boating, swimming, and boat-based hunting and trapping) and shore-line based activities (i.e., walking, running, cycling, nature and wildlife observation, picnicking, and sightseeing).

DOI plans to use a travel cost model<sup>25</sup> to determine the value of lost and diminished value recreational trips resulting from the spill. The model will use site-specific data that DOI will collect from telephone and on-site surveys to calculate the: (1) number and type of lost recreational trips to Talmadge Creek and the Kalamazoo River (pre-spill minus post spill), and (2) changes in value of a trip to these areas. DOI will then determine the total damages for loss of recreational uses as the number of lost and diminished trips times the change in value of those trips. The total dollars of lost and diminished trips (i.e., the natural resource damage) will then be scaled to the cost of appropriate restoration actions using the value-to-cost scaling approach<sup>26</sup>.

Under DOI's plan, assessment activities were proposed to be implemented over a 12 month period from April 2012 to April 2013. DOI subsequently extended the implementation schedule to December 2013 because of continued river closures<sup>27</sup>. DOI emphasized that the changes to the time schedule of the plan would not change the plan's purpose, scope, design, or implementation cost<sup>28</sup>. As well, the updated schedule for the plan will provide a better representation of the recreational impacts from the spill

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<sup>24</sup> This preliminary data was collected using funds obligated from an Interagency Agreement between the NPFC and DOI for the collection of preassessment data.

<sup>25</sup> The travel cost method is used to estimate economic use values associated with ecosystems or sites that are used for recreation. The method can be used to estimate the economic benefits or costs resulting from: changes in access costs for a recreational site; elimination of an existing recreational site; addition of a new recreational site; and changes in environmental quality at a recreational site. The basic premise of the travel cost method is that the time and travel cost expenses that people incur to visit a site represent the "price" of access to the site. Thus, peoples' willingness to pay to visit the site can be estimated based on the number of trips that they make at different travel costs.  
[http://www.ecosystemvaluation.org/travel\\_costs.htm#oview](http://www.ecosystemvaluation.org/travel_costs.htm#oview)

<sup>26</sup> In value-to-cost scaling, restoration actions are scaled by equating the cost of the restoration to the value (in dollar terms) of losses due to the injury (15 C.F.R. §990.53(d)(3)(ii)).

<sup>27</sup> Based on discussions with response agencies, the trustees' plan assumed that most or the entire river would be reopened by mid-Spring 2012; but the river was not reopened until late summer of 2012.

<sup>28</sup> DOI's plan states that the collection of data in 2012, from mid-April through mid-October, is based on the assumption that recreation levels would return to baseline in 2012 and, if this did not occur, changes to the plans would be considered.

because, with a fully opened river, the trustees can more accurately observe the recovery of recreation use and the return of recreation use to baseline<sup>29</sup>.

The NPFC reviewed the claim submission to determine how the costs claimed were determined with respect to the work proposed to be performed. The cost to implement DOI's Lost Recreational Use Assessment Plan is \$636,479. Claimed costs are for contractor labor, travel, and supplies. Contract labor costs and effort total \$528,179, which include 7,848 hours to draft, develop, and pretest the methods for the onsite in-person counts and surveys, develop and pretest the phone surveys, conduct the counts and surveys, analyze the data, and estimate recreational losses using the travel cost model. The remaining \$108,300 is for contract travel and supplies. These costs are reasonable with respect to the size of the spill<sup>30</sup> and geographic area affected<sup>31</sup>, the length of time the river was closed<sup>32</sup>, and the variety of recreational activities potentially affected.

After review of DOI's plan, the NPFC requested that DOI provide the basis for their determination that the use of a travel cost model to calculate injury is an appropriate assessment method<sup>33</sup>. 15 C.F.R. §990.27(c). DOI responded that the travel cost model has been successfully used in numerous natural resource damage assessments for lost recreational use caused by other oil spill incidents and, thus, could be expected to provide information that that will be useful and adequate for restoration planning; additionally, other methods would require more time and/or expense, which would reduce their efficiency<sup>34</sup>.

The NPFC also reviewed DOI's proposed value-to-cost valuation approach to scaling restoration. Under OPA, such methods may be employed in circumstances where the trustees determine that resource-to-resource<sup>35</sup> and service-to-service<sup>36</sup> are not appropriate scaling approaches. 15 C.F.R. §990.53). In response to a request for further information on this requirement from the NPFC, DOI stated that they selected the valuation approach based on determination that: (1) a resource-to-resource scaling approach is not possible because recreational uses are a service provided by natural resources rather than a resource in themselves<sup>37</sup>, and (2) a service-to-service scaling approach, while possible, would not be efficient<sup>38</sup> because of the amount of time and assessment costs required to

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<sup>29</sup> DOI responses to NPFC August 14, 2012 follow-up questions, received September 4, 2012

<sup>30</sup> The Enbridge spill is the largest oil spill in the Midwest and may represent the largest tar sands crude oil spill in the United States.

<sup>31</sup> Thirty eight miles of the Kalamazoo River, two miles of Talmadge Creek and substantial shorelines and wetlands were impacted by the spill.

<sup>32</sup> The river was closed for almost two years.

<sup>33</sup> Email from NPFC to DOI on January 9, 2013

<sup>34</sup> DOI responses to NPFC January 9, 2013 follow-up questions, received February 7, 2013

<sup>35</sup> Resource-to-resource scaling is an approach in which the natural resources injured due to the incident are replaced by an equivalent quantity of discounted natural resources.

<sup>36</sup> Service-to-service scaling is an approach in which the natural the services lost due to the incident are replaced by an equivalent quantity of discounted services.

<sup>37</sup> While the trustees continue to undertake assessments of potential injury to ecological resources and services, those assessments do not account for losses to recreational use of those resources.

<sup>38</sup> The trustees would have to undertake additional surveys that would measure the potential increase in services provided by proposed restoration alternatives.

determine the amount of replacement services<sup>39</sup> generated by potential restoration projects.

According to the administrative record, Enbridge denied the claim because it believed that there was sufficient preexisting data available to determine a recovery timeline, to quantify the loss and to evaluate a plan for compensation; therefore, the trustees' plan for additional surveys and site specific data collection is unnecessary. The NPFC requested that the trustees explain why the planned additional data collection is necessary to determine recreational losses. DOI responded that available data is not specific to recreational use of the Kalamazoo River in the area impacted by the spill<sup>40</sup> and that the RP's suggested approach of extrapolating available data would not yield an appropriate or reliable estimate of actual lost use, or timeline for the recovery of lost use in the impacted area<sup>41</sup>. In reviewing DOI's response, the NPFC finds that the trustee's approach of collecting site specific recreational use information from the affected areas, as opposed to extrapolating available data, is likely to produce a more precise and accurate injury estimate, and that the additional cost of this effort is not unreasonable given the geographic scope of the spill, duration of the closures, and range of recreational activities that were potentially affected.

After reviewing the claimed activity, costs, and additional information provided, the NPFC finds that DOI's: (1) assessment approach to determine injuries for lost human use will provide valid and useful information, thus meeting the standards for assessment procedures under 15 C.F.R. §990.27, (2) value-to-cost restoration scaling approach was reasonably determined in consideration of resource-to-resource and service-to-service approaches, as required by 15 C.F.R. §990.53, and (2) claimed costs of \$636,479 are reasonable and appropriate, given the scale of the incident and need for assessment. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211. The claimed amount, \$636,479, is payable from the Fund.

### **Revolving Trust Fund and Return of Unused Funds to the OSLTF**

As established by OPA (33 U.S.C. §2706(f)) and NRDA regulations (15 C.F.R. §990.65), sums recovered by trustees for natural resource damages must be retained by the trustees in a revolving trust account. Thus, the compensation for this claim will be placed in DOI's trustee restoration account: the Natural Resource Damage Assessment and Restoration Fund (NRDAR Fund). All sums must be used to implement the approved Assessment Plan, as approved by this determination. All unused funds shall be returned to the OSLTF in a timely basis and no later than six months from the completion of the assessment as described in this determination in accordance with 15 C.F.R. §990.65 and 33 U.S.C. § 2706(f).

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<sup>39</sup> DOI responses to NPFC January 9, 2013 follow-up questions, received February 7, 2013

<sup>40</sup> Memorandum from trustees to NPFC dated July 18, 2012, whereby DOI states that available data is does not address the diverse set of recreational uses in the impacted area and is limited in its ability to be extrapolated to the various geographic locations within the impacted area.

<sup>41</sup> In an email from DOI to NPFC on March 25, 2013, DOI further addressed the need to collect additional data to accurately assess lost recreational use.

## **Cost Documentation, Progress Reporting, and Final Report**

As the claimant, DOI shall ensure that all expenditures of OSLTF funds are documented appropriately and spent according to the Lost Recreational Use Assessment Plan as approved in this determination. Any funds not spent or appropriately documented shall be returned to the Fund.

One year from the date of this determination, and annually thereafter, DOI shall provide the NPFC with a report on the status of implementation and expenditures. These annual progress reports should include:

1. Certification by DOI that all assessment activities have been conducted in accordance with the Lost Recreational Use Assessment Plan as approved in this determination;
2. A progress report that includes a description of work accomplished, timeline for future activities, and any unexpected problems incurred during implementation;
3. A summary of expenditures by category (i.e., labor, consultant/contractors, and travel); and
4. A narrative description of the work accomplished by each individual and how that work fits into the overall progress for the year. Enough detail should be included to determine reasonableness of costs for each employee when cost documentation is received with the final report.

In addition to annual reports DOI shall submit a final progress report within 120 days of the date that plan implementation is complete. This report should include:

1. Certification by DOI that all expenditures of OSLTF funds were in accordance with the plan as approved by the NPFC;
2. A summary of findings;
3. Copies of final reports and/or studies;
4. Documentation of OSLTF funds remaining in the Revolving Trust Fund for this claim, including account balance and interest earned; and
5. Documentation of all expenditures as follows:
  - a. Labor: For each employee –
    - i. A narrative description of the work accomplished by each individual and how that work fit into the plan. Enough detail should be included to determine reasonableness of costs; and
    - ii. The number of hours worked, labor rate, and indirect rate. An explanation of indirect rate expenditures, if any, will be necessary;
  - b. Travel: Paid travel reimbursement vouchers and receipts;
  - c. Contract: Activities undertaken, lists of deliverables, and contract invoices and receipts;
  - d. Purchases/Expendables: Invoices and receipts, along with an explanation of costs; and
  - e. Government Equipment: Documentation of costs, including the rate (i.e., hourly, weekly) and time for all equipment used for which costs were incurred.



With the final report(s), the NPFC will reconcile costs and all remaining funds and/or inadequately documented costs will be returned to the OSLTF.

The NPFC has prepared a standardized template with detailed instructions to facilitate annual progress and final cost reporting. These templates are provided on the compact disc included with this determination.

### **Conclusion**

The NPFC has reviewed the claim submitted by DOI for costs to assess lost human use of natural resource resulting from the *Enbridge* oil spill in accordance with OPA (33 U.S.C. 2701 *et seq.*) and its implementing regulations (15 C.F.R. 990 *et seq.* and 33 C.F.R. Part 136). We have determined that \$636,479 is compensable to fund activities in the Lost Recreational Use Assessment Plan. This offer constitutes full and final payment for costs associated with this damage assessment plan.

If you accept this offer, please complete the enclosed Acceptance/Release Form and return to:

Director (cn)  
National Pollution Funds Center  
U.S. Coast Guard Stop 7100  
4200 Wilson Boulevard, Suite 1000  
Arlington, VA 20598-7100

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the offer is void. If the settlement is accepted, your payment will be mailed within 30 days of receipt of the Release Form. Please provide account information and instruction for the transfer of funds to your trustee account when you submit the Release Form.

If you have any questions regarding this determination, please feel free to contact me at .

  
Claims Manager  
Natural Resource Damage Claims Division

- Encl: (1) Acceptance/Release Form  
(2) Compact Disc with standardize template and instructions to facilitate annual progress and final cost reporting

U.S. Department  
of Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

U.S. Coast Guard Stop 7100  
National Pollution Funds Center  
4200 Wilson Boulevard, Suite 1000  
Arlington, VA 20598-7100

Claim Number: E10527-OI02	Claimant Name: Department of the Interior
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On July 31, 2012, DOI presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) in the total amount of \$636,479 for upfront costs to lost human use of natural resources resulting from the discharge of oil on or about July 26, 2010, from a pipeline owned by Enbridge Energy (the *Enbridge* oil spill).

DOI accepts the settlement offer of \$636,479 as full compensation for the cost to assess lost human use damages as described in the April 3, 2013 determination (E10527-OI02).

DOI agrees to provide annual and final reports to the NPFC as directed in the determination. DOI agrees to comply with 33 U.S.C. §2706(f) and 33 C.F.R. §136.211 by depositing into a revolving trust account the amounts awarded in the April 3, 2013 determination and any amounts in excess of those required for these reimbursements to accomplish the assessment studies approved in the determination shall be deposited to the OSLTF.

DOI hereby assigns, transfers, and subrogates to the United States all rights, claims, interest and rights of action, that it may have against any party, person, firm or corporation that may be liable for the loss. DOI authorizes the United States to sue compromise or settle in the name of DOI and that the NPFC be fully substituted for DOI and subrogated to all DOI rights arising from the April 3, 2013 determination.

DOI acknowledges that the United States anticipates the pursuit of legal actions associated with the *Enbridge* incident but warrants that no settlement will be made by any person on behalf of DOI with any other party for costs that are the subject of the claim against the OSLTF and DOI will cooperate fully with the NPFC in any claim and/or action by the United States against any person or party to recover the compensation paid by the OSLTF. The cooperation shall include but not be limited to, immediately reimbursing the OSLTF any compensation received from any other source for the same claim, and providing any documentation, evidence, testimony, and other support, as may be necessary for the NPFC to recover from any other party or person

DOI certifies that to the best of its knowledge and belief the information contained in this claim represents all material facts and is true, and understands that misrepresentation of facts is subject to prosecution under federal law, including but not limited to 18 U.S.C. §§287 and 1001.

**FOR THE DEPARTMENT OF THE INTERIOR**

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Thomas Melius  
Regional Director, USFWS Midwest Region

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Date