

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center  
United States Coast Guard

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October 28, 2009

*CERTIFIED MAIL Number: 7006 2760 0003 6206 8573*

Herbert Frost, Ph.D.  
Associate Director, Natural Resources and Stewardship  
U.S. National Park Service  
1849 C Street, NW, Mailstop 3130 MIB  
Washington, D.C. 20240

Re: Claim Number: E02414-OI2 - Pryor Oil Restoration

Dear Dr. Frost:

The National Pollution Funds Center (NPFC) has reviewed the claim submitted by the U.S. Department of the Interior (DOI) (\$825,374.00) for natural resource damages resulting from the Pryor Oil Well Blowout. We have determined that \$699,176.00 is compensable to fund implementation, oversight, and administration of three restoration projects to restore natural resource injuries resulting from this incident. We have also approved up to \$71,660.85 for contingency costs subject to NPFC review and approval of the trustees' justification and past expenditures. Our determination was made in accordance with the Oil Pollution Act (OPA, 33 U.S.C. 2701 *et seq.*) and the OPA regulations found at 33 C.F.R. §136 and 15 C.F.R. 990 *et seq.* The basis for our decision follows.

### **Summary of Claim**

On July 19, 2002, the Howard/White Unit No. 1 oil well in northeastern Tennessee (hereafter referred to as the "well") was being drilled to test for commercial oil production. After drilling to a certain depth, oil began to discharge around the well and outside of the containment area at an estimated rate of 200 to 500 barrels per hour (total spill volume unknown). Oil flowed down two paths from the well into White and Clear Creeks, both tributaries of the Obed Wild and Scenic River (WSR). Hours after the discharge, the well caught fire and burned oil-soaked vegetation and soils. The responsible party (RP), Pryor Oil Company, conducted initial response activities, before the U.S. Environmental Protection Agency (EPA) took over the response on July 21, 2002 (EPA POLREPS 1-26, FPN E02414, Site ID# Z4EZ).

The natural resource trustees include DOI, represented by the National Park Service (NPS) who serves as Lead Administrative Trustee (LAT) for the U.S. Fish and Wildlife Service (USFWS) and the Tennessee Department of Environment and Conservation

(TDEC) for the State of Tennessee). The trustees conducted a NRDA to determine the nature and extent of natural resource losses resulting from the spill and the type and scale of restoration necessary to compensate for those losses. The injury assessment and restoration planning efforts are detailed in the trustees' Damage Assessment and Restoration Plan (DARP).

On November 24, 2008, the NPFC received a natural resource damage (NRD) claim from the NPS, on behalf of itself, the USFWS, and the TDEC. The claim totaled \$825,374.00, representing \$699,176.00 to implement three restoration projects and \$126,198.00 for project contingency costs.

To support their claim, the trustees provided the NPFC with an Administrative Record (AR) that includes the information they considered as they addressed restoration and compensation issues and decisions. Based on review of the AR and the requirements for claims under OPA, the NPFC accepts the trustees' estimates of injuries to forest resources, lost use, and stream services, and approves \$699,176.00 to implement three projects to compensate for these losses. Table 1 summarizes injury findings, restoration projects, and claimed and approved costs. The remainder of this determination presents the NPFC findings with respect to the claim and the claims requirements under OPA.

| <b>Table 1. Summary of Injury, Selected Restoration Alternatives, and Claimed and Approved Costs.</b> |                                       |            |                                       |                  |                       |
|---|---------------------------------------|------------|---------------------------------------|------------------|-----------------------|
| Resource  | Injury Estimate                       |            | Restoration Project                   | Claimed Costs    | NPFC Determination    |
| Forest  | 0.74 acre                             | 24.3 DSAYs | Invasive Vegetation Removal           | \$9,018          | \$9,018               |
| Lost Use  | 509 fishing days<br>400 paddling days | \$56,446   | Land Acquisition (18.4 acres)         | \$73,496         | \$73,496              |
| Stream Services   | 6.29 acres                            | 26.1 DSAYs | Centennial Park Watershed Improvement | \$460,689        | \$460,689             |
| Trustee Oversight and Administration  |                                       |            |                                       | \$155,973        | \$155,973             |
| <b>Total</b>  |                                       |            |                                       | <b>\$699,176</b> | <b>\$699,176</b>      |
| Contingency   |                                       |            |                                       | \$126,198        | \$71,661 <sup>a</sup> |

<sup>a</sup> Approved contingency will be available when, and if, appropriate justification is provided to the NPFC

### Jurisdictional Information

The NPFC first considered whether the claimed damages arose from an incident as defined under 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 into navigable waters of the United States after August 18, 1990. Based on information provided by the trustees and the EPA summarized above, this incident resulted from the discharge of oil from the well into Clear and White Creeks in July 2002, both of which have been classified as navigable waterways. The NPFC therefore finds that this spill is an incident as defined by OPA.

## **Claimant Eligibility**

Pursuant to 33 C.F.R. §136.207, natural resource trustees may present claims to the Oil Spill Liability Trust Fund (OLSTF) for uncompensated natural resource damages. Natural resource trustees are designated according to Section 1006(b) of OPA (33 U.S.C. §2706 (b)); specifically, federal trustees are designated by the President, and state trustees by their respective Governors.

This claim for natural resource damages was submitted by the NPS, on behalf of itself, the USFWS, and the TDEC. The NPS and the USFWS, under the authority of the Secretary of the Interior, are authorized federal natural resource trustees 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). TDEC is also an authorized state natural resource trustee based on delegation letters on file at the NPFC. Accordingly, these claimants are eligible to present claims to the NPFC.

## **Claim Presentation**

The NPS, acting as the LAT, submitted the NRD claim to the NPFC on November 24, 2008. It was presented in writing for a sum certain, along with a cover letter and AR documents, including a DARP and documentation of the claim components and costs. The trustees provided for public review of the DARP by issuing a news release on February 4, 2008, printing a notice of availability in local newspapers on February 6, 2008, and posting the DARP on the NPS Planning, Environment and Public Comment website (<http://parkplanning.nps.gov>). The NPFC finds that these efforts satisfy the requirements set out in 33 C.F.R. §136.105.

The time limitation for NRD claims established by OPA (33 U.S.C. §§2712(h)(2) and 2717(f)(1)) and both the NRDA (15 C.F.R. §990.64(b)) and claims regulations (33 C.F.R. §136.101) is three years from completion of the NRDA. The assessment was completed on or about May 15, 2008, and the claim was submitted in November 2008. The NPFC therefore finds that the claim was presented within the statute of limitations set out in OPA and its implementing regulations.

Pursuant to 33 C.F.R. §136.103, all claims for damages must be presented first to the RP, if an RP has been designated. The EPA federal On-Scene Coordinator designated the Pryor Oil Company as the RP for this oil spill incident. On August 12, 2008, the trustees notified the following individuals that the DARP had been completed and demanded funding to implement the restoration projects selected by the trustees to restore the natural resource damages resulting from the well incident:

Frank Halbhuber, Registered Agent  
Pryor Oil Company  
200 SE Douglas, Suite 105  
Lee's Summit, Missouri 64063

Jimmy L. Pryor, President  
Pryor Oil Company  
5565 NW Barry Rd  
Kansas City, Missouri 64154

Beverlee J. Roper, Esq.  
Blackwell Sanders Peper Martin, LLP  
P.O. Box 419777  
Kansas City, Missouri 64141-6777

On September 8, 2008, the RP's attorney (Ms. Roper) responded with an inability to meet the demand for funding or implementation of any assessment or restoration. Thus, the NPFC finds that the trustees' satisfied the presentment requirements of OPA, as provided in 33 C.F.R. §136.103.

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

Under OPA, trustees bear the burden of proving their entitlement to the amount claimed for compensation of natural resource damages (33 C.F.R. §136.105). Trustees are assisted by the rebuttable presumption found at 33 U.S.C. §2706 (e)(2) and 15 C.F.R. §990.13 when they follow 15 C.F.R. 990 *et seq.* Trustee determinations made in accordance with 15 C.F.R. 990 *et seq.* are initially presumed correct, but the presumption of correctness may be rebutted if the rebuttal evidence is of sufficient weight.

After careful review of the claim and the supporting AR documents, the NPFC finds that the trustees followed 15 C.F.R. 990 *et seq.* Specifically, the trustees: coordinated actions to ensure that full restoration is achieved without double recovery of damages; invited the RP to participate in the damage assessment process, issued a notice of intent to conduct restoration planning; prepared a draft and final DARP that was reviewed by the public; maintained an AR that was made available for public review, and presented a demand for funding selected restoration projects to the RP.

#### **Injury Determination and Quantification**

Following 15 C.F.R. 990 *et seq.*, the trustees used information collected during their preassessment efforts to identify three types of natural resource injuries that likely resulted from the incident: forest resources, stream services, and lost visitor use. Specific assessments were then conducted for each of these types of injury to determine the need for, type of, and scale of restoration required to compensate for the losses.

## *Forest Resources*

The trustees determined that 0.74 acre of forest between the well and White and Clear Creeks was heavily oiled and subsequently burned when the oil caught fire. Using data from forest vegetation sampling, soil sample analyses, and previous studies on the recovery period for lands subject to agriculture use and strip mining<sup>1</sup>, the trustees determined that there was an initial 100 percent service loss within the 0.74 acre oiled and burned area and, based on the rate of biomass accumulation and the age structure of a reference forest, it will take 25 years to reestablish the site and 172 years for the forest to return to prespill biomass levels. Using a Habitat Equivalency Analyses (HEA) model, the trustees estimated injury to forest resources in the 0.74 acre site as 24.3 discounted service acre years (DSAYs).

In reviewing the trustees' forest assessment, the NPFC first considered whether the claimed damages were caused by the release or substantial threat of release of oil from the well into navigable waters. As stated above, the NPFC determined that uncontained oil from the well discharged into navigable waterways and adjoining shorelines. In addition, according to the trustees, oil-saturated sediments in the area between the well and the creeks continued to be a source of oil discharging into the two waterways for at least two years after the initial release. Thus, the NPFC finds that claimed forest injuries resulted from oil that discharged or posed a substantial threat of discharge to navigable waters.

The NPFC next considered whether claimed injuries resulted from the discharge of oil, rather than the subsequent fire, as required under OPA<sup>2</sup>. The trustees' claim for injury to forest resources is limited to the oil footprint area (i.e., 0.74 acre). Areas outside the oil footprint that were burned were not included in the injury assessment. Accordingly, the NPFC finds that the geographic extent of the claimed forest injuries is appropriate.

Finally, the NPFC reviewed the technical approach and parameters that were developed by the trustees to quantify injury to forest resources. The NPFC finds that the trustees' assessment was based on widely used field methods, accepted analytical techniques, and a reliable and valid modeling approach (i.e., HEA). We note, however, the acknowledged lack of past studies on the effects of oil saturation and burning, and the trustees' reliance on literature from studies involving agriculture use and strip mining to estimate the rate of natural recovery. While the NPFC has reservations about the 25-year establishment timeframe and 172-year recovery period, we conclude that there is not sufficient evidence in the record to rebut the trustees' professional judgment and presumed correctness of these estimates. Accordingly, the NPFC accepts the forest service injury of 24.3 DSAYs.

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<sup>1</sup> Webster, C.R. and M.A. Jenkins, 2006. The impact of an oil spill and subsequent burning on the vegetation of Obed Wild and Scenic River, Tennessee: Estimating the time interval required for recovery of stand biomass. Prepared for the Obed Wild and Scenic River, National Park Service, Wartburd, TN. 13pp.

<sup>2</sup> *Gatlin Oil Co., Inc. v U.S.* held that OPA damages are those that result from a discharge of oil or from a substantial threat of a discharge of oil.

### *Stream Services*

Following the blowout, oil flowed from the well downhill into Clear and White Creeks, and continued to seep into Clear Creek. In their DARP, the trustees state that it was not possible to determine if the source of the continued releases is the well or fractures in the geologic formation caused by the heat of the oil well fire<sup>3</sup>. Based on further analyses, however, the trustees provided the NPFC with supplemental information from their geologists indicating that the continuing discharges into Clear Creek are most likely from the oil-soaked soils between the well and the creeks.

To determine injury to stream services, the trustees surveyed riparian vegetation and assessed benthic algae, fish populations, and the chemical composition of water and sediments. This information was then used to develop input parameters for HEA models to estimate injury.

Within White Creek, the trustees determined that the geographic extent of injury was 1.62 acres (1,174 feet (ft) x 60 ft). The trustees assumed an initial 100 percent service loss from the July 2002 spill date through August 2002, five percent through 2005 (three years after the incident), and full recovery through 2006 (four years after the incident). Using these injury parameters in a HEA model, the trustees determined that injury to stream services in White Creek was 1.37 DSAYs (Table 2).

The trustees divided Clear Creek into two sections, reflecting differing degree and duration of oil exposure and injury. The Seep Reach is a 2.41 acre area (1,320 ft x 79.4 ft) section from the first riffle up to the release site, where oil continues to seep in the creek. The Downstream Reach is a 2.26 acre area (1,240 ft x 79.4 ft) from the first riffle to Barnett Bridge.

Within the Clear Creek Seep Reach the trustees determined 100 percent initial loss, 25 percent through 2006, and 50 percent (low flow years; 66 percent of years) or 25 percent (high flow years; 33 percent of years) loss through 2022. In the Downstream Reach, the trustees determined 100 percent initial loss, 10 percent through 2006, and 25 percent (low flow years: 66 percent of years) or 10 percent (high flow years; 33 percent of years) loss through 2022. The 20-year duration of injury was estimated based on observed seepage rates in the six years following the spill. Using these injury parameters in a HEA model, the trustees determined that injury to stream services in the Seep Reach and Downstream Reach was 16.01 and 8.76 DSAYs, respectively (Table 2). The total injury to stream services, including White Creek, Clear Creek Seep Reach, and the Clear Creek Downstream Reach, was therefore calculated as 6.29 acres and 26.14 DSAYs (Table 2).

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<sup>3</sup> See DARP Executive Summary, page v.

|                              | Injury Area (acres) | Injury Estimate (DSAYs) |
|------------------------------|---------------------|-------------------------|
| White Creek                  | 1.62                | 1.37                    |
| Clear Creek Seep Reach       | 2.41                | 16.01                   |
| Clear Creek Downstream Reach | 2.26                | 8.76                    |
| <b>Total</b>                 | 6.29                | 26.14                   |

The NPFC reviewed the trustees' assessment, and, in particular, the assumption of injury through 2022 attributed to oil seeping from the stream bank into Clear Creek. The NPFC notes that nearly 70 percent of the claimed injury in Clear Creek occurs between 2006 and 2022. In response to a NPFC request for additional justification of the 20- year duration of injury, the trustees stated that their injury estimate considers the continued discharge into the creek from oil-saturated soils and that oil that accumulates in soils can persist for decades when there are no active clean-up activities.

After reviewing this additional information, the NPFC continues to have reservations about the uncertainty of the trustees' estimate of the duration of injury resulting from the continuing seepage of oil into the creeks. The NPFC finds, however, that: (1) peer-reviewed literature is available to support the trustees' assertion that oil in the environment can persist for long periods of time<sup>4, 5</sup>, (2) the trustees' 6 years of monitoring data shows consistent oil seepage rates and frequency; (3) expert opinions from trustee geologists and economists support the injury duration estimate; and (4) that the trustees are only claiming 60 percent of the project costs to restore this injury (i.e., 26.1 DSAYs). Therefore, based on a preponderance of the available evidence, the NPFC accepts the trustees' estimate of injury to stream services.

### *Visitor Use*

On July 23, 2002, the NPS closed approximately 5.5 miles of Clear Creek to all recreational activity to facilitate response efforts and protect public health and safety. The trustees estimated lost visitor use as the lost fishing and paddling opportunities resulting from this closure. Using baseline estimates of visitors per week, the trustees calculated 509 lost fishing days and 400 lost paddling days. The trustees then used the benefits transfer method with consumer surplus values of \$58.26 and \$66.98 (for fishing and paddling, respectively) to determine the lost economic value of \$29,654.00 for lost fishing days and \$26,792.00 for lost paddling days. Total lost use injury was therefore calculated as \$56,446.00.

Upon review of the trustees' assessment, the NPFC requested further justification of the consumer surplus values used to determine lost fishing and canoe trip damages. The

<sup>4</sup> Short, J.W., Irvine, G.V., Mann, D.H., Maselko, J.M., Pella, J. J., Lindeberg, M.R., Payne, J.R., Driskell, W.B., and Rice, S.D. 2007. Slightly weathered Exxon Valdez oil persists in Gulf of Alaska beach sediments after 16 years. *Environ. Sci. Technol.*, 41(4)1245-1250.

<sup>5</sup> Reddy, C.M., Eglinton, T.I., Hounshell, R.B., White, L.X., Gaines, R.B., and Frysiner, G.S. 2002. The West Falmouth oil Spill after Thirty Years: The persistence of petroleum hydrocarbons in Marsh sediments. *Environ. Sci. Technol.*, 36(22)4754-4760.

trustees responded that they used the meta regression analysis benefit transfer method described by Rosenberger and Loomis (2001)<sup>6</sup> to determine consumer surplus values. Meta regression analysis is widely used in a variety of scientific disciplines to draw statistically-robust conclusions from a large number of scientific studies. It uses a larger number of studies than a simple benefits transfer model, and provides a more rigorous measure of central tendency, methodological differences among studies, forecasted value estimates for new or unstudied sites, and site specific conditions (specifically the value of lost uses on public land).

After review of this supplemental information, the NPFC finds the trustees' methods and estimates of injury are reasonable.

### **Restoration Alternatives**

The trustees considered a range of restoration alternatives to compensate for each of the three categories of injury (forest resources, stream services, and visitor use). They evaluated each restoration project using the criteria provided at 15 C.F.R. §990.54, scaled the projects to compensate for the quantified injury, and selected a preferred alternative(s) for each injury category.

#### *Restoration of Forest Resources*

The trustees considered four alternatives to restore the 0.74 acre (24.3 DSAYs) of injured forest. Two alternatives were selected: (1) removing invasive plant species from the injury area, and (2) acquiring a land or conservation easement in the Obed River Wild and Scenic River corridor. Alternatives considered but not selected include Hemlock Woolly Adelgid removal and fertilizing the oiled and burned area.

Invasive vegetation control would occur in the footprint of the burned area to facilitate natural recovery of native plants and trees, thereby reducing the duration of injury. The proposal is for semi-annual removal of invasive plant species from the footprint of the oiled and burned area for 25 years. Total claimed project cost is \$9,018.00.

The second forest restoration project selected by the trustees is acquisition of land or obtaining a conservation easement in the Obed WSR corridor from a willing landowner. The trustees have identified two parcels: Tract 101-10 (conservation easement) and Tract 102-14 (acquisition). Both options would protect additional forest resources from future development, thereby compensating for the lost forest services.

The trustees used a HEA model, assuming that 50 percent of the tract will be developed within 20 years without acquisition, to determine that acquisition or a conservation easement for 2.3 acres compensates for 24.3 DSAYs. The average cost of an acre of land within the authorized boundary of the Obed WSR is \$3,500.00. Other costs associated

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<sup>6</sup> Rosenberger, R.S, and J.B. Loomis, 2001. Benefit Transfer of Outdoor Recreation Use Values. A Technical Document Supporting the Forest Service Strategic Plan (2000 Revision), USDA Forest Service General Technical Report RMRS-GTR-72.



with this project include an environmental assessment (\$2,500.00), appraisal (\$5,000.00), and closing costs (\$1,500.00). Thus, the total cost for the 2.3 acre acquisition to restore injured forest resources is \$17,050.00.

The NPFC finds that the trustees considered a reasonable range of restoration alternatives, and that the two selected projects (invasive vegetation control and land acquisition) meet the objectives of restoring lost forest services. We also find that the proposed project costs (\$17,050.00) are reasonable.

#### *Restoration of Stream Services*

The trustees selected a watershed improvement project at Centennial Park on the Little Obed River to compensate for the lost stream services (6.29 acres; 26.1 DSA Ys). Restoration alternatives considered, but not selected, include implementation of best management practices to control sedimentation, plugging leaking wells, implementation of the spotfin chub recovery plan, and regrading, revegetation, and construction of grass lined waterways along Gollieher Creek.

The stormwater retention and biofiltration components of the Centennial Park Watershed Project would improve floodplain functions and water quality by reducing the effects of erosion and non point source pollution. The project includes regrading 0.189 acre (8,233 square feet) of eroded stream bank, removing invasive vegetation along 750 ft of the stream, and creating 2.12 acres of bog garden and 2.0 acres of rain garden water retention structures.

The trustees used a HEA model to scale this project to the stream injuries (26.1 DSA Ys), assuming that the footprints of the bog garden and rain garden will provide 25 percent and 20 percent of stream services, respectively. Project costs total \$762,649.00, \$301,960.00 of which will be covered by the City of Crossville, Department of Public Works through in-kind contribution and volunteer efforts. Thus, the claimed cost for this project is \$460,689.00.

The trustees believe that the Centennial Park project has a high likelihood of success and will provide substantial environmental and socio-economic benefits. The local cost share arrangement will enhance the benefits and ensure long-term stewardship and maintenance for the project. The project is also supported by city engineers and the Obed Watershed Community Association.

After reviewing the claim and, in particular the trustees' scaling approach, the NPFC requested further justification of the 25 and 20 percent habitat tradeoff ratios (i.e., 4 acres bog garden services = 1 acres stream services and 5 acres rain garden services = 1 acre stream services). The trustees responded that the proposed restoration will encourage more natural habitat where high water can spread out and dissipate, improve water quality that will increase secondary production, and that they used their professional judgment to determine the equivalent services between the habitat types.

The NPFC has reviewed this response, and continues to have reservations about the application of these tradeoff ratios. While we accept that the projects will improve water quality, which will enhance secondary productivity, the quantitative connection between these gains relative to the proposed project has not been established other than by the trustees' professional judgment. However, the NPFC does not have evidence to rebut the presumed correctness of the trustees' approach. The project itself has merit and is a cost-effective. Therefore, the NPFC finds that the selected watershed project at Centennial Park meets the objectives of restoring lost stream services from the well incident and that claimed project costs (\$460,689.00) are reasonable.

#### *Restoration of Lost Visitor Use*

The trustees determined lost visitor use as the dollar value (\$56,446.00) of lost paddling and fishing trips. Their approach to restore these losses is to add the \$56,446.00 to the land acquisition project selected to restore forest service injuries to acquire additional land within the Obed WSR boundary. Other alternatives considered, but not selected, include construction of wayside exhibits and public education through signs.

At an estimated cost of \$3,500.00 per acre, lost use damages (\$56,446.00) allows for acquisition of 16.1 additional acres. The trustees believe that protecting additional land will compensate for lost visitor use services in the same geographic vicinity of the spill, provide a number of benefits for recreational users, and provide additional habitat for wildlife and native vegetation.

The NPFC finds that the trustees considered a reasonable range of restoration alternatives to compensate for lost visitor use services, and that the selected restoration project will reasonably enhance visitor experiences at those areas impacted by the spill. Accordingly, the NPFC finds that the additional land acquisition/conservation easement meets the objective of restoring lost visitor use damages.

#### **Trustee Oversight and Administration**

The trustees' claim includes \$155,973.00 for future trustee oversight and administration of restoration project implementation. Costs are budgeted as two meetings and one site visit per year (for two years), periodic conference calls, and progress and cost reporting to the NPFC. The NPFC finds the \$155,973.00 in oversight and administrative costs to be reasonable given the complexity of restoration activities involved in this plan.

#### **Contingency Funding**

The trustees request \$126,198.00 as contingency funding for "unforeseen" future NRDA costs. The NPFC recognizes that claimed costs of approved projects are estimates and may unexpectedly increase as a result of new and/or unforeseeable circumstances. However, the NPFC's policy is to fund the contingency request when and if needed, and supported by appropriate justification and documentation of costs incurred to date. Accordingly, the OSLTF will remain available for contingency costs that arise during the implementation of the approved projects. The amount available (\$71,660.85) is

authorized by restoration projects, and was assigned based on the NPFC's determination of the degree of each project's complexity or potential for unknown events. See, Table 3.

The NPFC's determination differs from the claimed request in two ways. First, the NPFC does not approve contingency for the project to restore lost visitor use as injury was determined as a dollar amount, and paying a contingency above that dollar amount would result in over compensation. Second, the NPFC authorizes a 15 percent contingency cost, as opposed to the trustees claimed 25 percent contingency cost, for the Centennial Park Project based on the degree of complexity of the Project. The high visibility of and easy access to the site allow problems to be identified and forwarded for action quickly by park staff and users and future maintenance is predicted to be relatively simple and inexpensive compared with similar projects in more remote and undeveloped areas.

| Restoration Project                      | Cost (Injury)                  | Claimed         | Approved       |
|--|--------------------------------|-----------------|----------------|
| Land Acquisition                         | \$17,050<br>(Forest Resources) | \$2,558 (15%)   | \$2,558 (15%)  |
|  | \$56,446<br>(Visitor Use)      | \$8,467         | \$0            |
| Centennial Park<br>Watershed Restoration | \$460,689                      | \$115,173 (25%) | \$69,103 (15%) |
| <b>Total</b>                             |                                | \$126,198       | \$71,661       |

If the need for contingency funds arises, DOI should make a formal request to the NPFC. Such a request can be made through the annual cost and progress reporting described below, and must include a justification for the additional funds and documentation of past expenditures. In a rare case additional contingency may be granted if adequate documentation and rationale are provided.

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

As the designated LAT for this claim, DOI shall ensure that all expenditures of NPFC funds (including interest earned) are documented appropriately, spent according to the DARP as approved by this determination, and reported to the NPFC. 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 project implementation and expenditures. Annual progress reports should include the following for each funded project:

1. Certification by DOI that all expenditure of NPFC funds (including interest earned) were in accordance with the DARP as approved by the NPFC;
2. A summary of work accomplished, the timeline for future activities, and any unexpected problems incurred during implementation;

3. A summary of expenditures by category (labor, contracts, purchases/expendables, travel, government equipment);
4. A description of the work accomplished by each individual and how that work fits into the overall progress of the project for the year. Enough detail should be included to determine reasonableness of costs; and
5. Available project implementation photos showing pre-construction and various phases of construction.

A final report should be submitted to the NPFC for each approved project (i.e., Invasive Vegetation Removal, Land Acquisition, and Centennial Park) within 120 days of project completion. This report shall include:

1. Certification by DOI that all expenditure of NPFC funds (including interest earned) were in accordance with the DARP as approved by the NPFC.
2. A summary of project implementation and restoration benefits achieved;
3. Copies of final reports and/or studies;
4. "As-built" construction and landscaping plans, as available (e.g., plans approved or accepted by the local or state permitting authority);
5. Available final project implementation photos;
6. Documentation of NPFC funds remaining in the Revolving Trust Fund established for this claim, including account balance and interest earned;
7. 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 project. Enough detail should be included to determine reasonableness of costs.
    - 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 NPFC.

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.

## Revolving Trust Fund

The NPFC will deposit \$699,176.00 into the non appropriated DOI NRDA Fund revolving trust account. DOI has demonstrated that this is a revolving trust fund account set up pursuant to OPA (33 U.S.C. §2706(f)), the claims regulations (33 C.F.R. §136.211), and the NRDA regulations (15 C.F.R. §990.65).

## Conclusion

The NPFC has reviewed the claim for natural resource damages resulting from the well incident 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. §136). We have determined that \$699,176.00 for future restoration activities is compensable, and approved up to \$71,660.85 for potential contingency costs subject to NPFC review and approval of appropriate justification and documentation of expenditures (Exhibit 1).

If you accept this offer, please sign and return the enclosed Acceptance/Release Form to the address indicated below.

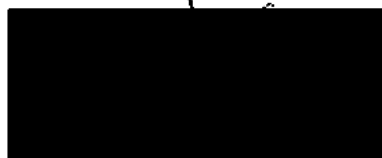
Director (Cn)  
National Pollution Funds Center  
U.S. Coast Guard Stop 7100  
4200 Wilson Blvd, Ste 1000  
Arlington, VA 20598-7100

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.

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

(202) 426-6067

Sincerely,



Chief, NRD Claims Division  
USCG National Pollution Funds Center


ENCL: Acceptance/Release Form  
Standardized Template for Progress and Cost Reporting (CD)

**Exhibit 1. Claim Accounting Summary**

| <i>Trustee Claimed Amount</i> | <i>Claim Components</i>   |
|-------------------------------|---|
| \$543,203.00                  | Restoration<br>\$9,018.00 – Invasive Vegetation Removal<br>\$73,496.00 – Land Acquisition<br>\$460,689.00 – Centennial Park Watershed Project |
| \$155,973.00                  | Trustee Oversight and Administration  |
| <b>\$699,176.00</b>           | <b>Total Restoration Costs Claimed</b>  |
| \$126,198.00                  | Contingency<br>\$11,024.00 - Land Acquisition (15%)<br>\$115,173.00 - Centennial Park Watershed Project (25%)                                 |
| <b>\$825,374.00</b>           | <b>Total Natural Resource Damages Claimed</b>   |

| <i>NPFC Decision Amount</i> | <i>NPFC Approved Claim Components</i>   |
|-----------------------------|---|
| \$543,203.00                | Restoration<br>\$9,018.00 - Invasive Vegetation Removal<br>\$73,496.00 - Land Acquisition<br>\$460,689.00 - Centennial Park Watershed Project |
| \$155,973.00                | Trustee Oversight and Administration  |
| <b>\$699,176.00</b>         | <b>Total compensable natural resource damages</b>   |

| <i>NPFC Decision Amount</i> | <i>Maximum Approved Contingency (subject to NPFC review and approval of justification and past project expenditures)</i> |
|-----------------------------|--|
| \$2,557.50                  | Land Acquisition (15%)   |
| \$69,103.35                 | Centennial Park Watershed Project (15%)  |
| <b>\$71,660.85</b>          | <b>Total Approved Contingency Funds</b>  |

|   |   |  |  |
|---|---|--|--|
| U.S. Department of<br>Homeland Security<br><br>United States<br>Coast Guard |  | Director<br>United States Coast Guard<br>National Pollution Funds Center | U.S. Coast Guard Stop 7100<br>4200 Wilson Blvd, STE 1000<br>Arlington, VA 20598-7100<br>Staff Symbol: (Cn) |
|---|---|--|--|

|   |  |
|---|--|
| Pryor Oil Restoration Claim<br>Claim Number: E02414-OI2 | Claimant Name: Herbert Frost, Ph.D.<br>Associate Director, Natural Resources and Stewardship<br>U.S. National Park Service<br>1849 C Street, NW, Mailstop 3130 MIB<br>Washington, D.C. 20240 |
|---|--|

I, the undersigned, on behalf of the U.S. National Park Service as the Natural Resource Damages Lead Administrative Trustee (LAT) acting for all claimant trustees, ACCEPT the settlement offer of \$699,176.00 as full compensation for the restoration claim associated with the claim number identified above.

This settlement represents full and final release and satisfaction of all costs for restoration actions discussed in the NPFC determination for the claim number noted above, addressed to Mr. Hebert Frost and described in the restoration claim the LAT presented to the NPFC dated 24 November 2008 under the Oil Pollution Act of 1990 (33 U.S.C. §2712(a)(4)), arising from oil pollution incidents in the Howard/White Well Blowout. This settlement is not an admission of liability by any party.

I, on behalf of the U.S. National Park Service as the Natural Resource Damages LAT and all the claimant trustees:

- (1) hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that the claimant trustees may have against any party, person, firm or corporation that may be liable for the loss;
- (2) authorize the United States to sue, compromise or settle in the name of the claimant trustees and that the United States be fully substituted for the claimant trustees and subrogated to all of the claimant trustees' rights arising from the incident;
- (3) warrant that no legal action has been brought by any claimant trustee regarding this matter and no settlement has been or will be made by the U.S. National Park Service as the Natural Resource Damages LAT or any person on behalf of the claimant trustees with any other party for costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund); and
- (4) will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund 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 United States to recover from any other person or party.

I, the undersigned, on behalf of the U.S. National Park Service as the National Resource Damages LAT acting for all claimant trustees, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true, and understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. §§287 and 1001).

|  |  |
|--|--|
| <hr/> Title of Claimant or Authorized Representative                 | <hr/> Date of Signature of Claimant or Authorized Representative |
| <hr/> Typed or Printed Name of Claimant or Authorized Representative | <hr/> Signature of Claimant or Authorized Representative         |
| <hr/> Title of Witness   | <hr/> Date of Witness Signature                                  |
| <hr/> Typed or Printed Name of Witness                               | <hr/> Signature of Witness                                       |
| <hr/> DUNs/TIN/EIN   | <hr/> Bank Routing and Account Number                            |