

**GUIDELINES FOR REIMBURSEMENT OF PAST ASSESSMENT  
COSTS**

**ADOPTED BY MONTROSE TRUSTEE COUNCIL  
MAY 23, 2001**

- cap costs at \$35 million
- pro rate costs among trustees if past costs exceed \$35 million
- include all assessment costs (that is there would be no exclusions of costs based on court rulings)
- exclude prejudgment interest recoverable under CERCLA
- exclude litigation support costs
- use new (and lower) NOAA overhead rates
- include NPS vessel costs

**IN ADDITION**, the Council agreed that any expenditure in the updated Rubino cost report (March 4, 2000) would be considered a reasonable, reimbursable cost without further examination.

Prepared by NOAA General Counsel for Montrose Trustee Council April 23, 2003  
Revised for Montrose Trustee Council Teleconference on May 27, 2003

Trustees could submit supplemental cost packages.

Prepared by NOAA General Counsel for Montrose Trustee Council April 23, 2003  
Revised for Montrose Trustee Council Teleconference on May 27, 2003

## **MONTROSE COST COMMITTEE**

- established by Montrose Trustee Council
- originally composed of a representative of F&WS, NPS & NOAA (no state trustee volunteered for committee)
- responsible for reviewing supplemental costs packages related to past, unreimbursed assessment costs
- responsible for reviewing cost packages related to implementation of restoration

## **DAMAGE ASSESSMENT COST CHRONOLOGY**

- October, 1994 Rubino expert report documented trustee costs through June 30, 1994 for NOAA, USF&WS, NPS, CDF&G, CSLC.
- March, 2000 Rubino expert report documented costs through the following dates: NOAA - September 30, 1999; Interior - September 30, 1995; California Department of Fish & Game - June 30, 1994; California State Lands Commission - June 30, 1994.
- June 2000, NOAA submits cost package to Rubino for costs through May 2000 (NOAA Supplemental Cost Package) for inclusion in a supplemental report being prepared for trial (unclear if any other trustee submitted additional information to Rubino at this time).
- After case settled, Trustees requested that Rubino conduct a final reconciliation of past costs.

- May 2001 - CDF&G submits complete cost package (rather than relying on any previous Rubino reports) to Montrose Cost Committee.
- July 2001 - NOAA GC provides report to Montrose Cost Committee on CDF&G's cost package and seeks additional information on some items.
- January 2002, Rubino submits Reconciliation Table and summary spreadsheets for DOI, CDF&G and CSLC (no spreadsheets for NOAA). NOAA GC reviews Table.
- January 31, 2002 - NOAA GC submits a memorandum "Review of Rubino Cost Reconciliation Table" to Montrose Cost Committee raising issues related to the Table.
- February - April, 2002 - NOAA GC and F&WS work on issues related to F&WS costs. NOAA continues to wait for Rubino spreadsheets related to Reconciliation Table.
- April 15, 2002 - NOAA GC recommends, and Trustee Council approves, a partial payment for Interior pending resolution

of cost accounting issues.

- May 2002 - CDF&G submits revised cost package that resolves all issues raised in July 2001.
- July 1, 2002 - NOAA GC recommends, and the Trustee Council approves, a partial payment to CDF&G pending final resolution of all trustee costs
- July 30, 2002 - after many oral requests from NOAA to Rubino for NOAA summary spreadsheets to support figures in the Reconciliation Table, NOAA GC sends formal request to Rubino for the documentation
- July 31, 2002 - Rubino states it does not have any spreadsheets for NOAA. NOAA decides to review its own spreadsheets against earlier Rubino reports (plus inclusion of its June 2000 Supplemental Cost Package for costs from October 1, 1999 through April 17, 2000) to determine its final past damage assessment costs.
- August 2002 - USF&WS decides to submit completely new cost

- package, foregoing reliance on any previous Rubino reports.
- Early November 2002 - USF&WS submits new package to NOAA (by this time, only NOAA and F&WS have representatives on Montrose Cost Committee).
  - Mid-February 2003 - NOAA completes internal review of its costs and prepares a final number.
  - February 13, 2003 - NOAA GC seeks additional information from F&WS on some items related to its 2002 cost package.
  - March 28, 2003, NOAA GC receives F&WS response to questions raised. F&WS requests review of NOAA's June 2000 Supplemental Cost Package.
  - April 2003 - NOAA GC reviews NOAA's June 2000 Supplemental Cost Package and requests new spreadsheets to reflect minor changes in expenditures and several invoices.

## PAST COST DISTRIBUTION STATUS

### 1. California Department of Fish & Game

Past Damage Assessment Costs:	\$598,251.40
6/94 payment	\$200,000.00
10/02 payment	\$353,685.00
Balance	44,566.40

### 2. California State Lands Commission<sup>1</sup>

Past Damage Assessment Costs:	\$17,300.21
10/02 payment	\$17,300.21
Balance	\$ 0

---

<sup>1</sup>The California State Lands Commission relied on the past cost figure calculated by Rubino in the Reconciliation Report.

3. U.S. Department of the Interior

Past Damage Assessment Costs:	\$4,752,095.00 <sup>2</sup>
1/93 payment	\$533,000.00
6/94 payment	\$667,000.00
10/02 payment	\$910,345.00
Balance	\$2,641,570.00

4. National Oceanic & Atmospheric Administration

Past Damage Assessment Costs:	\$31,002,737.00
1/99 payment	\$1,000,000.00
10/02 payment	\$5,000,000.00
Balance	\$25,002,737.00

---

<sup>2</sup>This figure includes \$4004.96 for the Office of Environmental Policy & Compliance; \$75,698.79 for the Office of the Solicitor; \$92,945.68 for the National Park Service. The U.S. Park Service, the Office of Environmental Policy & Compliance and the Office of the Solicitor relied on the past cost figure calculated by Rubino in the Reconciliation Table.

**5. California Department of Parks & Recreation**

The Department of Parks & Recreation did not submit any cost documentation for the case.

**TOTAL PAST DAMAGE ASSESSMENT COSTS                    \$36,370,383.00**



Prepared by NOAA General Counsel for Montrose Trustee Council April 23, 2003  
Revised for Montrose Trustee Council Teleconference on May 27, 2003