

**STATE OF NEVADA BOARD TO REVIEW CLAIMS  
BOARD MEETING MINUTES  
March 13, 2019**

**1. CALL TO ORDER**

Chair Tappan called the meeting to order at 10:00 a.m. from Carson City at the Laxalt Building, 401 North Carson Street, 2<sup>nd</sup> Floor Chambers. The meeting was also conducted via videoconference with Las Vegas at the NDEP Office Building, 2030 East Flamingo Rd., Conference Room 230.

**A. BOARD MEMBERS PRESENT**

Chair Maureen Tappan - Representative of the General Public  
Vice-Chair Dawn Lietz – Department of Motor Vehicles  
Greg Lovato – Nevada Division of Environmental Protection  
Albert Ruiz – State Fire Marshal’s Office  
Rod Smith – Representative of Petroleum Refiners  
LeRoy Perks – Representative of the Independent Retailers of Petroleum

**BOARD MEMBERS NOT PRESENT**

Vacant – Representative of Independent Petroleum Dealers

**OTHERS PRESENT**

Peter Keegan, State Attorney General’s Office – Carson City  
Jeff Kinder, Jeff Collins, Michael Cabble, Victoria Joncas, Kim Valdez, Don Warner, Megan Slayden, Michael Friend, Chuck Enberg, Diondrae White, and Karen Kovacs – Nevada Division of Environmental Protection (NDEP)  
Joe McGinley – McGinley & Associates  
Craig Stevenson – Division of Internal Audits  
Michelle Isherwood – Division of Internal Audits  
Jeremy Boucher – Broadbent and Associates  
Taylor Ball – Broadbent and Associates  
Jon Bell – Broadbent and Associates  
Rex Heppe – Terracon  
Brett Bottenberg – McGinley & Associates  
Zach Amos – The Westmark Group  
Keith Stewart – Stewart Environmental

**2. PUBLIC COMMENT**

There were no requests to speak.

**3. APPROVAL OF THE DECEMBER 6, 2018 MINUTES**

**Chair Tappan** invited comments, questions or changes to the minutes. There were none.

**Mr. Perks moved to approve the December 6, 2018 minutes. Mr. Lovato seconded the motion. Motion carried unanimously.**

**Mr. Lovato** commented on the excellent quality of the minutes.

**Chair Tappan** concurred.

**4. STATUS OF THE FUND**

**Mr. Cabbie** provided a budget status for the State of Nevada Petroleum Fund (Fund) for Fiscal Year 2019. Beginning with revenues, the balance forward was \$7,500,000. Approximately \$386,400 has been received from tank enrollment fees to date. Approximately \$6,381,552 has been generated from the \$0.0075 petroleum fee on each gallon of fuel purchased in the State. The Fund has earned approximately \$80,511 in interest. This brings the total revenue for the fiscal year to \$14,348,464.

In terms of expenditures, board member salaries totaled approximately \$677. Board member in-state travel totaled approximately \$114. Board meeting operating costs total approximately \$1,602. Funding for operating the program under NDEP, including State-led cleanups, staff salaries, and ongoing database/software maintenance total \$935,294. Total reimbursement for paid claims was approximately \$4,536,644. Total cumulative expenditures are \$5,474,331, which leaves an available operating balance of \$8,874,132.83.

**5. SITE SPECIFIC BOARD DETERMINATION FOR PETROLEUM FUND COVERAGE WITH REDUCTION**

**Site Specific Board Determination No. C2019-01**

Proposed Site Specific Board Determination (SSBD) to Provide Reduced Petroleum Fund Coverage for Wolf Fastop, 1625 North Virginia Street, Reno, NV  
Petroleum Fund Case ID No. 2018000035, Facility ID No. 4-000633

**Ms. Slayden** stated that SSBD No. C2019-01 proposes to provide reduced Petroleum Fund Coverage to Wolf Fastop located at 1625 North Virginia Street, Reno, Nevada. The subject site is owned by CD/Park7 Reno Owner, LLC. At the time of release, the facility consisted of three underground storage tanks (UST) constructed of steel; two of the systems contained gasoline and one contained diesel fuel. In January 2018, the facility owner placed the three existing USTs and associated piping in temporary closure. Then in May 2018, the owner permanently closed the USTs by removal from the ground. An application for Petroleum Fund coverage was received by NDEP in October 2018. The application identified the release source as a corrosion hole in the northernmost gasoline UST, Tank No. 1.

At the time of application review, the owner was unable to provide adequate documentation demonstrating compliance with State and Federal UST regulations. Specifically, they were unable to provide periodic monitoring records for the cathodic protection system from December 2017 through May 2018. Checking the voltage and amperage readings on the impressed current corrosion prevention system and maintaining a log of those readings is required to demonstrate the steel tanks are adequately protected from corrosion. This log was not available when requested by Fund staff, so it does not appear the corrosion system was being monitored prior to the tank systems being removed. Failure to monitor the corrosion system while a UST is in temporary closure is a violation of 40 CFR 280.70. Failure to maintain corrosion monitoring records is a violation of 40 CFR 380.34.

Pursuant to Board Policy Resolution No. 94-023, in the event that a site is found to have more than one noncompliance determination, Petroleum Fund Staff is required to recommend to the Board that any reimbursement be reduced by the largest percentage associated with any single item. The reduction amounts for each noncompliance issue are as follows:

- A. Failure to comply with UST design, construction, installation, notification, or change in service (such as not monitoring a UST that is in temporary closure) is a 10 percent reduction
- B. Failure to comply with UST general operating requirements (record keeping) is a 10 percent reduction.

In this case, a 10 percent coverage reduction is recommended for both noncompliance issues. Therefore, Fund staff recommends that the Board approve coverage for the subject site for one leaking gasoline UST with a 10 percent reduction and a 10 percent copayment. This would provide a maximum reimbursable cap of \$810,000 in cleanup costs and \$810,000 for damages to a person other than the operator or the State (third party liabilities).

**Mr. Perks** inquired as to the age of the site.

**Ms. Slayden** stated that the tanks on record show an installation date in the late 1960's of steel construction.

**Mr. Perks** asked for confirmation that the cleanup refers to an old spill under the tanks occurring in the 1990's.

**Ms. Slayden** clarified that the cleanup was of gasoline fuel, however she does not have a date range for the spill.

**Mr. Perks** commented that there was a spill with Washoe County, revealing that it was under the previous owner. The county provided closure on the spill. While he understands that the new owner is being penalized for not keeping records after the temporary closure, the new owner is also being charged for a cleanup that appears to have happened with the old owner.

**Ms. Slayden** explained that the recommendation is based solely upon what occurred during application review. During application review, staff did not have the records. The Board Policy Resolution directs staff that it must recommend a reduction.

**Mr. Perks** noted that the system was out of service and the owner out of compliance from January until May before the tanks were removed. He asked for confirmation that the owner was not keeping up his logs on the cathodic protection.

**Ms. Slayden** confirmed this.

**Mr. Perks** again asked why this owner would be penalized for the actions of the previous owner.

**Mr. Cable** stated that with regard to the application that was submitted, the release the Fund is looking to cover is more recent than the one from the 1990's. The Fund is not looking at the historic release. Based on the application, the operator is saying that this was a recent release from these tank systems. From the records available, the release originated from a tank with a corrosion issue, which is why they are recommending a 10 percent reduction.

**Mr. Perks** commented that the decision is harsh considering the age of the system and the issues experienced by the previous owners. While there are newer spills by one of the containment sumps, these have never been tested.

**Mr. Cabble** clarified that the Board has the opportunity to modify the recommendation. However, staff is required by the policy resolution to make the recommendation provided.

**Mr. Perks** stated that he would need to recuse himself from voting, as there is a conflict involving his son. In addition, Mr. Perks has worked on the site in the past. On a personal basis, he does not feel the owner should receive the 10 percent reduction.

**Vice Chair Lietz** noted that the SSBD indicates the application identified a corrosion hole in Tank 1 as the source of the gasoline leak and that they were unable to provide documentation showing compliance with Federal and State regulations. As such, the due diligence of the station operator was not sufficient.

**Mr. Perks** inquired as to the location of the hole.

**Vice Chair Lietz** stated that the notes do not provide that information. It merely makes comment under Item No. 3 that the application identifies a corrosion hole in Tank 1 as the source of the gasoline leak.

**Ms. Slayden** invited the Certified Environmental Manager (CEM) for the case to speak on the topic.

**Mr. Boucher** introduced himself as the CEM for Broadbent and Associates. He observed and oversaw much of the work that occurred at the location. The hole in the tank was on the bottom.

**Mr. Perks** asked if the tanks were lined.

**Mr. Boucher** stated that they did not appear to be lined, however they were heavily encrusted in backfill sand and it was difficult to make a definite determination.

**Mr. Perks** inquired as to the age of the spill.

**Mr. Boucher** said it was difficult to determine the age of the spill, as it was in an area of the site that had not been previously investigated. The previous release on the site, which was diesel related, occurred when a line was struck with a piece of equipment. It was a product dispensing line, not the UST.

**Mr. Lovato** asked Mr. Boucher to describe the scope of his duties related to managing the tank cleanup and removal. He also asked whether Mr. Boucher was aware of any due diligence investigation by the current owner as to the condition and compliance of the tank prior to coming into possession of the tank system.

**Mr. Boucher** stated that the property owner did do a Phase I site investigation prior to the purchase, performed by Summit Engineering. The age of the tanks was noted in the Phase 1 document, as were the previous releases. The new owner went into the purchase knowing there was the potential for a release. Mr. Boucher provided the CEM services. He observed the tanks come out of the ground, directed the soil sampling and the follow-up excavation that occurred to remediate the existing soils. Staff also provided the release report, Petroleum Fund application submittal, and had oversight of the separate cleanup activities located underneath the dispenser (non-Fund eligible).

**Mr. Lovato** asked if the case already closed.

**Mr. Boucher** confirmed that the case is already closed.

**Mr. Lovato** asked about any pending claims.

**Mr. Boucher** stated that they have not yet submitted the claim. There was a cap as to how much soil would be reimbursed by the Fund, which was defined by the Bureau of Corrective Actions UST Program Manager, Jon McRae. NDEP approved a specified amount of yardage that could be hauled.

**Mr. Lovato** asked if there would be a continuing burden to the current owner.

**Mr. Boucher** said it will not be a continuing burden to the current owner.

**Mr. Lovato** addressed Mr. Perk's comment regarding penalizing the current owner. The Board must consider that when someone takes possession of a property, there is an obligation to understand what they are getting into, including the compliance status and how it could affect any reimbursement from the Board prior to taking the property.

**Chair Tappan** asked about the total amount being asked from the Board.

**Mr. Boucher** stated that he does not have a total at this time, as he has not yet compiled all receipts and invoices for the soil excavation. Approximately 140 cubic yards were hauled out. He approximated the total to be \$180,000 or slightly more.

**Chair Tappan** invited a motion.

**Vice Chair Lietz moved to approve the adoption of Site Specific Board Determination No. C2019-01 as proposed, granting coverage under the State of Nevada Petroleum Fund to Wolf Fastop for one UST system with a 10 percent reduction and a 10 percent copayment. Mr. Lovato seconded the motion. Motion carried. Mr. Perks recused himself from the vote.**

**ADOPTION OF CONSENT ITEMS**

The Board will review all items as a consent calendar item, unless the item is marked by an asterisk (\*), or a member of the public wishes to speak in regards to the item.

A dagger (†) indicates previously disallowed monies have been appealed where the requested amount is less than the recommended amount.

An omega (Ω) indicates Board approved reimbursement monies have been subtracted from the amount requested due to new information.

**STATE BOARD TO REVIEW CLAIMS  
REQUESTED/RECOMMENDED AMOUNTS – MARCH 13, 2019**

<b><u>HEATING OIL</u></b>				<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>
FOR POSSIBLE ACTION	1	2012000017	Churchill County School District: Old High School	\$5,594.10	\$5,594.10
FOR POSSIBLE ACTION	2	2018000037	Costa Family Trust: James P. Costa Property	\$10,329.89	\$10,079.89
FOR POSSIBLE ACTION	3	2018000041	Adolf Allesch: Adolf S. Allesch Property	\$12,772.76	\$12,522.76
<b>SUB TOTAL:</b>				<b><u>\$28,696.75</u></b>	<b><u>\$28,196.75</u></b>

<b><u>ONGOING CASES</u></b>				<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>
FOR POSSIBLE ACTION	1	1992000126	Clark County School Dist.: RC White (Arville) Transp. Satellite	\$17,367.79	\$16,492.22
FOR POSSIBLE ACTION	2	1993000011	7-Eleven INC.: 7-Eleven #29646	\$11,037.00	\$11,037.00
FOR POSSIBLE ACTION	3	1993000102	Rebel Oil Company: Rebel Store #2008	\$2,415.67	\$2,415.67
FOR POSSIBLE ACTION	4	1993000103	Charlie Brown Construction: Charlie Brown Const.	\$6,489.21	\$6,310.43
FOR POSSIBLE ACTION	5	1994000012	Breakthru Beverage: Fmr Deluca Liquor & Wine	\$78,592.85	\$77,971.30
FOR POSSIBLE ACTION	6	1994000027	7-Eleven INC.: 7-Eleven #19653	\$32,581.39	\$32,525.61
FOR POSSIBLE ACTION	7	1994000037	Param Investments LLC: Go-Fer Supermarket	\$8,788.25	\$8,761.25
FOR POSSIBLE ACTION	8	1994000113	Pilot Travel Centers LLC: Former Unocal Truck Stop #6328	\$46,940.54	\$46,466.90
FOR POSSIBLE ACTION	9	1995000039	Al Park Petroleum INC.: Crescent Valley Market	\$59,296.44	\$31,291.85
FOR POSSIBLE ACTION	10	1996000063	Joan Pennachio: V & V Automotive	\$6,736.27	\$6,163.14
FOR POSSIBLE ACTION	11	1996000064	H & A Esslinger, LLC: Red Rock Mini Mart	\$33,524.40	\$32,518.67
FOR POSSIBLE ACTION	12	1996000101	Phillips 66 Company: Circle K #695	\$12,246.76	\$11,022.08
FOR POSSIBLE ACTION	13	1997000071	7-Eleven INC.: 7-Eleven #25586	\$7,079.99	\$6,371.99
FOR POSSIBLE ACTION	14	1998000034	Chevron USA Products CO.: Chevron #9-4116	\$47,588.89	\$41,190.20
FOR POSSIBLE ACTION	15	1999000014	Al Park Petroleum INC.: Pit Stop #7 Conoco	\$8,977.40	\$8,079.66

**ONGOING CASES: CONTINUED**

				<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>
FOR POSSIBLE ACTION	16	1999000022	Terrible Herbst, INC.: Terrible Herbst #129	\$2,253.00	\$2,027.70
FOR POSSIBLE ACTION	17	1999000029	Terrible Herbst, INC.: Terrible Herbst #136 (Arco)	\$12,110.22	\$10,899.20
FOR POSSIBLE ACTION	18	1999000064	Al Park Petroleum INC.: Pit Stop #4 (Conoco)	\$1,137.50	\$1,023.75
FOR POSSIBLE ACTION	19	1999000086	Terrible Herbst, INC.: Terrible Herbst #126 (Arco)	\$10,893.78	\$9,804.40
FOR POSSIBLE ACTION	20	1999000104	Terrible Herbst, INC.: Terrible Herbst #118 & #120 Lube	\$2,857.94	\$2,572.15
FOR POSSIBLE ACTION	21	1999000135	Terrible Herbst, INC.: Terrible Herbst #106 (Gas) & #108 (Lube)	\$12,770.98	\$11,493.88
FOR POSSIBLE ACTION	22	1999000137	Terrible Herbst, INC.: Terrible Herbst #152 (Gas) & #155 (Lube)	\$23,413.07	\$21,039.36
FOR POSSIBLE ACTION	23	1999000199	Village Springs, LLC: Lakeshore Orbit Station	\$5,493.83	\$5,475.83
FOR POSSIBLE ACTION	24	1999000243	7-Eleven INC.: 7-Eleven #27607	\$14,127.78	\$12,715.00
FOR POSSIBLE ACTION	25	1999000244	7-Eleven INC.: 7-Eleven #22070	\$17,585.91	\$15,708.71
FOR POSSIBLE ACTION	26	2005000002	Carson Valley Oil Co INC.: Carson Valley Oil CO	\$830.00	\$747.00
FOR POSSIBLE ACTION	27	2005000036	Phillips 66 Company: Circle K #1791	\$3,262.80	\$2,349.22
FOR POSSIBLE ACTION	28	2007000014	Ace Cab Company: Ace Cab Company	\$31,368.48	\$28,223.53
FOR POSSIBLE ACTION	29	2008000018	Jacksons Food Stores INC: Jacksons Food Stores #0145	\$6,439.49	\$5,795.54
FOR POSSIBLE ACTION	30	2008000019	One Panou LLC: Golden Market #3	\$13,304.74	\$11,974.27
FOR POSSIBLE ACTION	31	2010000005	7-Eleven INC.: 7-Eleven #27071	\$5,406.22	\$4,865.60
FOR POSSIBLE ACTION	32	2010000007	Pecos Express: Pecos Express	\$3,172.85	\$2,815.07
FOR POSSIBLE ACTION	33	2011000009	Cimarron West: Cimarron West	\$35,983.00	\$32,185.75
FOR POSSIBLE ACTION	34	2012000004	7-Eleven INC.: 7-Eleven #15426	\$27,993.90	\$25,179.11
FOR POSSIBLE ACTION	35	2012000012	Dewey Has Gas, INC: Smart Mart	\$32,740.83	\$29,466.75
FOR POSSIBLE ACTION	36	2013000003	7-Eleven INC.: 7-Eleven #25586	\$6,703.69	\$6,033.32
FOR POSSIBLE ACTION	37	2013000004	7-Eleven INC.: 7-Eleven #29665	\$8,197.40	\$7,377.66
FOR POSSIBLE ACTION	38	2013000020	7-Eleven INC.: 7-Eleven #26395	\$24,263.47	\$21,592.32
FOR POSSIBLE ACTION	39	2013000021	7-Eleven INC.: 7-Eleven #27700	\$41,905.98	\$37,715.38
FOR POSSIBLE ACTION	40	2014000007	7-Eleven INC.: 7-Eleven #29658	\$8,730.23	\$7,857.21
FOR POSSIBLE ACTION	41	2014000016	Smitten Oil And Tire Co INC.: Former Smitten Oil	\$1,698.00	\$1,528.20
FOR POSSIBLE ACTION	42	2015000005	Elko Acquisitions LLC dba Red Lion Chevron: Red Lion Chevron	\$11,052.04	\$9,946.84
FOR POSSIBLE ACTION	43	2016000005	Golden Gate S.e.t. Retail of NV LLC: Golden Gate Fac. #65-Fallon	\$2,515.50	\$2,263.95
FOR POSSIBLE ACTION	44	2016000012	DLF Corporation: Mr Ds Fastlane	\$1,557.50	\$1,401.75
FOR POSSIBLE ACTION	45	2016000023	Al Park Petroleum INC.: Pit Stop #1	\$42,718.07	\$30,509.87
FOR POSSIBLE ACTION	46	2016000027	Terrible Herbst, INC.: Terrible Herbst #272	\$14,286.20	\$11,571.82
FOR POSSIBLE ACTION	47	2017000035	Rebel Oil Company: Rebel Store #2177	\$11,694.54	\$10,515.58
FOR POSSIBLE ACTION	48	2018000005	Rebel Oil Company: Rebel Store # 2153	\$11,873.56	\$10,686.20

FOR POSSIBLE ACTION	49	2018000009	Reed Incorporated: Pacific Pride	\$9,389.91	\$8,450.92
				<b>SUB TOTAL:</b>	
				<b><u>\$839,395.26</u></b>	<b><u>\$742,430.81</u></b>
				<b>RECOMMENDED CLAIMS TOTAL:</b>	
				<b><u>\$868,092.01</u></b>	<b><u>\$770,627.56</u></b>



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**Mr. Smith** commented that some of the cases are ancient, in particular, Number 14, which is a Chevron USA Products issue from 1998. This is a 30-year-old case with a request for \$40,000. He questioned an expenditure of this size on a case so old without knowing how the money is being spent.

**Mr. Cabble** stated that when the numbers are approved by Fund staff, the activities being funded have already been reviewed and confirmed by the leaking underground storage tank program. Leaking UST program staff monitor these remediation activities and it is left in their hands to manage their cases appropriately, ensuring that the expenditures for which Fund monies are being used are appropriate for cleanups at the site. There are a few cases that are quite old and have required a fair amount of expenditure. There are various reasons for this. If the Board would like to pull this item specifically from the list, staff can do that. However, he cannot at this time identify the specific reimbursement cost purpose without going back and looking at the case file. In the future, staff could potentially look at trying to include a description under the site summary for these amounts, if the Board desires.

**Mr. Smith** said he appreciates this offer, as the Board has a fiduciary responsibility for the funds and he would like a clear understanding of any distributions.

**Mr. Cabble** stated that he would address this with the database developer to acquire a short description for activities being paid for. This will be on a claim-by-claim basis without history. He reiterated that the Board is free to pull the item from the consent list and hold back the payment.

**Mr. Smith** stated that on every item, the staff recommendations include agreed upon amounts. However, when looking at the status report, there is no indication of what the money is going to. He suggested that on a quarterly basis, staff could include its recommended amounts with a one-line item as to what the funds are being spent on.

**Mr. Cabble** said he would follow up with management and the database developer.

**Mr. Lovato** shared the concern regarding old cases. There have been steps taken by the corrective action staff at NDEP to clean these cases up or close them out, as opposed to having them continue indefinitely. There have been a few steps in the last few years that have enabled the closing of cases more quickly. It does require a demonstration that the plume is stable and not a threat to receptors. Sometimes depending on the owner/operator and the consultant, they may or may not have gone through those steps for some of these cases. Some cases have not been able to demonstrate that the plume is stable, which then requires additional investment. For example, there are situations where a source was never dealt with due to it being underneath the tank or underneath the roadway. In these cases, the consultant may not have had the ability to access the source. There are a variety of other reasons why some issues remain longer than expected. He suggested a possible overall review of what the Fund is doing to clean things up or close these older cases out, including the potential of a presentation of such review for the Board. This could involve staff and any consultants who wish to participate.

**Mr. Smith** commented that there are substantial amounts of money being spent on items that are well over 20 years old. The Board should be provided information as to steps that will be taken to close out these items.

**Mr. Lovato** said that when items come before the Board as a site-specific Board determination or as a third party liability extension of coverage, there are efforts to ensure a path to closure. Making the steps more clear on the path to closure is important in terms of transparency and clarity.

**Vice Chair Lietz** asked the Board whether there is a time limit they would like to see (for example, anything over ten years). She inquired about having a list of all the open cases ten or more years old. This would provide a scope to the significance of the issue. Mr. Smith commented that 50 percent are over 20 years old.

**Mr. Lovato** said that before he came to the State of Nevada, he worked for the EPA. The agency was looking nationwide to determine where most of the cases were stuck and not moving forward. There was a focus on the State of California. For all the districts in California, including the water boards, a portfolio analysis was completed five to six years ago. The case closure rates have increased significantly in California. Portfolio analyses have been performed in other jurisdictions. The Fund could take a look at what that might look like for Nevada. In Nevada, it is likely that many of the old cases have sources that are difficult to reach and prevents a demonstration of plume stability. In these cases, a remedy may have been initiated, but it did not perform as expected or reaches a point of diminishing returns. The costs to pursue a new, more robust remedy will drive up costs. Since many of operators covered by the Fund do not have the resources on hand to cover these costs, including the 10 percent copayment, the overall cleanup process slows until funding is available. The older cases that could be closed, have been, and those cases that have site-specific challenges remain. NDEP could provide some insight on some of these challenges to the Board.

**Mr. Cabbie** stated that since the Fund was started, they have covered over 1,600 sites. They have closed nearly 1,300 of these sites. This is a positive track record overall.

**Mr. Lovato** suggested that staff take into account questions and suggestions that have been made and perhaps bring back a proposal at the next meeting for how to provide additional information and overview to put the numbers into context. An audit is currently taking place for the Petroleum Fund within the executive branch, and is expected to be completed in June. There may be some findings related to Fund performance or efficiency.

**Mr. Lovato moved to have NDEP staff return to the next Board meeting with a proposal for additional information to be provided on cases older than ten years in the Board packet, as well as a proposal for a presentation to the Board on steps the Division is taking to make progress on cases older than ten years. Ms. Lietz seconded the motion. Motion carried unanimously.**

Chair Tappan invited a motion on the consent items.

**Mr. Smith moved for approval of the consent items as listed. Ms. Lietz seconded the motion. Motion carried unanimously.**

7. **DIRECT PAYMENT OF UNCONTESTED CLAIMS MADE PER POLICY RESOLUTION 2017-02**

The Board to Review Claims authorizes NDEP to make claim payments prior to a Board meeting when the recommended payment value is uncontested. This authorized delegation is consistent with the findings in the memorandum from the Attorney General's Office dated August 3, 2017 (Attachment A of Policy Resolution 2017-02). Below is a list of all quarterly claim payments made on the Board's behalf in accordance with Policy Resolution No. 2017-02.

A dagger (†) indicates previously disallowed monies have been appealed where the requested amount is less than the recommended amount.

An omega (Ω) indicates Board approved reimbursement monies have been subtracted from the amount requested due to new information.

**STATE BOARD TO REVIEW CLAIMS  
REQUESTED/RECOMMENDED AMOUNTS – MARCH 13, 2019**

<b><u>HEATING OIL – DIRECT PAYMENT</u></b>				<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>
FOR DISCUSSION	1	1993000020	University of Nevada Reno: Albert Fragione Property	\$12,093.93	\$12,093.93
FOR DISCUSSION	2	2004000041	University of Nevada Reno: Unr Crisis Center	\$28,235.75	\$28,235.75
FOR DISCUSSION	3	2018000034	University of Nevada Reno: 1121 Evans Avenue	\$37,669.22	\$37,419.22
FOR DISCUSSION	4	2018000040	Sonja Dresbach: Sonja M. Dresbach Residence	\$22,954.13	\$22,704.13
FOR DISCUSSION	5	2018000044	University of Nevada Reno: 1081 Evans Ave	\$3,513.50	\$3,263.50
<b>SUB TOTAL:</b>				<b><u>\$104,466.53</u></b>	<b><u>\$103,716.53</u></b>

<b><u>OTHER CASES – DIRECT PAYMENT</u></b>				<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>
FOR DISCUSSION	1	1994000015	Pilger Family Holdings: Former D & G Oil Company	\$45,473.16	\$45,473.16
FOR DISCUSSION	2	1997000008	Ewing Bros INC.: Ewing Bros INC.	\$4,275.00	\$3,847.50
FOR DISCUSSION	3	1999000023	Nevada Ready Mix Corp: Nevada Ready Mix	\$31,040.50	\$27,936.45
FOR DISCUSSION	4	1999000066	HP Management, LLC: Former Haycock Petroleum	\$35,985.21	\$32,324.81
FOR DISCUSSION	5	2004000011	Travel Centers of America: Wells Petro Truck Service	\$30,386.81	\$27,348.13
FOR DISCUSSION	6	2004000039	Clark County Dept of Aviation: Frmr National Car Rental	\$133,319.12	\$26,703.84
FOR DISCUSSION	7	2005000044	Ewing Bros INC.: Ewing Bros INC.	\$18,584.04	\$16,725.64
FOR DISCUSSION	8	2008000018	Jacksons Food Stores INC.: Jacksons Food Stores #0145	\$19,697.96	\$17,728.16
FOR DISCUSSION	9	2010000003	Sira Truck Holdings, Lllp: Big Wheel Truck Center	\$7,722.50	\$6,950.25
FOR DISCUSSION	10	2010000009	Travel Centers of America: Mill City Travel Center	\$119,861.97	\$97,088.19

**OTHER CASES – DIRECT PAYMENT: CONTINUED**

				<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>
FOR DISCUSSION	11	2013000009	Western Petroleum: Western Petroleum	\$22,509.42	\$20,258.48
FOR DISCUSSION	12	2013000011	Har Moor Investments, LLC: Village Shop #4	\$22,832.93	\$20,543.33
FOR DISCUSSION	13	2013000019	Hardy Enterprises INC.: Elko Sinclair #53	\$15,863.99	\$14,251.10
FOR DISCUSSION	14	2014000004	Alsaker Corp: Broadway Colt Service Center	\$20,830.36	\$18,747.32
FOR DISCUSSION	15	2014000025	Superior Campgrounds of America LLC: Silver City RV Resort	\$52,419.41	\$46,771.25
FOR DISCUSSION	16	2014000033	Speedee Mart Inc.: Speedee Mart #108	\$16,278.31	\$14,650.48
FOR DISCUSSION	17	2014000041	Forever Resorts: Callville Bay Resort Marina	\$6,965.00	\$6,268.50
FOR DISCUSSION	18	2017000019	Rebel Oil Company: Rebel Store #2197	\$113,235.52	\$90,213.32
FOR DISCUSSION	19	2017000027	John Edmond: MLK Gas Mart	\$4,946.64	\$4,451.98
FOR DISCUSSION	20	2018000029	Rebel Oil Company: Rebel Oil CO #25	\$23,251.86	\$20,926.67
				<b>SUB TOTAL:</b>	
				<b><u>\$745,479.71</u></b>	<b><u>\$559,208.56</u></b>
				<b>DIRECT PAYMENT CLAIMS TOTAL:</b>	
				<b><u>\$849,946.24</u></b>	<b><u>\$662,925.09</u></b>
				<b>BOARD MEETING CLAIMS TOTAL:</b>	
				<b><u>\$1,718,038.25</u></b>	<b><u>\$1,433,552.65</u></b>

## 8. EXECUTIVE SUMMARY

**Mr. Cabbie** presented the Executive Summary. Tank enrollment fees are tracked pursuant to the Federal fiscal year, which runs October 1st through September 30th. For tank invoices for Enrollment Year 2019, at total of 1,279 facilities have been invoiced. Approximately 1,239 of those invoices have been paid (approximately 97 percent). For those facilities eligible for coverage that have received reimbursement following a release at their facility, the Fund has covered 1,623 remediation cases to date. Of those, 1,299 have been closed. Currently 146 cases are active under the Fund. NDEP has received seven new applications since January 2019, of which five are still under review. Prior to this meeting, the Board has approved a cumulative total of \$229,405,913.40 for reimbursement of petroleum claims. The total includes the 25 direct payment claims processed during the past quarter (\$662,925.09). With today's approval of the consent item list (totaling \$770,627.56), the cumulative total will rise to \$230,176,540.96.

In terms of an update on home heating oil tank owners, they are still receiving their miscellaneous 1099 Form. An application is still pending with the USDA. The Fund has been told that the USDA has reviewed the documents, their concerns have been addressed, and the application is moving up the chain, hopefully to the Secretary, who will make the final determination. A final date of approval has not been received. It was suggested during the last meeting, that the administrator of NDEP and the Board Chair provide a joint letter, asking for a more specific time frame for the review. If an update is not received within the next few weeks, Mr. Cabbie may request such a letter to be provided for submission.

**Mr. Lovato** suggested that Mr. Keegan draft the letter.

**Mr. Keegan** stated that he would be happy to draft the letter, which could be reviewed by Board Members for comments to be eventually signed by the Director of the Department of Conservation and Natural Resources and the Board Chair.

**Mr. Cabbie** proposed that Fund staff request for one more update in the interim.

**Mr. Keegan** said he would follow up after today's meeting regarding receipt of a proposed timeline. If not forthcoming, then they could move forward with the letter.

**Mr. Cabbie** continued the Executive Summary by stating that the program is in process of moving the grant program forward. Fund staff have submitted a draft agreement to the State Attorney General's Office for an official grant agreement. The original agreement proposed by the Fund was reviewed and it was decided that the agreement should be more consistent with how other NDEP programs are issuing grants. There is an award ready for issuance, once this is complete. They have also received an additional application for 2019 and have two more that are expected to be submitted by the end of the application period.

In terms of the Eagle Gas update, abandonment of the remediation wells onsite are being completed this week. A no further action determination will likely be under review in the coming months.

On January 24, 2019, the NDEP Administrator and Petroleum Fund staff were informed of a pending audit of the program by the Governor's Finance Office. All audit inquiries are confidential until the audit concludes. Fund staff will update the Board of the findings by the Governor's Finance Office staff at the conclusion of the audit, which is projected to be at the end of June 2019.

**Mr. Keegan** recalled that there had been discussion regarding recovery of costs related to Eagle Gas and whether it should be handled outside of the Controller's Office by the State Attorney General's Office. He asked whether a formal request was made by the Board to have this taken on.

**Mr. Cabbie** did not recall a formal request by the Board, but it is his understanding that the case has left the Controller's Office and believes it is with the Attorney General's Office for evaluation as to whether to proceed. If the Board feels there would be a benefit to a formal request, he could certainly make the request.

**Chair Tappan** asked for confirmation that the question is whether or not the Board wants the District Attorney's Office to be working to collect the money back on the Eagle Project.

**Mr. Cabbie** confirmed the understanding, adding that it may include a potential prosecution.

**Mr. Keegan** stated his understanding that when the Board has attempted to collect the debts and this process has become ineffective through the Controller's Office, the Board can request that the Attorney General's Office attempt to collect the debts or recover costs expended. He is not prepared at this time to provide the statutory citation, however he recalls his office began such discussions through various interdivisional cooperation.

**Mr. Lovato** said it has been reported to the Board that NDEP's assigned Attorney General staff are evaluating steps for cost recovery and that the Controller's Office has already formally relinquished. The Attorney General's Office is intending to pursue. The lien on the property is still in effect for the judgment that was obtained, so any sale of the property still has the lien related to the judgment and that is currently active. He suggested that the Attorney General's Office update the Board at the next meeting.

**Chair Tappan** asked for the total amount of money that the Board spent on the project.

**Mr. Cabbie** stated that he did not have the figure readily available.

9. **PUBLIC COMMENTS**

**Mr. Cabbie** stated that NDEP received a certificate of appreciation for Chair Tappan's service from Governor Sandoval prior to his departure from office. Mr. Cabbie read the text of the certificate into the record and presented it to Chair Tappan.

10. **CONFIRMATION OF NEXT BOARD MEETING DATE**

**Chair Tappan** announced the next meeting date June 13th. Two members noted conflicts. Other options will be explored, but June 6<sup>th</sup> was tentatively scheduled following Board discussion on availability.

11. **ADJOURNMENT**

The meeting adjourned at 10:53 am