

**STATE OF NEVADA BOARD TO REVIEW CLAIMS
BOARD MEETING MINUTES
JUNE 11, 2020**

1. CALL TO ORDER

Chair Tappan called the meeting to order at 10:00 a.m. from Carson City at the Bryan Building, 901 S. Stewart Street, Great Basin Conference Room 4-S. The meeting was also conducted via video/phone conference.

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
Mike Dzyak – 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 Handy, State Attorney General’s Office – Carson City
Jeff Collins, Jeff Kinder, Michael Cabble, Victoria Joncas, Kim Valdez, Megan Slayden
Don Warner, Jonathan McRae, Diondrae White, Ben Moan, Chuck Enberg, and Karen Kovacs – Nevada Division of Environmental Protection (NDEP)
Jonathan Bell – Broadbent Inc.
Scott Keeseey – Broadbent Inc.
Richard Wright – Jacksons Food Stores Inc.
Joe McGinley – McGinley & Associates
Caitlin Jelle – McGinley & Associates
Kathleen Johnson – The Westmark Group
Matt Grandjean – Stantec
Rex Heppe – Terracon
Keith Stewart – Stewart Environmental
Peter Krueger – Nevada Petroleum Marketers and Convenience Store Association
(NPM&CSA)

2. PUBLIC COMMENT

There were no requests to speak.

3. **APPROVAL OF THE DECEMBER 12, 2019 MINUTES**

Chair Tappan invited comments, questions, or changes to the minutes. She identified one correction in that the meeting should have indicated an end time of 12:25 p.m. as opposed to 12:25 a.m. There were no other corrections.

Vice-Chair Lietz moved to approve the December 12, 2019 minutes as amended. Mr. Perks seconded the motion. Motion carried unanimously.

4. **STATUS OF THE FUND**

Mr. Cabbie provided the status of the State of Nevada Petroleum Fund (Fund), beginning with revenues for Fiscal Year (FY) 2020. The balance forward from FY 2019 was \$7,500,000. Approximately \$394,200 was received for general tank system enrollment fees. Approximately \$10,032,169 has been generated by the \$0.0075 petroleum fee. The Fund has earned approximately \$138,522 in interest. Total revenue collected for State Fiscal Year 2020 thus far is \$18,064,890.98.

Expenditures for FY 2020 thus far include Board member salaries, totaling \$745, in-state travel costs for Board members at \$122, and Board meeting operating costs of approximately \$1,075. Total funds transferred to NDEP and used for State-led cleanups, staff salaries and ongoing maintenance is approximately \$901,701. Funds expended for underground storage tank upgrade grants totaled \$112,521. The payment to DMV for assessment of the cleanup fee on the Fund's behalf totaled \$12,714. Reimbursement of Petroleum Fund claims thus far totaled approximately \$7,504,030. Total expenditure to date is \$8,532,908.82, leaving a current available balance of \$9,531,982.16.

Chair Tappan invited comments or questions from Board Members. There were none.

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

Don Warner presented a site specific Board determination to the Board proposing reduced coverage for a gasoline and diesel release at Jacksons Food Store No. 0169. The facility is a Chevron Station owned by Jacksons Food Stores, located at 1102 Carson Street, Carson City Nevada. Four underground storage tank systems, three of which contain gasoline and one containing diesel fuel, were operated onsite. On April 11, 2019, Broadbent & Associates was contracted by Jacksons to provide certified environmental manager oversight of product piping and dispenser removal activities at the subject site. After piping and dispensers were removed, soil samples were collected from underneath each dispenser location and product line for each underground storage tank system.

On April 12th, 2019, Broadbent was contracted by Frank Lepori Construction to evaluate another potentially impacted area onsite at a location separate from the fuel system product piping. There was additional piping observed cut off from the known piping system (orphaned), showed evidence of fuel within the pipes, and appeared to have leaked into the soil beneath the pipes. The orphaned piping was not previously documented, appears to have been abandoned without notifying NDEP, and was not connected to the current product piping associated with the Fund-enrolled UST systems.

On April 15, 2019, analytical results from the initial sampling event (April 11, 2019) were received. The results indicated that total petroleum hydrocarbons (TPH) exceeded State reporting levels for the samples collected below the dispensers on the west side of the fueling island and product piping

leading back to the USTs on the site. Following the discovery of the orphaned piping on the east side of the site, additional soil sampling and excavation was conducted on April 17, 2019 and April 22, 2019. Analytical results indicated that TPH exceeding State reporting levels were present in samples collected below the orphaned piping.

The two UST systems identified in the coverage application were enrolled at the time of the release discovery and are eligible for Fund coverage. However, the discharge associated with the orphaned piping is ineligible for Fund coverage since the piping was not abandoned in accordance to UST regulatory requirements and was the proximate cause of release to the environment. Additionally, it is unknown when these lines began to leak and as such, Fund staff cannot verify whether or not the orphaned piping caused a release prior to the establishment of the Fund or that they were ever enrolled in the Fund.

In accordance with Board Policy Resolution 99-022, NDEP staff's recommendation to the Board is the adoption of site-specific Board Determination Number C2020-01, as proposed, granting coverage under the State of Nevada Petroleum Fund to Jacksons Food Stores No. 0169 with a 20 percent reduction, due to a non-Fund eligible release source that is comingled with a Fund eligible source and 10 percent copayment for a total of \$1,440,000. The CEM and owner-operator will not contest NDEP's reduction recommendation, however, the CEM and Leaking UST (LUST) Supervisor were present to answer questions regarding the case.

Chair Tappan invited comments or questions from Board Members.

LeRoy Perks asked whether the abandoned pipe was still connected to the turbines. **Mr. Warner** stated his understanding that they were not connected. They were found on the east side of the property, separate from the piping and the dispensers. **Mr. Perks** further inquired as to the type of existing pipe, whether it was capped off by a mechanical joint and where exactly the leak was originating. **Scott Keeseey**, Broadbent Inc., said that the piping appeared to be unconnected to any other components. In looking at the photos, it appeared that the piping was dismantled and abandoned. Nothing was connected. There were horizontal lengths of pipe that contained fuel. When the contractor was at the location, there may have been some movement of the pipe, so the observations of Broadbent might have been slightly different than in situ. Generally, there was a collection of disconnected, abandoned old piping, which appeared to be for use in the old fuel system. The dismantled parts were somewhat organized in their arrangement. There was no way to determine what the pipes were formerly connected to.

Mr. Perks noted that the site has been remodeled three to four times to his knowledge. The abandonment of the pipes likely happened long before Jacksons' purchase of the property. **Mr. Keeseey** concurred with that assessment. **Mr. Perks** commented that the Board is essentially penalizing Jacksons for purchasing the site, completing the demo and rebuilding it brand-new. **Mr. Cabbie** clarified that staff is required to make a reduction recommendation per Board Policy Resolution 99-022. The policy states that if there is a component that has caused a release at a facility that was not enrolled in the Fund at the time of release detection or is otherwise an ineligible release source, they are required to make the 20 percent reduction. There is no assertion that Jacksons, as the new owner, was at fault, however, this does not change the fact that there is abandoned piping in place which was not abandoned in accordance with regulation. Whether that was done by a previous owner or Jacksons, it is still an ineligible release.

Mr. Perks noted the age of the site and stated that this could have occurred before the regulations were even in place. **Mr. Cabbie** confirmed this possibility, noting however, that a release that pre-dates the Fund is also an ineligible release source. The coverage application indicates that it was fiberglass pipes. Blenders were installed at the dispensers down the road, which would also indicate that at least one product line from one of the onsite tanks was abandoned in the past. NDEP was

not notified of the abandonment. NDEP cannot verify that the pipe system was ever enrolled in the Fund, which is why the recommendation is being made as an ineligible release source. **Rod Smith** stated that Jacksons has the option to attempt to recover the money from the previous owner.

Greg Lovato stated that it is clear the abandoned piping was not operated by the current owner. **Mr. Cabbie** concurred, stating his understanding that the current owner/operator took on the store when it was in temporary closure and has never operated the facility. They essentially came in as the purchaser and completed a remodel. During this process, they discovered contamination, which led to their request for coverage.

Mr. Lovato commented that customarily, when someone acquires property and especially when it is a formerly used petroleum site, in order to protect themselves from liability, they conduct a Phase I and/or Phase II site assessment to understand what they are getting into with the property. He asked if this due diligence was performed by Jacksons prior to acquiring and developing the property. **Mr. Keeseey** stated his understanding that a Phase II was definitely not done and is uncertain as to whether a Phase I was performed. The decision was made by Jacksons, a company not new to this business. **Mr. Lovato** said that with property sales, there is an understood element of buyer beware. New owners can assess any risks via due diligence efforts while also potentially protecting themselves from liability. As such, a penalty of 20 percent or a reduction should not be seen as a punitive measure towards a new owner. It is merely a recognition of the Fund not investing in historical releases; only systems that are registered prior to a release are covered under the Fund. It would not be a good risk management model for the Fund to pay for whatever conditions are found on a purchased property.

Chair Tappan stated that the fact that Jacksons is not present to oppose the 20 percent requirement, seems to communicate their agreement that it is a reasonable request.

Mr. Perks commented that in the past, the Board has lowered the percentages for people who have spent significant sums completing improvements that benefit the public. Especially since this situation is not the fault of Jacksons, he would recommend a reduced penalty. **Chair Tappan** stated that she is comfortable with the 20 percent reduction.

Rod Smith asked about the precedent for possibly agreeing to lower the recommended reduction, questioning whether this was the appropriate time to set such a precedent. **Mr. Perks** commented that they provided a reduction last year in Las Vegas, where owners had taken over an old site. That coverage was dropped by 10 percent, after it was determined that the new owner got stuck with the property. **Mr. Cabbie** stated his recollection that under those circumstances, the owner had purchased the property more as an investment in the area and was not a seasoned operator of storage tank systems. This does not necessarily mean they should be let off the hook from due diligence, but certainly an owner with experience in operating gas stations for many years in multiple states knows the risks involved in purchasing a property without conducting a Phase II. This case is a different scenario than the example Mr. Perks referenced from last year. **Vice-Chair Dawn Lietz** shared her recollection that in the case referenced from last year, the parcel was not used as a fueling location, but was intended for other uses. All fueling equipment, including tanks, are being removed from the property. **Mr. Cabbie** concurred with this recollection. The owner did not say definitively that it would never be a gas station again, but there was no intent to install a new system.

Chair Tappan invited further comments or questions. There being no further comments or questions, she invited a motion.

Vice-Chair Lietz moved to adopt site-specific Board Determination Number C2020-01 as proposed, granting coverage under the State of Nevada Petroleum Fund to the Jacksons Food

Stores, No. 0169 for two UST systems with a 20 percent reduction due to a non-Fund eligible release source that is comingled with the Fund-eligible release source, and a 10-percent copayment. Mr. Smith seconded the motion. Motion carried unanimously.

6. SITE SPECIFIC BOARD DETERMINATION FOR RECONSIDERATION

Mr. Cabbie stated that in this case, in the past, the owner was awarded a 20 percent reduction for a noncompliance concern. The case is in regards to 24/7 Mini Mart, also known as Auto Center. The original reduction was awarded in September of 2017. The owner and its consultant, Broadbent & Associates, is requesting that pursuant to Policy Resolution 2012-06, there is a mechanism within the Fund to allow a case that has been awarded a reduction to either have the reduction eliminated in total or have it further reduced. Jonathan Bell of Broadbent was present to speak on behalf of the operator. The operator is requesting that based upon an expedited plan and schedule outlined in the Board members' packets, and allowed by Policy Resolution 2012-06, the reduction be removed completely.

Mr. Lovato sought clarification, noting that the Board packet only contained the Broadbent report without a cover sheet or accompanying recommendation. **Mr. Cabbie** explained that there will not be a recommendation, as the determination for reconsideration is entirely under the Board's purview. They are free to eliminate the reduction in total, reduce it to a lower percentage or keep it as is.

Mr. Bell thanked the Board for the opportunity to present the reconsideration request for removal of the 20 percent reduction. The request is in accordance with Board Policy Resolution 2012-06, 5(c), to comply with the NDEP approved compliance plan and schedule. The compliance plan was submitted and approved by the NDEP in February of 2020. In September, 2017, the Board to Review Claims issued coverage for the facility with a 20 percent reduction due to the facility being two months out of compliance at the time of the release. The noncompliance was failure to complete line tightness testing within one year of the previous test. The previous operator of the facility essentially missed a deadline by approximately two months. Therefore, the owner, ELLEN 5, LLC, received a 20 percent reduction. The two-month period was essentially a scheduling technical error on the part of the operator. Subsequent to the noncompliance event, ELLEN 5, LLC took a more active role in verifying the UST compliance.

ELLEN 5, LLC is the owner and manages the properties at the facility, however they are not a UST operator. The noncompliance did provide an understanding of the possible ramifications, leading them to take a more active role. ELLEN 5, LLC is now included in all ongoing UST compliance documentation. Those documents are reviewed and discussed directly with the UST operator or CEM for any required clarification or action. The facility has been in compliance since the two-month noncompliance period in 2017. In addition to record keeping and keeping abreast of compliance documents, in 2018, ELLEN 5, LLC moved forward with substantial investments to replace the old UST system. They previously had an old, 1985 version UST system, which was direct bury without infrastructure containment, sensors or mechanisms. In 2018, they demoed the entire facility and did a ground-up rebuild, essentially replacing everything at the facility. The replacement system is currently in operation with all up-to-date containment infrastructure and sensor technology. ELLEN 5, LLC understands the ramifications of noncompliance issues and the status of their system, as evidenced by the actions and investments they made. This substantially bolstered release prevention at the facility.

In terms of the ongoing LUST UST project, to date, ELLEN 5, LLC has worked aggressively with the NDEP to characterize the site without hold ups since the release was discovered. For the soil and groundwater at the facility, the contaminate plume has been characterized and delineated vertically and laterally. The project is progressing to the mitigation phase. In January of this year,

NDEP approved the six-month long-term groundwater remediation pilot test. Implementation of the test is currently underway. Startup of the system is anticipated later this month. In regards to the Fund coverage, as of March 2020, the 20 percent reduction has cost an additional \$52,000 in out-of-pocket expenses to ELLEN 5, LLC. In essence, the scheduling technical error, which may or may not have impacted the overall contaminate plume at the facility, has cost over \$50,000. This will substantially increase as the project enters the remediation phase. All work has been done pursuant to work plans and documents approved by NDEP.

Chair Tappan invited comments or questions from Board Members. **Mr. Perks** asked for confirmation on the total cost paid by the operator due to the reduction. **Mr. Bell** stated that as of March of this year, costs have totaled \$52,000, just for the 20 percent and not including the 10 percent copay.

Mr. Lovato commented that this update is encouraging news in that ELLEN 5, LLC is taking this process seriously. This is exactly the reason the revised resolution was created in 2016. He asked whether there is a general perception that the intent of the 2016 resolution for these accelerated cleanup plans has been effective. **Mr. Bell** stated that it has been beneficial. Property owners generally want access to all parts of their property. The potential of recouping the reduction percentage is a significant issue. ELLEN 5, LLC has already spent \$52,000 and they are just getting into remediation. The requirements motivate owners to make appropriate progress to a point where they can request reconsideration. **Mr. Cabbie** echoed Mr. Bell's statements, noting that this is exactly why the policy resolution was put in place. The SSBD just discussed in Agenda Item 5 (reduction to case) is just the type of scenario that resolution 2012-06 can address in terms of owners who are serious about getting a site cleaned up in an expedited manner. The reduction appears to have motivated this operator to progress the cleanup forward as evidenced by complete characterization and delineation of the plume, and has paid a penalty for the noncompliance to this point.

Vice-Chair Lietz posed a scenario where a reconsideration is done on this particular case with the Board choosing not to reduce the full 20 percent. She asked whether there is an option for the operator to come back later to petition for the remaining amount. **Mr. Lovato** said he understands Vice-Chair Lietz' point that there is potential for continually incentivizing. However, in looking at this particular case, he sees it slightly differently. In past reductions of SSBDs, they have set the percentage at 10 percent or 5 percent, when there was cause to hold back. However, in this case, the noncompliance did not seem to be serious enough to necessarily cause the release to be more significant than it otherwise would have been. Based on that understanding, in his perspective, it may be worthwhile to remove the reduction completely.

Mr. Cabbie clarified that the policy resolution does not specifically exclude an operator from coming back with additional requests. However, if a reconsideration is requested and the Board determines that no changes should be made, the Board will not entertain additional repeated requests. The intent is that the Board convenes once more to review its decision on the initial coverage reduction. This is essentially the last chance for the operator to demonstrate cleanup progress and show that the reduction has made an impact on how they operate. Some leniency may be shown to the operator once they are able to make an effective case. The idea of a reconsideration is not to enable the operator to come back multiple times. Even if the reduction is removed in total, the language indicates that if the site fails to comply with NDEP directives moving forward, cannot meet the plan and schedule, or becomes recalcitrant, the reduction can be reinstated.

Vice-Chair Lietz said she agrees with the explanation. She cited a scenario where an operator starts with good momentum, then receives a reduction and begins to drag its feet. Historically, some cases go for a long period before the Fund is finally exhausted. If the goal is to get the cleanup accomplished quicker, perhaps reducing to 10 percent with additional time requirement incentive

would be effective. The question was towards clarification and not necessarily specific to this case. **Mr. Cabbie** stated that there is a firm incentive in place at this time. Whatever decision is made at this time is the final decision and any missteps or unacceptable delays by the operator will result in an increase back to 20 percent. He also argued that setting the reduction lower rather than a total elimination may actually serve to slow down the cleanup process.

Jeff Collins commented that in the past, NDEP has had the consultant and operator develop a compliance schedule, which provides certainty to the case officer and helps to accelerate the process.

Mr. Bell stated that Tedd Rosenstein, owner representative from ELLEN 5, LLC was present and available for questions. **Mr. Bell** estimated that the impact of the two-month lapse in testing did not contribute significantly to the contamination onsite. The previous test (one year prior) was passed. The failure was in the shear valve. While there is a chance it may have been caught, there is also a chance it may not have been. The reality is that the failure was found in February, which was 30 days after the test technically was supposed to be conducted. Thus, there was not a significant period of noncompliance during which they were unaware. In terms of the cleanup schedule addressed by Mr. Collins, the operator did develop an expedited schedule, which is included in the reconsideration documents. Even with the challenges of the COVID epidemic and extended Board meeting time frames, they have managed to stay on track with the cleanup schedule. Originally, they were to be operational in the second quarter and they remain on target for this timeline. These actions demonstrate the reduction has motivated the operator to stay in compliance. **Mr. Lovato** referred to Mr. Bell's comments that the two-month period was not material, if at all, and stated this comports with the briefing Mr. Lovato received from the corrective action staff when they reviewed the case previously. Everyone who has reviewed the timeline has concluded that that period was not a substantial contribution to the size of the release as a result of the noncompliance.

Chair Tappan commented on the excellent quality of comments and discussion. She commented that this case is precisely the purpose of the policy. With no further comments pending, she invited a motion from the Board.

Mr. Perks moved that for Petroleum Fund Case No. 2017000015, the 20 percent penalty for compliance be discontinued.

Discussion:

Mr. Cabbie sought clarification that Mr. Perks' intent was to remove the reduction in total. **Mr. Perks** confirmed this understanding. **Chair Tappan** clarified the intent: *In accordance with Board Policy Resolution 2012-06, an expedited remediation compliance plan and schedule has been submitted to and approved by NDEP.* She stated her understanding that Mr. Perks would move to eliminate the 20 percent coverage reduction. **Mr. Perks** confirmed the understanding. **Chair Tappan** invited a second on the motion.

Vice-Chair Lietz seconded the motion.

Chair Tappan called for any further discussion. **Mr. Bell** said he had a comment on the timing of the process, but surmised that it could be addressed after the vote. **Mr. Cabbie** clarified that it should be discussed at this time.

Mr. Bell stated the reconsideration was originally set for the March 2020 Board meeting. The operator had hoped to have a resolution at that time prior to system installation and all the costs associated with that. Regardless of that, ELLEN 5, LLC has moved forward with the process and

remains on track. They would like to request that the Board make any removal or decrease of reduction retroactive to the March meeting. **Mr. Cabbie** read the policy resolution into the record: *“Upon reconsideration, if the Board approves to reduce or eliminate an existing SSBD fund coverage reduction, the new fund coverage conditions will be applied to all reimbursable costs incurred beginning on the day of Board approval.”* Essentially, the resolution states that starting the day that the vote is taken, any activities (not claims) that occur on this day forward, the elimination of the reduction would be applied. Only the copayment would be required for those activities. There are extenuating circumstances in this case, in that but for the meeting cancellation, this vote would have taken place on March 30th, 2020. Mr. Bell’s request is counter to the contents of Number 3 in the policy resolution, however he surmised that Peter Handy, State Attorney General’s Office, could speak to whether the Board has authority to grant the request to retroactively apply the reduction to March 30, 2020.

Chair Tappan requested that Mr. Handy provide his opinion on this issue. **Mr. Handy** prefaced his comments by stating there is no way to know what challenges it might present, should this scenario occur multiple times in the future. He noted that primarily, these resolutions regarding reconsideration really affect how NDEP brings resolutions to the Board. The Board retains the discretion to modify or remove penalty reductions retroactively, immediately or prospectively. The resolutions provide a guide for NDEP in presenting reconsideration to the Board more so than it is limiting the Board’s authority. **Chair Tappan** thanked Mr. Handy for his input.

Chair Tappan invited the Board to make further comments as to the request to apply the reduction retroactively to March 30th.

Mr. Perks inquired whether the Board should approve the motion on the floor and have a separate motion. **Mr. Cabbie** suggested that it all be contained in one motion. **Chair Tappan** requested that Mr. Perks withdraw his previous motion prior to moving with a new motion.

Mr. Perks withdrew the motion without objection from any Board Members.

There was discussion clarifying the fact that Mr. Perks referenced the case number in his motion, while Chair Tappan referenced the resolution number.

Vice-Chair Lietz reviewed that there is a 10 percent copay and the testimony has been that only \$52,000 has been spent to this point. Ten percent equates to \$100,000. She asked whether the owner must pay \$100,000 on the copay or whether this just minimizes how much can be drawn from the fund. **Mr. Cabbie** clarified that the copay and the reduction are applied to the claim amount as the case progresses, meaning that they will not pay the full \$100,000 ten percent copay up front. It will be spread out through the entirety of the project. When Mr. Bell stated that \$52,000 has been spent thus far, he was talking specifically about the 20 percent component, not the 10 percent. Additional money has been spent by the operator to date.

Chair Tappan asked for clarification from Mr. Bell that the operator has spent money from March 30th through today’s date. **Mr. Bell** confirmed that that have made significant expenditures. They are installing wells and the system itself.

Chair Tappan invited a new motion.

Mr. Perks moved that in accordance with Fund Policy Resolution 2012-06, for Petroleum Fund Case No. 2017000015, the Board recommends discontinuation of the 20 percent compliance penalty in full. Any site cleanup activities that occurred on or before March 30th will not have the reduction applied to them, but will only be subject to the 10 percent copayment. Vice-Chair Lietz seconded the motion. Motion carried unanimously.

7. EXECUTIVE BRANCH AUDIT COMMITTEE MEETING SUMMARY

Mr. Cabble discussed activity since the last meeting in December 2019. A six-month follow-up report by the Division of Internal Audits in December 2019 was presented during an Executive Branch Audit Committee meeting on February 26, 2020. He reviewed elements of that discussion and five findings and recommendations made. The report presented to the Executive Branch Audit Committee indicated that of the five recommendations made in June 2019, the Petroleum Fund and NDEP have essentially not taken action on two recommendations and have partially implemented actions on three recommendations.

The two recommendations where no action was noted include Recommendation No. 2, which speaks to third party liability funds. NDEP has a policy resolution that says it may grant third party liability funding to cleanup costs. The Division of Internal Audits disagrees and intends to solicit an opinion from the State Attorney General's Office for a final determination on the issue. The other recommendation noted as having no action by the Fund was Recommendation Number 5, which speaks to NDEP and the Petroleum Fund specifically revising its policies and resolutions with regard to enrollment and reimbursement coverage. Discussion of on these recommendations occurred during both the September and December 2019 Board meeting. The Board and Fund staff agreed its polies were strong and opted not to revise them. The Governor, however, supported the Executive Branch Audit Committee's input that NDEP take a second look at the policies to ensure they are clear and transparent. As such, NDEP may take another look at the policies to determine potential additions and revisions. This may be necessary anyway since NDEP is pursuing statutory changes to address another audit recommendation regarding small businesses. If presented and adopted during the 2021 legislative session, Fund regulations and policy resolutions will need to be amended.

During the Executive Branch Audit Committee meeting, Secretary Cegavske also inquired as to the status of the Fund's new policy with regard to field audits. This was meant to address Recommendation Number 3. At that time, NDEP indicated that it would present an Equipment Policy Resolution, which included the field audit component, to the Board at the March 2020 meeting. Unfortunately, that meeting was cancelled due to COVID 19. Rather than trying to squeeze the topic into this meeting and not yet understanding how virtual meetings would be handled, Mr. Cabble opted to postpone the discussion to September. The new policy resolution will be included in the September agenda for Board adoption. In the meantime, NDEP will pursue virtual workshops to solicit addition public comment regarding the policy resolution. In addition, staff were considering visiting sites with equipment on them in order to assess inventory. This would provide a starting point to launch the new program.

Another Executive Branch Audit Committee Member, Attorney General Ford, also asked about NDEP's progress toward addressing Recommendation No. 1, relating to the small business issue and any other changes to Fund statute to ensure the implementation of statutory intent. NDEP proposed that it look at the definition of a small business as a bill draft request, which would be submitted to the Governor for approval. If approved, it would go to the next legislative session in February. Staff is still working through the process and will update the Board on its progress in future meetings.

Recommendation No. 4 was to develop additional risk-based tools to assist in cleaning up petroleum impacted sites. This recommendation was not addressed during the Executive Branch Audit Committee meeting; however, the Division of Internal Audits follow up report acknowledged that there was partial implementation of the recommendation. NDEP plans to continue to evaluate its current tools, perhaps look to other states and programs to see if there are other avenues not

already being implemented. Staff will also look at recent closure rates based on the risk-based technologies already being used.

Chair Tappan invited comments or questions from Board Members. She surmised that this will be ongoing and there will be likely more discussion at the next meeting. **Mr. Cabbie** stated his understanding that they are now on an annual cycle in the Executive Branch Audit Committee's meetings. Staff will work to resolve the issues timely.

Mr. Lovato said part of what came out of the Executive Branch Audit Committee's February meeting was that the Governor's Office was going to request an official opinion from the Attorney General's Office on whether third party liability funds were eligible to be used. This relates to the Board's approval of the second million dollars for certain cleanups. The question is whether this funding is eligible to address cleanups or can only be used as part of a settlement that an operator reaches with a third party. It is unknown whether that request from the Governor's Office actually went to the Attorney General's Office. The substance of that request was learned on February 26th. The Division provided input that same day to the Division of Internal Audits and has not heard back after multiple requests on whether the letter actually went to the Attorney General's Office and whether it included the Division's input. One item of importance to NDEP was that the question that was posed to the Attorney General's Office be inclusive and that it analyze all sides of the issues. This includes analysis of the strengths and weaknesses of different interpretations and which of these might be reasonable, as opposed to asking the Attorney General's Office for a yes or no answer. This remains an open item that the Division is waiting to hear back on. The status of the letter is unknown, as is the status of the review at the Attorney General's Office. Once more information is received, it will be shared with the Board.

Chair Tappan asked whether Mr. Handy would have an avenue for obtaining the information. **Mr. Handy** stated that he does not have access to updates. He did initial work for NDEP on the review and preparation of NDEP's audit response. As such, he is not involved in the Division of Internal Audit's request for an Attorney General opinion (conflict of interest).

Chair Tappan invited further comments or questions. There were none.

8. **ADOPTION OF CONSENT ITEMS**

The Board reviewed all items as a consent calendar item. There were no items marked by an asterisk (*), or members of the public who wished 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 – JUNE 11, 2020**

| <u>HEATING OIL</u> | | | | <u>REQUESTED</u> | <u>RECOMMENDED</u> |
|-----------------------------|----|-------------------|---|---------------------------|---------------------------|
| FOR POSSIBLE ACTION | 1 | 2012000017; 79685 | Churchill County School District: Old High School | \$4,460.00 | \$4,460.00 |
| FOR POSSIBLE ACTION | 2 | 2019000013; 79433 | Truckee River Flood Management Authority: Brothers of Holy Rosary | \$15,025.98 | \$10,565.65 |
| FOR POSSIBLE ACTION | 3 | 2019000016; 79605 | CA Student Living Reno II, LLC: 1669 N Virginia Street | \$28,808.00 | \$19,803.12 |
| SUB TOTAL: | | | | <u>\$48,293.98</u> | <u>\$34,828.77</u> |
| <u>ONGOING CASES</u> | | | | <u>REQUESTED</u> | <u>RECOMMENDED</u> |
| FOR POSSIBLE ACTION | 1 | 1992000126; 79706 | Clark County School District: RC White (Arville) Transportation Satellite | \$11,745.96 | \$11,725.37 |
| FOR POSSIBLE ACTION | 2 | 1994000037; 79667 | Param Investments LLC: Go-Fer Supermarket | \$44,000.00 | \$44,000.00 |
| FOR POSSIBLE ACTION | 3 | 1995000012; 79693 | N. Nevada Asset Holdings, LLC: Parker's Model T | \$8,722.50 | \$7,850.25 |
| FOR POSSIBLE ACTION | 4 | 1995000039; 79682 | Al Park Petroleum Inc.: Crescent Valley Market | \$28,704.60 | \$25,721.23 |
| FOR POSSIBLE ACTION | 5 | 1998000034; 79122 | Chevron USA Products Co.: Chevron #9-4116 | \$642,166.34 | \$489,597.29 |
| FOR POSSIBLE ACTION | 6 | 1999000014; 79683 | Al Park Petroleum Inc.: Pit Stop #7 Conoco | \$5,266.91 | \$4,734.82 |
| FOR POSSIBLE ACTION | 7 | 2004000011; 79697 | Travel Centers of America: Wells Petro Truck Service | \$3,952.00 | \$3,556.80 |
| FOR POSSIBLE ACTION | 8 | 2005000002; 79688 | Carson Valley Oil Co., Inc.: Carson Valley Oil Co. | \$11,937.00 | \$10,743.30 |
| FOR POSSIBLE ACTION | 9 | 2007000014; 79705 | Raiders Oz Business, LLC: Former Ace Cab/Frias Transportation | \$146,716.41 | \$131,587.32 |
| FOR POSSIBLE ACTION | 10 | 2007000016; 79691 | Golden Gate Petroleum of Nevada LLC: Golden Gate Petroleum | \$4,959.78 | \$4,441.30 |
| FOR POSSIBLE ACTION | 11 | 2008000005; 79601 | Avis Rent A Car System LLC: Avis Rent A Car | \$25,325.00 | \$22,792.50 |
| FOR POSSIBLE ACTION | 12 | 2008000009; 79641 | Pilot Travel Centers LLC: Flying J Travel Plaza #770 | \$87,585.83 | \$61,474.96 |
| FOR POSSIBLE ACTION | 13 | 2009000024; 79518 | Parampreet Investment LLC: Chucks Circle C Market | \$13,275.54 | \$8,850.19 |
| FOR POSSIBLE ACTION | 14 | 2010000009; 79699 | Travel Centers of America: Mill City Travel Center | \$16,164.72 | \$13,092.96 |
| FOR POSSIBLE ACTION | 15 | 2011000009; 79686 | Cimarron West: Cimarron West | \$27,902.35 | \$24,956.87 |

ONGOING CASES: CONTINUED

| | | | | <u>REQUESTED</u> | <u>RECOMMENDED</u> |
|---------------------|----|-------------------|--|-------------------------|---------------------------|
| FOR POSSIBLE ACTION | 16 | 2012000012; 79687 | Dewey Has Gas, Inc.: Smart Mart | \$39,778.71 | \$35,646.96 |
| FOR POSSIBLE ACTION | 17 | 2013000019; 79692 | Hardy Enterprises Inc.: Elko Sinclair #53 | \$36,117.45 | \$32,241.87 |
| FOR POSSIBLE ACTION | 18 | 2014000004; 79702 | Alsaker Corp: Broadway Colt Service Center | \$40,667.39 | \$36,003.11 |
| FOR POSSIBLE ACTION | 19 | 2014000016; 79696 | Smitten Oil and Tire Co., Inc.: Former Smitten Oil | \$4,376.04 | \$3,938.44 |
| FOR POSSIBLE ACTION | 20 | 2015000009; 79698 | Travel Centers of America: Las Vegas Travel Center | \$2,482.50 | \$2,234.25 |
| FOR POSSIBLE ACTION | 21 | 2016000005; 79690 | Golden Gate S.E.T. Retail of Nevada LLC: Golden Gate Facility #65 - Fallon | \$3,918.08 | \$3,382.50 |
| FOR POSSIBLE ACTION | 22 | 2016000023; 79684 | Al Park Petroleum Inc.: Pit Stop #1 | \$17,828.94 | \$12,485.51 |
| FOR POSSIBLE ACTION | 23 | 2017000004; 79613 | Regional Transportation Commission: Regional Transportation Commission | \$1,493.75 | \$1,493.75 |

SUB TOTAL: \$1,225,087.80 \$992,551.55

RECOMMENDED CLAIMS TOTAL: \$1,273,381.78 \$1,027,380.30

BOARD MEETING CLAIMS TOTAL:

Mr. Smith moved for approval of the consent items. Heating Oil Cases 1 through 3, Ongoing Cases, 1 through 23. Mr. Perks seconded the motion. Motion carried unanimously.

9. **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.

| <u>HEATING OIL – DIRECT PAYMENT</u> | | | | <u>REQUESTED</u> | <u>RECOMMENDED</u> |
|--|----|-------------------|---|----------------------------|----------------------------|
| FOR POSSIBLE ACTION | 1 | 2012000017; 79585 | Churchill County School District: Old High School | \$4,517.39 | \$4,517.39 |
| FOR POSSIBLE ACTION | 2 | 2018000043; 79565 | Mr. William Kennedy: William Kennedy Residential Heating Oil Tank | \$23,569.42 | \$23,361.01 |
| FOR POSSIBLE ACTION | 3 | 2019000031; 79472 | 555 S. Center Street LLC: 555 S. Center Heating Oil Tank | \$9,489.60 | \$8,989.60 |
| FOR POSSIBLE ACTION | 4 | 2019000045; 79564 | Jonathan Fore: Jonathan Fore Residential Heating Oil Tank | \$13,482.10 | \$13,232.10 |
| FOR POSSIBLE ACTION | 5 | 2020000001; 79617 | Arroyo East LLC: Arroyo East LLC | \$13,600.56 | \$13,350.56 |
| FOR POSSIBLE ACTION | 6 | 2020000003; 79624 | 542 Lander Street, LLC.: 542 Lander Street, LLC | \$16,444.11 | \$16,194.11 |
| FOR POSSIBLE ACTION | 7 | 2020000004; 79633 | Andrew Samuelsen: Andrew Paul Samuelsen Property | \$7,601.83 | \$7,351.83 |
| FOR POSSIBLE ACTION | 8 | 2020000005; 79676 | Benjamin King: Ben King Residential Heating Oil Tank | \$10,649.77 | \$10,117.27 |
| FOR POSSIBLE ACTION | 9 | 2020000007; 79634 | Tom L. Fountain: Fountain Mountain, LLC | \$15,149.50 | \$14,899.50 |
| FOR POSSIBLE ACTION | 10 | 2020000008; 79635 | Susan Manfredi Trust: Susan M. Manfredi Property | \$22,553.92 | \$22,303.92 |
| FOR POSSIBLE ACTION | 11 | 2020000011; 79650 | Gabriel Morris: Gabriel P. Morris Residence | \$14,982.82 | \$14,732.82 |
| FOR POSSIBLE ACTION | 12 | 2020000013; 79651 | Michael Yopez: Michael Christopher Yopez Residence | \$15,307.34 | \$15,057.34 |
| FOR POSSIBLE ACTION | 13 | 2020000014; 79669 | Thomas Scoggin: Thomas Dean Scoggin Property | \$15,985.09 | \$15,735.09 |
| FOR POSSIBLE ACTION | 14 | 2020000018; 79674 | Lisa Carlson: Urban Flats, LLC Series 5 | \$17,429.45 | \$17,179.45 |
| FOR POSSIBLE ACTION | 15 | 2020000020; 79670 | Matthew Park: Matthew Joseph Park Property | \$15,975.00 | \$15,725.00 |
| FOR POSSIBLE ACTION | 16 | 2020000021; 79673 | Glory Kiel: Glory D. Kiel Residence | \$17,725.84 | \$17,475.84 |
| FOR POSSIBLE ACTION | 17 | 2020000022; 79675 | Garrett Weir: Garrett Christopher Weir Residence | \$18,523.63 | \$18,273.63 |
| SUB TOTAL: | | | | <u>\$252,987.37</u> | <u>\$248,496.46</u> |

OTHER CASES – DIRECT PAYMENT

| | | | <u>REQUESTED</u> | <u>RECOMMENDED</u> | |
|---------------------|----|-------------------|---|---------------------------|--------------|
| FOR POSSIBLE ACTION | 1 | 1992000126; 79625 | Clark County School District: Rc White (Arville) Transportation Satellite | \$20,728.10 | \$20,622.01 |
| FOR POSSIBLE ACTION | 2 | 1993000102; 79589 | Rebel Oil Company: Rebel Store #2008 | \$5,358.75 | \$4,768.75 |
| FOR POSSIBLE ACTION | 3 | 1993000102; 79666 | Rebel Oil Company: Rebel Store #2008 | \$6,040.00 | \$6,040.00 |
| FOR POSSIBLE ACTION | 4 | 1993000103; 79619 | Charlie Brown Construction: Charlie Brown Const. | \$10,324.62 | \$10,118.13 |
| FOR POSSIBLE ACTION | 5 | 1993000103; 79677 | Charlie Brown Construction: Charlie Brown Const. | \$11,329.41 | \$11,102.82 |
| FOR POSSIBLE ACTION | 6 | 1994000015; 79664 | Pilger Family Holdings: Former D & G Oil Company | \$44,238.58 | \$43,826.08 |
| FOR POSSIBLE ACTION | 7 | 1994000027; 79554 | 7-Eleven Inc.: 7-Eleven #19653 | \$111,486.24 | \$111,232.94 |
| FOR POSSIBLE ACTION | 8 | 1994000027; 79608 | 7-Eleven Inc.: 7-Eleven #19653 | \$34,787.78 | \$34,531.44 |
| FOR POSSIBLE ACTION | 9 | 1994000113; 79607 | Pilot Travel Centers LLC: Former Unocal Truck Stop #6328 | \$7,997.00 | \$7,997.00 |
| FOR POSSIBLE ACTION | 10 | 1995000012; 79599 | N. Nevada Asset Holdings, LLC: Parker's Model T | \$22,227.09 | \$19,996.32 |
| FOR POSSIBLE ACTION | 11 | 1995000039; 79568 | Al Park Petroleum Inc.: Crescent Valley Market | \$22,458.25 | \$19,369.88 |
| FOR POSSIBLE ACTION | 12 | 1996000063; 79628 | Joan Pennachio: V & V Automotive | \$3,966.02 | \$3,966.02 |
| FOR POSSIBLE ACTION | 13 | 1996000064; 79618 | The Esslinger Family Trust: Red Rock Mini Mart | \$16,666.05 | \$16,166.07 |
| FOR POSSIBLE ACTION | 14 | 1996000064; 79680 | The Esslinger Family Trust: Red Rock Mini Mart | \$34,003.78 | \$32,983.67 |
| FOR POSSIBLE ACTION | 15 | 1997000008; 79655 | Ewing Bros Inc.: Ewing Bros Inc. | \$2,510.00 | \$2,259.00 |
| FOR POSSIBLE ACTION | 16 | 1997000071; 79560 | 7-Eleven Inc.: 7-Eleven #25586 | \$52,774.75 | \$47,492.37 |
| FOR POSSIBLE ACTION | 17 | 1997000071; 79609 | 7-Eleven Inc.: 7-Eleven #25586 | \$17,341.82 | \$15,607.64 |
| FOR POSSIBLE ACTION | 18 | 1999000014; 79569 | Al Park Petroleum Inc.: Pit Stop #7 Conoco | \$4,839.51 | \$4,355.56 |
| FOR POSSIBLE ACTION | 19 | 1999000022; 79646 | Terrible Herbst, Inc.: Terrible Herbst #129 | \$9,083.22 | \$8,174.90 |
| FOR POSSIBLE ACTION | 20 | 1999000023; 79581 | Nevada Ready Mix Corp: Nevada Ready Mix | \$24,842.75 | \$22,020.97 |
| FOR POSSIBLE ACTION | 21 | 1999000023; 79661 | Nevada Ready Mix Corp: Nevada Ready Mix | \$42,389.12 | \$38,150.21 |
| FOR POSSIBLE ACTION | 22 | 1999000029; 79541 | Terrible Herbst, Inc.: Terrible Herbst #136 (Arco) | \$29,868.85 | \$25,570.67 |
| FOR POSSIBLE ACTION | 23 | 1999000064; 79571 | Al Park Petroleum Inc: Pit Stop #4 (Conoco) | \$1,362.50 | \$1,226.25 |
| FOR POSSIBLE ACTION | 24 | 1999000066; 79671 | HP Management, LLC: Former Haycock Petroleum | \$32,203.30 | \$28,982.97 |
| FOR POSSIBLE ACTION | 25 | 1999000086; 79645 | Terrible Herbst, Inc.: Terrible Herbst #126 | \$1,422.50 | \$1,280.25 |
| FOR POSSIBLE ACTION | 26 | 1999000104; 79536 | Terrible Herbst, Inc.: Terrible Herbst #118 | \$4,140.42 | \$2,887.61 |
| FOR POSSIBLE ACTION | 27 | 1999000104; 79644 | Terrible Herbst, Inc.: Terrible Herbst #118 | \$9,046.42 | \$8,141.78 |
| FOR POSSIBLE ACTION | 28 | 1999000135; 79535 | Terrible Herbst, Inc.: Terrible Herbst #106 (Gas) & #108 (Lube) | \$64,279.06 | \$55,736.52 |
| FOR POSSIBLE ACTION | 29 | 1999000135; 79643 | Terrible Herbst, Inc.: Terrible Herbst #106 (Gas) & #108 (Lube) | \$7,272.12 | \$6,185.12 |
| FOR POSSIBLE ACTION | 30 | 1999000137; 79543 | Terrible Herbst, Inc.: Terrible Herbst #152 (Gas) & #155 (Lube) | \$30,386.96 | \$25,859.75 |
| FOR POSSIBLE ACTION | 31 | 1999000137; 79701 | Terrible Herbst, Inc.: Terrible Herbst #152 (Gas) & #155 (Lube) | \$3,585.00 | \$3,226.50 |
| FOR POSSIBLE ACTION | 32 | 1999000199; 79591 | Village Springs, LLC: Lakeshore Orbit Station | \$6,562.31 | \$6,562.31 |
| FOR POSSIBLE ACTION | 33 | 1999000243; 79549 | 7-Eleven Inc.: 7-Eleven #27607 | \$39,672.34 | \$35,705.11 |
| FOR POSSIBLE ACTION | 34 | 2004000011; 79604 | Travel Centers of America: Wells Petro Truck Service | \$12,687.66 | \$11,418.89 |
| FOR POSSIBLE ACTION | 35 | 2004000039; 79579 | Clark County Dept of Aviation: Fmr. National Car Rental | \$63,211.65 | \$63,211.65 |

OTHER CASES – DIRECT PAYMENT: CONTINUED

| | | | <u>REQUESTED</u> | <u>RECOMMENDED</u> | |
|---------------------|----|-------------------|--|---------------------------|-------------|
| FOR POSSIBLE ACTION | 36 | 2005000044; 79656 | Ewing Bros Inc.: Ewing Bros Inc. | \$7,137.50 | \$6,423.75 |
| FOR POSSIBLE ACTION | 37 | 2007000014; 79616 | Raiders Oz Business, LLC: Former Ace Cab/frias Transportation | \$41,020.90 | \$36,900.30 |
| FOR POSSIBLE ACTION | 38 | 2007000016; 79595 | Golden Gate Petroleum of Nevada LLC: Golden Gate Petroleum | \$4,722.35 | \$4,250.11 |
| FOR POSSIBLE ACTION | 39 | 2008000018; 79700 | Jacksons Food Stores Inc.: Jacksons Food Stores #0145 | \$3,577.00 | \$3,219.30 |
| FOR POSSIBLE ACTION | 40 | 2008000019; 79563 | One Panou LLC: Golden Market #3 | \$15,747.89 | \$13,908.73 |
| FOR POSSIBLE ACTION | 41 | 2010000007; 79623 | Pecos Express: Pecos Express | \$4,832.75 | \$4,299.57 |
| FOR POSSIBLE ACTION | 42 | 2010000009; 79612 | Travel Centers of America: Mill City Travel Center | \$17,844.19 | \$14,358.47 |
| FOR POSSIBLE ACTION | 43 | 2012000005; 79627 | Travel Systems, LLC: Zephyr Cove Resort | \$38,772.23 | \$34,845.96 |
| FOR POSSIBLE ACTION | 44 | 2012000012; 79622 | Dewey Has Gas, Inc.: Smart Mart | \$36,663.11 | \$32,874.40 |
| FOR POSSIBLE ACTION | 45 | 2013000009; 79668 | Western Petroleum: Western Petroleum | \$15,998.50 | \$14,398.65 |
| FOR POSSIBLE ACTION | 46 | 2013000011; 79653 | Har Moor Investments, LLC: Village Shop #4 | \$19,238.47 | \$17,314.62 |
| FOR POSSIBLE ACTION | 47 | 2013000019; 79600 | Hardy Enterprises Inc.: Elko Sinclair #53 | \$77,297.42 | \$69,548.60 |
| FOR POSSIBLE ACTION | 48 | 2014000004; 79578 | Alsaker Corp.: Broadway Colt Service Center | \$46,370.31 | \$41,664.75 |
| FOR POSSIBLE ACTION | 49 | 2014000010; 79610 | 7-Eleven Inc.: 7-Eleven #29667 | \$7,449.36 | \$6,704.42 |
| FOR POSSIBLE ACTION | 50 | 2014000016; 79603 | Smitten Oil and Tire Co Inc.: Former Smitten Oil | \$3,106.77 | \$2,796.09 |
| FOR POSSIBLE ACTION | 51 | 2014000025; 79602 | Superior Campgrounds of America LLC: Silver City RV Resort | \$29,477.93 | \$26,497.92 |
| FOR POSSIBLE ACTION | 52 | 2014000033; 79654 | Speedee Mart Inc.: Speedee Mart #108 | \$15,542.11 | \$13,987.90 |
| FOR POSSIBLE ACTION | 53 | 2015000009; 79611 | Travel Centers of America: Las Vegas Travel Center | \$9,090.45 | \$8,181.41 |
| FOR POSSIBLE ACTION | 54 | 2016000005; 79593 | Golden Gate S.E.T. Retail of Nevada LLC: Golden Gate Facility #65 - Fallon | \$2,929.03 | \$2,636.13 |
| FOR POSSIBLE ACTION | 55 | 2016000009; 79555 | 7-Eleven Inc.: 7-Eleven #13685 | \$28,951.08 | \$26,009.68 |
| FOR POSSIBLE ACTION | 56 | 2016000012; 79636 | DLF Corporation: Mr. D's Fastlane | \$5,608.00 | \$5,047.20 |
| FOR POSSIBLE ACTION | 57 | 2016000021; 79556 | 7-Eleven Inc.: 7-Eleven #29647 | \$30,425.20 | \$27,382.68 |
| FOR POSSIBLE ACTION | 58 | 2016000023; 79572 | Al Park Petroleum Inc.: Pit Stop #1 | \$20,193.21 | \$14,539.11 |
| FOR POSSIBLE ACTION | 59 | 2016000027; 79544 | Terrible Herbst, Inc.: Terrible Herbst #272 | \$38,770.12 | \$31,134.47 |
| FOR POSSIBLE ACTION | 60 | 2016000027; 79647 | Terrible Herbst, Inc.: Terrible Herbst #272 | \$13,291.44 | \$10,644.57 |
| FOR POSSIBLE ACTION | 61 | 2017000019; 79597 | Rebel Oil Company: Rebel Store #2197 | \$30,890.12 | \$27,264.71 |
| FOR POSSIBLE ACTION | 62 | 2017000019; 79665 | Rebel Oil Company: Rebel Store #2197 | \$72,964.00 | \$65,667.60 |
| FOR POSSIBLE ACTION | 63 | 2017000035; 79587 | Rebel Oil Company: Rebel Store #2177 | \$27,636.20 | \$24,050.23 |
| FOR POSSIBLE ACTION | 64 | 2017000035; 79663 | Rebel Oil Company: Rebel Store #2177 | \$22,334.00 | \$20,100.60 |
| FOR POSSIBLE ACTION | 65 | 2018000005; 79598 | Rebel Oil Company: Rebel Store # 2153 | \$11,854.38 | \$10,247.74 |
| FOR POSSIBLE ACTION | 66 | 2018000005; 79659 | Rebel Oil Company: Rebel Store # 2153 | \$10,039.75 | \$9,035.77 |
| FOR POSSIBLE ACTION | 67 | 2018000009; 79614 | Reed Incorporated: Pacific Pride | \$7,712.50 | \$6,941.25 |
| FOR POSSIBLE ACTION | 68 | 2018000009; 79694 | Reed Incorporated: Pacific Pride | \$15,232.12 | \$13,707.18 |
| FOR POSSIBLE ACTION | 69 | 2018000018; 79649 | Primadonna Company LLC: Whiskey Pete's Stateline Stop | \$8,274.77 | \$4,096.01 |
| FOR POSSIBLE ACTION | 70 | 2019000001; 79596 | Rebel Oil Company: Rebel Store #2160 | \$18,732.25 | \$16,859.03 |

OTHER CASES – DIRECT PAYMENT: CONTINUED

| | | | <u>REQUESTED</u> | <u>RECOMMENDED</u> | |
|---------------------|----|-------------------|--|------------------------------|------------------------------|
| FOR POSSIBLE ACTION | 71 | 2019000002; 79594 | Rebel Oil Company: Rebel Store #2166 | \$7,585.25 | \$6,287.63 |
| FOR POSSIBLE ACTION | 72 | 2019000002; 79662 | Rebel Oil Company: Rebel Store #2166 | \$24,531.25 | \$22,078.13 |
| FOR POSSIBLE ACTION | 73 | 2019000004; 79586 | Rebel Oil Company: Rebel Store #2142 | \$17,820.00 | \$15,653.93 |
| FOR POSSIBLE ACTION | 74 | 2019000004; 79658 | Rebel Oil Company: Rebel Store #2142 | \$6,398.75 | \$5,758.87 |
| FOR POSSIBLE ACTION | 75 | 2019000005; 79583 | Fairway Chevrolet Co.: Fairway Chevrolet Co. | \$15,012.50 | \$13,511.25 |
| FOR POSSIBLE ACTION | 76 | 2019000005; 79657 | Fairway Chevrolet Co.: Fairway Chevrolet Co. | \$6,978.50 | \$6,280.65 |
| FOR POSSIBLE ACTION | 77 | 2019000014; 79660 | Western Cab Co.: Western Cab Co. | \$16,668.00 | \$15,001.20 |
| | | | SUB TOTAL: | <u>\$1,665,815.59</u> | <u>\$1,508,887.73</u> |
| | | | DIRECT PAYMENT CLAIMS TOTAL: | <u>\$1,918,802.96</u> | <u>\$1,757,384.19</u> |
| | | | BOARD MEETING CLAIMS TOTAL: | <u>\$3,192,184.73</u> | <u>\$2,784,764.51</u> |

10. **EXECUTIVE SUMMARY**

Mr. Cabbie provided the summary. Tank enrollment fees are tracked pursuant to the Federal Fiscal year from October 1st through September 30th. Invoices for enrollment year 2020 were issued on August 22nd, 2019 and total 1,281 facilities as of May 27, 2020. Approximately 97.5 percent of facilities invoiced have paid the required enrollment fee. Since the inception of the Fund, a total of 1,681 remediation cases have applied for coverage. NDEP has denied 172 cases over time. Of the cases provided fund coverage, 1,387 cases have been closed and are no longer receiving reimbursement monies from the fund. There are currently 118 active cases. Since January 1st, 2020, NDEP has received 18 new coverage applications. Four applications are pending a coverage determination currently. Prior to this meeting, the Board had approved \$238,996,527.90. This figure does not include direct payments made during the past 6-months, which are included in the Board packets. Those direct payment claims total \$1,757,384.19. With today's Board approval of the 26 claims for \$1,027,380.32, the total cumulative Fund expenditure to date is \$240,023,908.22.

Mr. Cabbie recalled the Board and NDEP sent in a request to the Department of Agriculture more than a year and a half ago essentially asking for a deferment of reporting Fund reimbursement payments as taxable income. The NDEP finally received a Notice of Determination from the Secretary of Agriculture. It states that in accordance with Section 126 of the Internal Revenue Code, recipients of cost share payments (individual storage tank owners) may exclude Fund payments from their gross income to the extent allowed by the IRS. This issue was particularly affecting heating oil case operators, sole proprietor (homeowners), who were having heating oil tanks removed from their properties. They had been receiving 1099 Miscellaneous tax forms each year. This decision allows them to provide the Notice of Determination with their tax records and hopefully not have to include the Fund reimbursements as income. Confirmation has also been received from the Controller's Office that most homeowners will no longer be issued the 1099 Miscellaneous tax form.

Mr. Cabbie reported that over the last six months, the Agency issued two UST upgrade grants. One facility was in Washoe County, in Reno. The operator utilized the full \$90,000 available and essentially upgraded his entire facility, including spill buckets, overflow prevention devices, containment sump penetrations, product piping and dispenser sumps. The other site was located in rural Nevada (Orovada), and used \$22,521.29 in grant funding to replace spill buckets.

Mr. Cabbie reported that a waiver request has been developed and submitted to the Controller's Office to allow the Division to pursue collection of debt owed by Eagle Gas. Generally, the procedure is lengthy, taking up to five months. Given the pandemic and limitations of staff, it is expected to take longer.

11. **PUBLIC COMMENTS**

There were no requests to speak.

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

It was confirmed the next meeting date would be Thursday, September 10, 2020, at 10:00 am. **Mr. Cabbie** noted that for the foreseeable future, meetings will be held using the same format as this meeting.

13. **ADJOURNMENT**

The meeting adjourned at 11:25 a.m.