

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on November 13, 2014 beginning at 1:00 p.m.
Brynhild Haugland Room/Governor's Conference Room

Present: Governor Jack Dalrymple, Chairman
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Also

Present: Jason Nesbit, Governor's Office
Bonnie Storbakken, Governor's Office
Hope Hogan, Attorney General's Office
Chris Harvey, Attorney General's Office
Lynn Helms, DMR
Bruce Hicks, DMR-Oil and Gas Division
Alison Ritter, DMR-Oil and Gas Division
Ed Murphy, DMR-Geological Survey
Senator Kelly Armstrong
Senator Connie Triplett
Members of the Public (See list in the Commission's files.)
Members of the Press

Governor Dalrymple called the Department of Mineral Resources portion of the Industrial Commission meeting to order at 1:00 p.m. in the Brynhild Haugland Room at the State Capitol.

Mr. Lynn Helms, Department of Mineral Resources Director, said the Department received the first permit that is going to be posted for comment under the Areas of Interest Policy the Commission adopted May 1. It was on the November 12 Daily Activity Report. The email has gone out and it will be open for comment until midnight November 24. This will be the first time the Commission will be going through that process. The permit location is north of Lake Sakakawea on State land – between Lewis and Clark State Park and New Town.

Mr. Helms presented proposed Order 25417 for Case 23084 that had been heard on September 23, 2014 regarding provisions deemed appropriate to improve the transportation safety and marketability of crude oil. (A copy of proposed Order 25417 is available in the Commission's files.)

Mr. Helms walked through the proposed order. He stated that the focus of the hearing held on September 23 and this order are:

- 1) Safety
- 2) Based on Science and
- 3) Enforceable through the Industrial Commission Oil and Gas Division processes.

He noted that Finding (3) states:

(3) Prior to the hearing, the Commission indicated it was seeking testimony of technical nature for input on the following:

- (a) Typical operating temperature, pressure, and retention time of gas/liquid separators;
- (b) Optimum operating gas/liquid separator temperature, pressure, and retention time to effectively remove light hydrocarbons;
- (c) Typical operating temperature, pressure, and retention time of treaters;

- (d) Optimum operating treater temperature, pressure, and retention time to effectively remove light hydrocarbons;
- (e) Optimum oil stock tank pressure to effectively operate vapor collection equipment;
- (f) Optimum oil tank settling time prior to shipment;
- (g) Capital costs of typical gas/liquid separator and treating equipment;
- (h) Operating costs of typical gas/liquid separator and treating equipment;
- (i) Other field operation methods to effectively reduce the light hydrocarbons in crude oil; and
- (j) Crude oil quality and safety studies including but not limited to those conducted by American Fuel & Petrochemical Manufacturers, PHMSA & FRA Operation Classification, Transportation Safety Board of Canada, and Turner Mason & Company.

Mr. Helms stated that Findings (4) and (5) list the participants in the hearing and a listing of who provided written comments; 33 different individuals or parties of which 19 of them appeared in person and the remainder submitted written comments -- everything from a New York State Legislator to a couple of citizens of the State of New York who live in small towns where oil trains pass through to the Fire Academy of North Dakota along with six oil and gas operators. Those six operators represent 56 percent of the Bakken and Three Forks wells – if you add to them the other Turner Mason operators, the ones who use similar equipment, it actually represents about 80 percent of the Bakken and Three Forks well operators.

Mr. Helms said he and his staff have carefully considered all of the comments, testimony and the written material. Based on the record they are recommending the following provisions that come under the heading “It is therefore ordered:”

(2) All wells completed in the Bakken Petroleum System must be produced through equipment utilizing the following conditioning standards to improve the marketability and safe transportation of the crude oil:

(a) A gas-liquid separator and/or emulsion heater-treater of ample capacity and in good working order that effectively separates the production into gaseous and liquid hydrocarbons, must be operated within manufacturer’s recommended operating limits.

Mr. Helms stated that 2(a) is an extension of the Commission’s existing Rule 43-02-03-28. This Order strengthens the rule to require not just that the operator has separation equipment in good working order on the site but that the equipment is actually operated within the manufacturer’s specifications including rates, temperatures and pressures. This is something that the staff can inspect and is enforceable. It is something that is going to require industry, particularly during the very high flow rate times on these wells – during the initial flow back, to bring out additional separation equipment. Typically, the operators do bring rental equipment to the well sites to make sure they are staying within manufacturer’s specifications.

(b) Production facilities utilizing a gas-liquid separator and/or an emulsion heater-treater operating at a pressure of no more than 50 psi must heat the produced fluids to a

temperature of no less than 115 degrees Fahrenheit. Such temperature may be applied in the emulsion heater-treater or prior to the fluids entering the separator if no emulsion heater-treater is utilized;

(c) Production facilities utilizing a gas-liquid separator and/or an emulsion heater-treater operating at a pressure greater than 50 psi but no more than 75 psi must heat the produced fluids to a temperature of no less than 120 degrees Fahrenheit. Such temperature may be applied in the emulsion heater-treater or prior to the fluids entering the separator if no emulsion heater-treater is utilized;

(d) Production facilities utilizing a gas-liquid separator and/or an emulsion heater-treater operating at a pressure greater than 75 psi must heat the produced fluids to a temperature no less than 120 degrees Fahrenheit and shall also be required to install a vapor recovery unit on the crude oil storage tanks;

Mr. Helms stated that items (b), (c) and (d) are the ones that set parameters for 80% of the Bakken and Three Forks wells represented by most of the companies who presented information at the hearing. These are the various pressures that the field equipment is operated at; it sets minimum temperatures. Those temperatures are designed to remove the propane and almost all of the butane (the light ends) from the crude oil so it is a stable crude oil when it goes in the sales tank or leaves this equipment. The one thing to note, under 2(d), there are some areas particularly in the Mandaree area where the field equipment has to be operated at pretty high pressures because of bottlenecks in the gas gathering system. In those cases, the Order requires the addition of what is called a vapor recovery unit to the tank so there is one more layer of separation. A separator operating at high pressure; the heater-treater at high pressure and an elevated temperature but finally, because that heater-treater is at pretty high pressure, there is going to be quite a bit of light ends evolved when that crude oil goes in that tank and a vapor recovery unit actually pulls those vapors off the tank so they don't have a chance in cold weather to sit in that tank and re-condense and get back into the crude oil. That deals with about 80 percent of the wells. Again, all of these pieces of equipment have thermometers, pressure gauges and name plates on them so field inspectors can check those things.

(e) Production facilities utilizing a gas-liquid separator and/or an emulsion heater-treater operating at pressures and temperatures other than those provided in (b) through (d) above shall be allowed only upon the operator confirming the resulting Reid Vapor Pressure is no greater than 13.7 psi. Such test must be performed by a third party sufficiently trained to perform the test. All Reid Vapor Pressure tests shall be performed in accordance with the latest version of ASTM D6377 and shall be conducted quarterly. A Sundry Notice (Form 4) shall be submitted to the Director within 15 days of the test date which includes a screen shot printout of the Reid Vapor Pressure test conducted and details the operating capacities, pressures, and temperatures of all well site conditioning equipment at the time of the test;

Mr. Helms indicated that 2(e) takes on another 15%+ of the wells. A couple of companies submitted comments indicating that they are not using this standard process train so in those cases this Order states that it is okay as long as on a quarterly basis you test your re-vapor pressure and submit that data to the Commission so we can be assured that you are achieving what the Division considers as stable oil. The National Standard for stable oil is atmospheric

pressure 14.7 but that carries with it a sampling and measurement error of about one psi so we went to 13.7 to make sure we are below that threshold.

Mr. Helms stated there are a couple of individuals here from Grabner Instruments who brought their portable re-vapor pressure testers and will demonstrate how that tester works. This is technology that has been developed over about 27 years of measuring re-vapor pressure. This unit is capable of reproducing a re-vapor pressure measurement within a tenth of a psi. You can haul it out to the field, plug it into a 110 volt outlet and in ten minutes measure the re-vapor pressure of the crude oil that is in the tank.

(f) Production facilities not utilizing a gas-liquid separator and/or an emulsion heater-treater will only be approved by the Commission after due notice and hearing, and must: (a) be capable of delivering crude oil with a Reid Vapor Pressure no greater than 13.7 psi at custody transfer; or (b) provide safe transportation of marketable crude oil to a crude oil conditioning or stabilization plant.

Mr. Helms stated that leaves about 5% of the wells that are intending to do something else and that is dealt with in paragraph 2(f). A couple of parties testified at the hearing and one submitted written testimony regarding high pressure field operations with the oil piped or trucked directly to a stabilization unit. They have a business model they want to follow. They think the crude oil could be exportable after it goes through that process resulting in a significant value increase. In those cases, this Order directs them to provide notice and hold a hearing because those processes are more complex than the standard processes above. The Commission needs to be able to assure the public, that when using this process that the crude oil will stay in that pipeline and can only go to that stabilization unit before it enters the market. It does not get mingled in with other oil that has been through the conditioning process of 2(a) through 2(e). Through that hearing process the staff will be able to look at individual business models.

In response to a question Mr. Helms confirmed that less than 50 psi means at least 115 degrees Fahrenheit and 50 to 75 psi means at least 120 degrees Fahrenheit.

In response to a question Mr. Helms said the operators that submitted information or testified at the hearing typically run their equipment in the range of 90 degrees to 120 degrees Fahrenheit. What is outlined in the Order is at the upper range. It is not so high that the crude oil is being cooked but it is at the upper range because you need to reach those somewhat higher temperatures to reduce the butane content. The 90 to 120 degrees is plenty adequate to get the methane, ethane and propane content out of there but to reduce the butane content you need to get to the higher end of that range. This is at the upper end of the range of what we heard in the testimony and what we saw in the various studies that we incorporated into the record. We brought all of the studies that we knew about into the record – American Refiners, Canadian Transportation Board, PHMSA and Turner Mason studies.

In response to a question regarding the pressures, Mr. Helms said most of the operations, at least when the wells are new, are in that 50 to 75 psi range. That is typical for heater-treater and separator design pressures. As the wells age, the pressure drops off and they fall into 2(b), the

less than 50. However, there is a percentage of these typical field operations, particularly the Mandaree area, where the gas gathering system is bottlenecked and they are having to use pressures above 75 psi. The vast majority are in the 50 to 75 psi range. Those temperature pressure combinations are driven by butane – that's driven by the behavior of butane in crude oil and the desire to get the butane content down so that the re-vapor pressure gets below the 13.7.

In response to a question Mr. Helms indicated that the operator will recover most of the propane when they get to those pressures and temperatures. Under the conditions outlined in 2(b), 2(c) and 2(d) the propane content of the crude oil should be less than 2%; 98% of the propane is gone.

In response to a question regarding the operations under 2(d) Mr. Helms said that when you are operating above 75 psi you can't really heat the fluid hot enough in the treating equipment to boil the butane off. When you drop the pressure to less than one psi as the fluid flows out of the treater into the tank, that butane is going to evolve and we want to make sure it gets pulled off that tank and ends up in the gas system--we don't want it to re-condense and end up back in the crude oil.

In response to a question in regards to safety if these provisions are followed as it relates to the transporting of North Dakota crude oil, Mr. Helms said the best way to explain it is we end up at something that has very similar behavior to winter blend unleaded gasoline. So if you stopped at a gas station this morning, you put winter blend unleaded gasoline in your gas tank. It was trucked to the gas station, there were no major safety concerns about you using that pump, filling your tank, but that gasoline has a re-vapor pressure of 13.5. Our crude oil leaving North Dakota will behave like the gasoline you put in your car this morning – at the worst.

In response to a question regarding how this conditioned oil compares to the universe of other oil being transported around the country, Mr. Helms said this would put North Dakota crude well below the midpoint in terms of behavior. This would be comparable to traditional West Texas Intermediate coming out of the Permian Basin. It would be significantly less volatile than Eagle Ford condensate or crude oil or some of those other crude oils. It would be well below the midpoint in terms of its behavior.

In response to a question Mr. Helms stated that the requirement would be the 13.7 standard and although they have not identified every type of separator or heater-treater production train that would be used, every barrel of oil will go through some process and must be able to demonstrate that the oil is at 13.7 or less. Paragraph 2(e) is a catch all for the 15 percent that aren't using the standard equipment and the appropriate standard for them is you have got to prove that you are at 13.7 because we can't define every production train that is going to be out there.

Mr. Bruce Hicks, Oil and Gas Division Assistant Director, noted that minimums are also built into the process because when they are connected to a gas line they have to have enough pressure to get the gas into the line.

It was pointed out that the word "utilizing" in 2(e) implies that every barrel will go through a separator or a heater-treater and that the operator can't just decide the crude oil is good enough

and bypass that process. It was indicated that If that isn't clear then that wording should be revised.

In response to a question regarding 2(f) Mr. Helms said the alternative or technology is going to require its own special hearing so the staff has a clear understanding of exactly what the operator is going to do to the crude oil to achieve the 13.7. There were written comments from a company who has partnered with a stabilizer and what they want to do is run their crude oil through something called a shark tank – it separates off the water and any solids entrained in the oil - and the crude oil, the gas, the light ends all stay together, travel down a pipeline to a crude oil stabilization facility which will then do a very complicated and heat intensive process to the crude oil to get it to the 13.7. That would be the only example in the record and he feels an alternative like that which doesn't use equipment that the Division staff is familiar with – that it needs to have its own special hearing and needs to be very detailed.

Governor Dalrymple said he thinks 2(f) should read “Production facilities utilizing an alternative conditioning method other than gas liquid separators or emulsion heater-treaters will only be approved etc...” Again, we are making it clear that every operator is doing something to the oil. Mr. Helms agreed.

It was stated that if a process was approved by the Commission after the hearing outlined in 2(f) each case would have their own 2(a) - 2(e) -- their own parameters that they would have to operate at-- to make sure that the final delivered crude oil was safe.

In response to a question regarding export, Mr. Helms said the meaning behind it was it would pass the U.S. Department of Commerce requirements of processed crude oil and it would allow export outside the United States of that crude oil. That is taking place with a fairly significant amount of the Eagle Ford condensate that's being stabilized. They've gotten approval from the U.S. Department of Commerce to export that as processed product. The business model they are operating under is that either through export or whatever market they found, they can get a premium by spending this extra time and money of laying out this process for the Commission and that the premium will be worth it to them.

In response to a question regarding what the market is for that condensate, Mr. Helms said stabilized condensate is dominantly hexane through probably decane so a diesel fuel plant or a petro chemical plant that was going to produce maybe insecticides or something like that would be in the market for the condensate.

Governor Dalrymple said when all is said and done, every barrel of oil is going to go through some kind of conditioning method and meet the 13.7 standard. In addition we are bringing down the entire universe of product by having it all conditioned so our average product at the loading site is also improved.

In response to a question about 2(f) and how the Commission can verify the safe transportation to a centralized conditioning plant. Mr. Helms stated that at the hearing the operator would have to present the process that will be utilized -- ideally showing that the operator has a dedicated

pipeline for this oil that can take it only to this conditioning or stabilization plant. That it has no other off take points or options for that oil to get outside that system or process and become part of the market. That is the ideal. Otherwise we are going to have to require a dedicated fleet of trucks or something like that so we can make sure that crude oil leaving that site under those conditions can go only to the conditioning or stabilization plant that the Commission approved at the hearing. The one example we have is where an operator has already approached the PSC for a dedicated pipeline that will do that.

In response to a question Mr. Helms stated that any orders involving 2(f) after a hearing will come to the Commission for their consideration -- the order would not be approved at the Director level.

In response to a question regarding the requirement for a safe transportation plan under 2(f), Mr. Helms stated that the safe transportation plan would have to be submitted at the hearing and that the plan would have to be approved by the Commission.

Mr. Helms noted Paragraph 3 of the Order which deals with prohibitions:

- (3) The following practices are hereby prohibited:
 - (a) Blending crude oil produced from the Bakken Petroleum System with liquids recovered from gas pipelines prior to oil sales; and
 - (b) Blending crude oil produced from the Bakken Petroleum System with liquids (i.e. condensate, pentanes, butanes, or propane) prior to oil sales.

He stated that this prohibits some behavior that might be driven by the market. It states that any light ends or liquids collected from a gas gathering system are prohibited from being blended back into the crude oil. That would be a big step backwards. Also, no condensate –some legacy formations in the State produce condensate – none of that condensate or any condensate or NGL's from a gas plant is going to be allowed to come to a Bakken well site facility and be blended into the crude oil because that is not controllable under Paragraph 2.

Mr. Helms then commented on Paragraph 4.

- (4) The operator of any transload rail facility shall submit a Sundry Notice (Form 4) to the Director within 15 days of discovering the Reid Vapor Pressure exceeds 13.7 psi for any crude oil received from the Bakken Petroleum System. The notice shall indicate (a) the Reid Vapor Pressure reading and the test date; (b) the probable source of each crude oil, if known; and (c) an outline on the final disposition of such crude oil and the process subsequently utilized to provide the safe transport of such crude oil.

Mr. Helms stated that Paragraph 4 is very important as well. It is an expansion of the current 43-02-03-80 reporting requirements by these rail facilities. It expands that to say if a rail facility receives some crude oil that exceeds the 13.7 standard within fifteen days they need to notify the Commission that they received it, where they think it came from, and how they dealt with it. This will allow the Commission to track down and correct the problem.

Mr. Helms discussed the February 1 effective date. It allows these companies, particularly the one company who is well along in designing this 2(f) process and implementing it to have time for notice, hearing and get the Commission's approval so everyone is treated fairly, that is why the February 1 effective date.

The Commission members discussed the process that this has gone through and the fact that they were seeing the Order for the first time today. It was suggested that a short period of time be allowed for the Commission to review the Order and to allow individuals that have previously submitted comments into the record to comment on it. The Commission indicated that they thought the Order was on the right track to making North Dakota oil safer -- it is an excellent working draft. Some minor edits have already been suggested today for clarity. It was stated that any further comments will be most useful if the comments are scientific and practical and helps the Commission achieve what it wants to achieve and that we are meeting our intended consequences without any unintended consequences.

Governor Dalrymple noted that Mr. Helms has requested a number of new monitoring positions in his budget which will be needed in gearing up to do the verifications outlined in the draft Order.

Mr. Helms noted that if the Commission was going to take action on any comments that might be received they would need to re-open the record -- the comments would need to be part of the record.

It was stated that because this Order applied to field/pool combinations these are field rules and do not apply statewide.

The Commission and Mr. Helms discussed the length of time that should be allowed for comments, and then the amount of time the staff would need to review the comments. There was discussion of timelines and the desire of the Commission to move forward in a timely manner and yet allow for a comment period. It was decided that the record be reopened and the comment period be open until next Wednesday, November 20 at 5:00 p.m. It was stated that the Commission is not interested in adding a second round of comments on top of the comments they already have; this is more of a technical corrections type of thing, anything that would be perceived as not workable. They wanted to move this along as soon as possible. Ms. Fine was directed to schedule a special meeting no later than December 11.

In response to a question, Mr. Helms stated that this Order does not outline enforcement provisions--enforcement will be done under the Commission's other rules. It was suggested that in the next draft of the Order there might need to be a statement about enforcement although it was noted that all orders are subject to the enforcement authority the Commission has under its rules and under the law. Mr. Helms said they could add a couple paragraphs to the findings identifying how through their normal field inspection processes these things will be followed up on and also identifying the statute and maximum fine potential that is behind the enforcement.

The individuals from Grabner Instruments then began a demonstration on the vapor pressure testing.

While the test was being run, the Commission discussed whether the Commission should do its own study on North Dakota Bakken oil. Mr. Helms said that he is aware of a study that the US Department of Energy has initiated that is going to be very extensive and performed under the most rigorous standards. The Department of Energy has contracted with Sandia Labs who is subcontracting with the Energy and Environmental Research Center for part of that work. There was discussion about what type of work the EERC would be doing; what might be the dollar amount for the State's participation -- perhaps funding coming through the Oil and Gas Research Program - (perhaps something between \$500,000 and \$1,000,000); obtaining an understanding what all is encompassed in this Department of Energy study; and whether field testing is included in the study and if that field testing would be done throughout the year. Mr. Helms indicated it was his recommendation that the Commission ask the EERC to come to a future meeting -- perhaps the special meeting if time allows -- to learn more about the study and then determine if the Commission would want to get behind that project and support the multi-partner project that is led by the US Department of Energy.

In response to a question Mr. Helms stated that the Department of Energy has total oversight and Sandia Labs will be directing the portion EERC does as well as some of their own work. It is primarily being funded at a national level by the Department of Energy. Sandia Labs is a national lab and very independent and they are going to subcontracting the North Dakota work to the EERC, that is their intent. This would be a year-long study so they can test the seasonality of North Dakota.

After further discussion it was the consensus of the Commission that the EERC should make a presentation to the Commission in the near future about the Department of Energy study.

The Commission, Mr. Helms and the representatives from Grabner Instruments discussed the test that was being demonstrated (the comparison between the conditioned oil and gasoline), how the equipment works, the data that would be provided (date and time, technician administering the test, the well name, etc.), how the results could be transmitted to the Department electronically, the amount of time it takes to conduct the test, the ability to hook up the equipment directly to a tank, etc. There are four certified labs in the state that have this equipment.

After the demonstration of the sample was finished they discussed the results of the test. Total pressure is 10.84 re-vapor pressure which is equivalent to 9.92 psi. The crude oil that was tested in the demonstration came from a Corral Creek well and that well would have been operated under the conditions outlined in 2(c) of the proposed Order. That is what the pressure is after it has been conditioned. Mr. Helms said that although the equipment is simple to operate they would be requiring a third party lab to do it. The Oil and Gas Division's meter technicians would be observing these third party labs as they perform the testing at least once a year to make sure they are performing the test according to the correct protocols. The Commission thanked Grabner Instruments for the demonstration of the equipment.

The Commission took a short break at 2:04 p.m. and relocated the meeting to the Governor's Conference Room with the meeting resuming at 2:07 p.m.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, provided draft comments for submission to the U.S. Environmental Protection Agency on the Proposed Definition of Waters of the United States (Docket ID No. EPA-HQ-OW-2011-0880). She requested authority to sign the comments on behalf of the Commission.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission authorize the Industrial Commission Executive Director to sign on the Commission's behalf the comments as presented for submission to the U.S. Environmental Protection Agency on the Proposed Definition of Waters of the United States (Docket ID No. EPA-HQ-OW-2011-0880. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously. (A copy of the comments is available in the Commission files.)

Mr. Ed Murphy presented the Geological Survey Quarterly Report. (A copy of the quarterly report is available in the Commission files.) During the report Mr. Murphy commented on the status of the "Dakota" fossil and the work that continues to be done on it. A memorandum of Agreement has been signed between the Marmarth Foundation and the State Historical Society of North Dakota regarding the mummified hadrosaur. Among other things, the agreement transfers ownership of Dakota from the Marmarth Foundation to the Historical Society if the Society is able to create a three million dollar endowment fund for the Marmarth Foundation. They will have four years to fully fund the endowment.

Mr. Murphy talked about the fossil digs that are being scheduled for 2015. The Commission expressed an interest in going to one of the fossil sites.

Being no further Department of Mineral Resources business, Governor Dalrymple adjourned this portion of the meeting at 2:18 p.m. and the Commission took up Housing Finance Agency business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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Present: Governor Jack Dalrymple, Chairman
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Also

Present: Jason Nesbit, Governor's Office
Bonnie Storbakken, Governor's Office
Jolene Kline, Housing Finance Agency
Mindy Piatz, Brady Martz
Members of the Press

Governor Dalrymple called the Housing Finance Agency portion of the Industrial Commission meeting to order at 2:18 p.m. following completion of Department of Mineral Resources business.

Ms. Mindy Piatz, Brady Martz, presented the Housing Finance Agency's Fiscal Year 2014 Audit. (A copy of the Audit is available in the Commission files.) She said the audit on the financial statements had been conducted in accordance with generally accepted accounting principles (GAAP). Their firm had issued a clean opinion on the financial statements. She did note that the Housing Finance Agency had adopted the new accounting guidance -- GASB Statement #65. The effect was that the net position was decreased due to the change on how the costs of issuance on bonds were treated. Previously the costs of issuance were amortized over the life of the bonds and now they are expensed right away. The Legislative Audit and Fiscal Review Committee questions were all positive and there were no issues. They looked at compliance with Century Code, IT technology and controls and all comments were positive. They review internal controls, tested for compliance and material weaknesses and they issued a clean report. They conduct a compliance audit testing the federal programs the Agency receives -- two programs -- the mortgage insurance program and veterans housing program, again there were not issues with either program and it is a clean opinion. The audit management letter, items she is required to communicate to the Commission, is a standard letter.

Ms. Piatz presented the Housing Incentive Fund's Fiscal Year 2014 Audit. (A copy of the Audit is available in the Commission files.) She said the audit on the financial statements had been conducted in accordance with generally accepted accounting principles (GAAP). Their firm had issued a clean opinion on the financial statements. They did not identify any significant deficiencies or material weaknesses. The Legislative Audit and Fiscal Review Committee questions had been responded to-- no issues with Century Code compliance. The audit management letter is a standard letter -- everything had a clean opinion.

Ms. Jolene Kline, Housing Finance Agency Executive Director, discussed proposed legislation and legislative update. She requested permission to pre-file and testify in support of one Agency sponsored bill which would primarily fix a provision in the Century Code that was passed last session. That bill dealt with property tax exemptions for affordable housing programs. The language was very specific in that it targeted primarily Federal Low Income Housing Tax Credit projects, Housing Incentive Fund projects and local Housing Authority owned projects. There was a discrepancy in the language in subsection a of the Century Code 57-02-08 -- it identifies non-profits as defined under Section 42 of the Code. Section 42 is the IRS Code that deals with

the Federal Low Income Housing Tax Credit Program and under Section 42 it includes both 501(c)(3)s and 501 (c)(4)s but that bill as passed in the previous session went down in subdivision f of that section where they talk only about 501 (c)(3)s and left 501 C4s out. When the Agency was in the process of certifying to the county tax assessors at the end of 2013 as to which projects were eligible for the property tax exemption, anything that was 501(c)(4) the Tax Department felt we could not certify it as being eligible. This proposed bill would change the definition in both sections to be consistent and use the definition as defined under Section 42 so those smaller city housing authorities that are set up as 501(c)(4)s would now also be eligible to be considered for that property tax exemption. It is not a full property tax exemption that the legislature gave them; it is a reduction to an amount equal to five percent of gross rents collected minus utilities paid by the owner. So in reality, they are still paying for the primary services – fire, ambulance – those kinds of essential services. Their taxes are probably in the 30 to 40 percent taxation rate so they are paying some; they are not just subject to full taxation.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Housing Finance Agency be authorized to introduce to the Sixty-fourth Legislative Assembly and support an agency bill regarding property tax exemptions for affordable housing projects. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Kline presented the 2015-2016 Low Income Housing Tax Credit Qualified Allocation Plan. (A copy is available in the Commission files.) She said the Advisory Board is recommending approval.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Housing Finance Agency Advisory Board and approve the 2015-2016 Low Income Housing Tax Credit Qualified Allocation Plan as submitted and recommend final adoption by the Governor. (A copy of the Plan is available in the Commission files.) On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Attorney General Stenehjem discussed his recommendation for selection of bond counsel. He said from time to time hire bond counsel and an RFP was issued. Two firms applied and the committee comprised of Jolene Kline, Karlene Fine, John Fox, Pat Nagel and Tom Caine reviewed those proposals and recommended Kutak Rock LLP.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of Attorney General Stenehjem and appoint Kutak Rock as bond counsel for the North Dakota Housing Finance Agency for an engagement extending up to December 31, 2018, with an annual review by the Agency. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Fine presented a resolution of appreciation for Ron Jordan, who is present, and has served on

the Advisory Board since 2004, has been a very active member and served as vice chairman since 2005 and has indicated he wishes to retire from the Board.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring to adopt the follow resolution:

Resolution of Appreciation

Whereas, Ron Jordan has served as a member of the North Dakota Housing Finance Agency Advisory Board since 2004 as a representative of the lending community and served as Vice Chairman for many of those years; and

Whereas, Ron has identified opportunities and helped develop programs to assist the citizens of North Dakota in obtaining financing to purchase their home; and

Whereas, Ron's input, commitment to the Board and leadership over the years has been appreciated by the Commission and Housing Finance Agency staff, and

Whereas, Ron's thoughtful counsel and willingness to assist the Housing Finance Agency in all facets of its operations over the past 10 years has been valuable to the Agency, Industrial Commission and an overall benefit to the State of North Dakota;

Now, therefore, the Industrial Commission hereby thanks Ron Jordan for his years of service to the Housing Finance Agency, the Industrial Commission and to the State of North Dakota and all its citizens.

The Commission thanked Mr. Jordan for his service. Mr. Jordan thanked the Commission for the opportunity to serve.

On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

The Commission took a picture with Mr. Jordan.

Ms. Kline briefed the Commission on a situation that has been evolving very quickly. She summarized what has happened with the \$1.5 million appropriated to the Housing Finance Agency (Agency) last session in House Bill 1016 (Adjutant General's bill) to provide flood assistance as follows:

- April of 2013 the Agency issued an RFP
- Award made to the one applicant - Minot Housing Authority - \$1.5 million for operations and deployment of the Virgil Workmen FEMA worksite.
- Deployment of FEMA worksite went very quickly and only \$5,500 of the \$1.5 million was utilized.
- December 2013 - Report to Budget Section as required by law. She asked for guidance on what to do with the balance of that money because she had a request from an individual from Minot indicating the money should be used for flood assistance. Because of the legislative discussions about the use of the monies she was hesitant to proceed on

spending the dollars. During the Budget Section, the message was very loud and clear that the intent was that the money was focused on one thing and that was the Virgil Workmen site. Following that, a legislator requested an Attorney General's Opinion on whether or not legislative intent takes precedence over legislative language.

- November 3, 2014 Attorney General's opinion states the language of the law is clear - as it was in this case, you don't go and look at what the legislative history or legislative intent may have been by some members of the Legislature, the language says what it says.
- Agency is considering a couple of options - does the Agency issue another RFP or does the Agency do nothing and let the 2015 Legislature decide how to utilize the dollars.
- This week the Division of Emergency Services contacted the Agency and stated the City of Minot could really use those dollars to help with acquiring homes and demolishing homes and turning the land over to the Minot Community Trust for redevelopment. These are flood damaged homes that can't be rehabilitated.

The Commission, Ms. Kline and Mr. John Fox, Assistant Attorney General, discussed the language in the bill -- money is to be used for residential flood recovery -- the need to issue an RFP and the potential language in the RFP regarding who would be eligible to submit a proposal.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem to authorize the Housing Finance Agency to issue an expedited RFP for the use of the remaining \$1.5 million for Minot residential flood recovery with priority given to political subdivisions.

In response to a question regarding the timeline on the expedited RFP, Ms. Kline said the Agency could get it out within the week and ask for a two week turnaround.

On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Housing Finance Agency business, Governor Dalrymple adjourned this portion of the meeting at 2:55 p.m. and the Commission took up State Mill business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on November 13, 2014 beginning at 1:00 p.m.
Brynhild Haugland Room/Governor's Conference Room

Present: Governor Jack Dalrymple, Chairman
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Also

Present: Jason Nesbit, Governor's Office
Bonnie Storbakken, Governor's Office
Vance Taylor, State Mill
Ed Barchenger, State Mill
Ed Nagel, Auditor's Office
Members of the Press

Governor Dalrymple called the State Mill portion of the Industrial Commission meeting to order at 3:05 p.m. following completion of Housing Finance Agency business.

Mr. Ed Nagel, State Auditor's Office, presented the North Dakota State Mill Fiscal Year 2014 Audit. (A copy of the Audit is available in the Commission files.) He said their office has issued an opinion that the financial statements are fairly stated -- a clean opinion. Internal control and compliance with laws and regulations were also given a clean report with no findings. He reviewed the financial statements.

Mr. Vance Taylor, North Dakota Mill President and General Manager presented the North Dakota State Mill FY 2015 First Quarter Report as follows: (A copy of the full report is available in the Commission files.)

**North Dakota Mill
Review of Operations
1st Qtr. Ended
September 30, 2014**

Summary

The mill experienced a profit of \$4,537,524 in the first quarter compared to a profit of \$3,006,609 last year.

	<u>9/14</u>	<u>9/13</u>
Profits	\$ 4,537,524	\$ 3,006,609
Sales	78,030,836	82,987,298
Cwt Shipped:		
Spring	2,878,374	2,940,151
% to Total	91.7%	91.0%
Durum	<u>264,803</u>	<u>291,375</u>
Total	<u>3,138,208</u>	<u>3,231,525</u>
Bag Shipments	707,991	689,598
% to Total	22.6%	21.3%
Tote Shipments	26,549	35,709
% to Total	0.8%	1.1%
Family Flour	91,581	69,491
% to Total	2.9%	2.2%
Organic Flour	18,213	42,173
% to Total	0.6%	1.3%

Wheat/Durum Bought:		
Spring/Winter	6,304,237	6,673,075
Durum	<u>441,876</u>	<u>701,436</u>
Total	<u>6,746,113</u>	<u>7,374,511</u>

Sales

Sales for the first quarter were \$78,030,836 compared to \$82,987,298 last year, a decline of 6.0%. The price of grain settled with suppliers at the mill for the first quarter of the year is \$0.703 lower than last year. Shipments of 3,138,208 cwts. in the first quarter are 93,317 cwts. below last year. The reduction in cwts. shipped was caused by several issues including plant shutdowns for the electrical infrastructure project, a lack of durum flour orders due to the high cost of durum, and a power outage from a storm in July. The spring wheat flour demand from current customers continues to be high. Bag shipments of 707,991 cwts. are 2.7% above last year. Family flour shipments reached 91,581 cwts., an increase from last year's first quarter shipments of 69,491 cwts. Organic flour shipments were 18,213 cwts.

Operating Costs

Operating costs for the first quarter were \$6,542,844 compared to \$5,948,237 last year, an increase of \$594,607. The increase in costs is primarily due to increases in wages and benefits, repairs and maintenance, utilities, and depreciation. Total flour production for the first quarter was 1.7% below last year's first quarter. Operating cost per cwt. of production was \$2.09 per cwt., compared to \$1.87 last year, an increase of 11.8%.

Profits

The mill had profits of \$4,537,524 in the first quarter compared to \$3,006,609 last year. This is an increase of 50.9%. Gross margins as a percent of gross sales for the quarter was 14.3% compared to 11.0% last year.

Risk Management Position

The table below shows our hedge ratio by futures month going forward. As the table shows each futures month listed indicates that the mill continues to be closely matched in each period.

**Position Report
30-Sep-14**

Period	Hedge Ratio
Dec-14	0.9
Mar-15	0.9
May-15	1.1
Jul-15	1.0
Sep-15	0.7
Dec-15	1.0
Net Position	0.9

Minutes - Page 3
November 13, 2014

Mr. Taylor gave an update on the progress of the capacity expansion project.

Being no further State Mill business, Governor Dalrymple adjourned this portion of the meeting at 3:17 p.m. and the Commission took up Bank of North Dakota business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on November 13, 2014 beginning at 1:00 p.m.
Brynhild Haugland Room/Governor's Conference Room

Present: Governor Jack Dalrymple, Chairman
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Also

Present: Jason Nesbit, Governor's Office
Bonnie Storbakken, Governor's Office
Eric Hardmeyer, Bank of North Dakota
Chad Johnson, Bank of North Dakota
Brad Thompson, Bank of North Dakota
Members of the Press

Governor Dalrymple called the Bank of North Dakota portion of the Industrial Commission meeting to order at 3:18 p.m. following completion of State Mill business.

Mr. Eric Hardmeyer, Bank of North Dakota President, discussed the upcoming 2015 Legislative Session. He noted that the Bank does not have any proposed legislation other than an extension of the Flex PACE program which is used for multi-family housing. Currently there is a sunset of June 30, 2015. There was discussion on whether to extend it for 4 or 6 years or to eliminate the sunset. Mr. Hardmeyer stated they will try to extend the authority for four years. No emergency clause would be needed.

Commissioner Goehring requested that Bank staff meet with him in the near future regarding livestock financing and the needs of the livestock producers in case there is some legislation that needs to be introduced.

In response to a question Mr. Hardmeyer discussed the rates for student loan borrowers and the rate structure that is being selected by the DEAL One borrowers; 85% of the borrowers are selecting the adjustable rate.

Mr. Hardmeyer said within their budget request they included two new FTEs. The Bank would be going from 179.5 to 181.5 FTE's, simply to deal with growth. He said the Bank has also indicated in their budget request that the Bank's capital be used to fund the buydown programs (up to \$40 million).

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring to authorize the Bank of North to seek an extension on the Flex PACE Program so Bank can continue to do multi-family housing units for all parts of the State for another four years to June 30, 2019. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Hardmeyer presented the non-confidential Bank of North Dakota Advisory Board September 18, 2014 meeting minutes.

Governor Dalrymple closed the meeting at 3:28 p.m. pursuant to North Dakota Century Code 6-09-35 to discuss the items on the agenda under Bank of North Dakota confidential business.

Following the confidential portion of the meeting, the Commission reconvened in non-confidential session at 3:50 p.m. and it was noted that during the confidential portion of the meeting, it had been moved and seconded that the Bank of North Dakota be authorized to participate in two loans identified as Attachments 12 and 13. In non-confidential session, on a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Bank of North Dakota business, Governor Dalrymple adjourned this portion of the meeting at 3:52 p.m. and the Commission took up Western Area Water Supply Authority business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on November 13, 2014 beginning at 1:00 p.m.
Brynhild Haugland Room/Governor's Conference Room

Present: Governor Jack Dalrymple, Chairman
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Also

Present: Jason Nesbit, Governor's Office
Bonnie Storbakken, Governor's Office
Brad Thompson, Bank of North Dakota
Jaret Wirtz, WAWSA (By Speakerphone)
Members of the Press

Governor Dalrymple called the Western Area Water Supply Authority (WAWSA) portion of the Industrial Commission meeting to order at 3:53 p.m. following completion of Bank of North Dakota business.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the WAWSA monthly financial reports and Debt Reduction Report as follows: (A complete copy of the report is available in the Commission files.)

RE: Western Area Water Supply Authority - Industrial Sales - October, 2014 and
Debt Repayment Report

Attached is the Western Area Water Supply Authority (WAWS) financial information for the month of October and for the fifteen months ending October 31, 2014.

Pages 1 & 2 were prepared by the Bank of North Dakota reflecting debt service payments. This report reflects the debt reduction payments made through November 6, 2014 while the remaining reports reflect October 31, 2014 numbers. In October one prepayment was made (10/21/2014) in the amount of \$645,537 consisting of:

- interest payment of \$64,743.05, and
 - principal prepayment of \$580,794.66 which was applied to debt service payments due in 2015
- and current interest payments on all the remaining loans were made on October 31 in the amount of \$215,656.86.

This report also reflects a prepayment on November 6 (this will be reflected at next month's Industrial Commission meeting as a November payment) in the amount of \$1,291,075. This prepayment consists of:

- interest payment of \$35,211, and
- principal prepayment of \$1,255,864 which was applied to debt service payments due in 2015.

All the principal prepayments are being applied to the debt service owed on BND Loan #1. Original loan was \$50,000,000 and with the November prepayment the principal owed is down to \$38,906,817. On this particular loan WAWS has made principal prepayments totaling \$11,093,182. The next regular principal payment due date on this particular loan is February 28, 2016.

The next 3 pages (pages 3, 4 & 5) I prepared based on the information provided by WAWS staff reflecting revenues and expenses and showing net income. Capital improvement disbursements (highlighted in orange) and prepayments (highlighted in yellow) are noted separately. With those adjustments the net income for the month of October was **\$1,319,543.39**. Revenues in October were \$3,081,309.83. Page 6 is the balance sheet prepared by WAWS staff as of October 31, 2014. As noted on the Balance Sheet the Accounts Receivable are \$4,556,953.69.

In response to a question Mr. Jaret Wirtz, Western Area Water Supply Authority Executive Director, stated the Authority had requested \$120 million in funding from the State Water Commission for the upcoming legislative session. The Authority is proposing that the funding be 75% grant and 25% loan -- \$90 million grant and \$30 million loan. What he has been hearing recently is that the way the Water Commission policy is now written the Authority would only be able to get 80% of the \$120 million from the Water Commission.

Governor Dalrymple said it is a matter of the "so called" local share and that local share could potentially be financed if you can show financial hardship.

Mr. Wirtz said the Authority was hoping to make some more prepayments in the next month so they will be able to show that the Authority is in a position to take on additional loans with the payment source being industrial sales; the loans to be with either the Water Commission or the Bank of North Dakota, wherever it is best to be financed.

In response to a question Mr. Wirtz clarified that Mr. Sando had stated that the Water Commission would only provide 80% of a project (either as a grant and/or a loan). So the Authority would need to find other financing for 20% of a project. Right now, the law does not allow the Authority to obtain financing except from the Water Commission or state guaranteed loans. The Authority cannot seek funding from the Drinking Water Fund or from Rural Development.

In response to a question, Mr. Wirtz reviewed the projects that were in the \$120 million request to the Water Commission. A copy of that list was provided to the Commission at their last meeting and is available in the Commission files.

Being no further WAWSA business, Governor Dalrymple adjourned this portion of the meeting at 4:01 p.m. and the Commission took up Administrative business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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Brynhild Haugland Room/Governor's Conference Room

Present: Governor Jack Dalrymple, Chairman
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Also

Present: Jason Nesbit, Governor's Office
Bonnie Storbakken, Governor's Office
Members of the Press

Governor Dalrymple called the Administrative portion of the Industrial Commission meeting to order at 4:01 p.m. following completion of Western Area Water Supply Authority (WAWSA) business.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, discussed potential legislation for the upcoming session. She indicated that there is one potential item regarding the membership of the Lignite Research Council which is made up of primarily industry representatives. The Governor makes the appointments to this Council. Last year it came to our attention that the Governor couldn't appointment anyone from out of state because there is a law that says the Governor can only appoint citizens of North Dakota. It appears that the Commission may want to support a change to that law. She is working with the Lignite Energy Council to find a legislator from coal country to introduce it and not have it as a separate agency bill. Mr. Mike Jones has indicated that it would be valuable to have representatives from the Department of Energy and from companies that are involved in similar research on the Council.

Ms. Fine indicated that she did not have her recommendation for the Mill President and General Manager ready for consideration at this time and she did not have any minutes available for their consideration.

Being no further Administrative business, Governor Dalrymple adjourned the meeting at 4:04 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary