

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on October 22, 2015 beginning at 12:45 a.m.
McKenzie County Courthouse – County Commission Meeting Room
201 5th Street NW, Watford City, ND

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

Also

Present: A copy of the attendees is available in the Commission files

Prior to taking up Industrial Commission business, the Commission members participated in a tour of the Watford City area and hearing presentations from McKenzie County Commission/Watford City officials and OneOK representatives regarding the Lonesome Creek facility. The tour began at 10:00 a.m. and concluded at approximately 11:45 a.m.

Governor Dalrymple called the Industrial Commission meeting to order in the McKenzie County Commission Meet Room at 11:54 a.m..

Mr. Ron Anderson, McKenzie County Commission Chairman, gave a summary of their budget. (A copy of the packet is available in the Commission files.)

Mr. Dick Vande Bossche, OneOK, presented the following slide show on the Lonesome Creek facility.



ONEOK Rockies Midstream Williston Basin Project Update

October 22, 2015



Midstream Infrastructure

More Than \$3 Billion Invested in the Williston Basin

Natural Gas Gathering & Processing

- More than 3 million acres of natural gas production dedicated to our systems
- 6,500 miles of natural gas pipelines
- Nine processing plants with 685 MMcfd capacity
 - Two under construction for additional 280 MMcfd

Natural Gas Liquids

- Bakken Pipeline: A 600-mile, 135,000 bpd pipeline to transport raw NGLs to Conway, KS, or Mont Belvieu, TX, for fractionation and access to markets
- Two De-ethanizers under construction

Natural Gas Pipelines

- 50% owner of Northern Border Pipeline, which transports residue natural gas to Chicago with access to additional markets

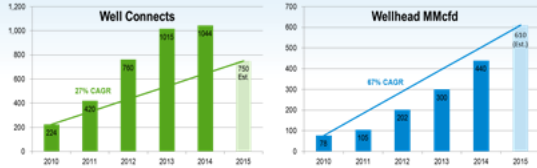
Legend:

- ▲ Growth projects
- ▲ ONS plants
- ▲ Stateline De-ethanizers
- Bakken NGL Pipeline
- Northern Border Pipeline

Page 2

Williston Basin System Growth

2010 – Present | Natural Gas Infrastructure



- **Natural Gas Processing Plants:** Built five new facilities with capacity of 580 MMcf/d
- **Pipelines:** Averaged ~500 miles of pipe constructed per year
- **Field Compression:** Built 18 new compressor stations and expanded three, for total additional horsepower of ~185,000

Page 3



Compression Capacity

Compressor Stations Built in 2015

• Crosby Expansion (Divide)	3,000 hp.	10 MMcf/d – Q1 2015
• North Forks (NE McKenzie)	12,500 hp.	50 MMcf/d – Q2 2015
• Banks (NE McKenzie)	15,000 hp.	60 MMcf/d – Q2 2015
• Lewis & Clark (E Williams)	15,000 hp.	60 MMcf/d – Q3 2015
• Galaxy (NE McKenzie) *	12,500 hp.	50 MMcf/d – Q4 2015
• Timber Creek (NE McKenzie) *	12,500 hp.	50 MMcf/d – Q4 2015
• Sand Creek (NE McKenzie) *	7,500 hp.	30 MMcf/d – Q4 2015
		310 MMcf/d

* Under construction

Page 4



Natural Gas Processing Capacity

Williston Basin Plants

• Grasslands	85 MMcf/d
• Garden Creek I, II & III	360 MMcf/d
• Stateline I & II	220 MMcf/d
Current Plant Capacity	665 MMcf/d
• Lonesome Creek	200 MMcf/d; Dec 2015
• Bear Creek	80 MMcf/d; Q3 2016
In Progress Plant Capacity	945 MMcf/d

Page 5



Lonesome Creek Plant

Natural Gas Gathering and Processing Investments

- Lonesome Creek plant and upgrades and expansions of existing infrastructure
 - \$550 million – \$680 million
 - 200 MMcf/d natural gas processing facility
 - Expected to be completed in fourth quarter 2015
- Located in McKenzie County, North Dakota

\$550 million to \$680 million



- ▲ Lonesome Creek plant
- ▲ Garden Creek plant (completed)
- ▲ Garden Creek II plant (completed)
- ▲ Garden Creek III plant (completed)
- ▲ Stansine I plant (completed)
- ▲ Stansine II plant (completed)
- ▲ Bear Creek plant
- ▲ Existing O&G processing plants
- Williston Basin
- Natural Gas Gathering Pipelines
- Divide County Natural Gas Gathering System (completed)

Page 6

Lonesome Creek Plant

November 2014



Page 7



Lonesome Creek Plant

November 2014



Page 8



Lonesome Creek Plant

March 2015



Page 9



Lonesome Creek Plant

June 2015



Page 10



Lonesome Creek Plant

July 2015



Page 11



Lonesome Creek Plant

September 2015



Page 12



Bear Creek Plant

Natural Gas Gathering and Processing and NGL Investments

- Bear Creek plant and related natural gas infrastructure
 - \$230 million to \$330 million
 - 80 MMcf/d
 - Expected to be completed in 3rd quarter 2016
- Natural gas liquids pipeline connecting the Bear Creek plant to the Bakken NGL pipeline
 - \$35 million to \$45 million
 - Expected to be completed in 3rd quarter 2016
- Located in Dunn County, North Dakota

\$230 million to \$330 million



- ▲ Bear Creek plant
- ▲ Garden Creek plant (completed)
- ▲ Garden Creek II plant (completed)
- ▲ Garden Creek III plant (completed)
- ▲ Strathairn I plant (completed)
- ▲ Strathairn II plant (completed)
- ▲ Lonesome Creek plant
- ▲ Existing OGS processing plants
- Williston Basin
- Natural Gas Gathering Pipelines
- Dunn County Natural Gas Gathering System (completed)

Page 13

Bear Creek Plant

October 2015



Page 14





Community Investments
~ \$1.3 Million of Investments and Contributions in 2014 and 2015

2014

- \$25,000 in support of the mechanical maintenance facility enhancement – Bismarck State College, Bismarck, North Dakota;
- \$1 million for the construction of a new medical complex – benefit Fund for the McKenzie County Healthcare Systems in Watford City, North Dakota;
- \$25,000 in support of a new affordable daycare facility – Wolf Run Village in Watford City, North Dakota;
- \$50,000 in support of the new Killdeer Cowboys Sports Complex – North Dakota Community Foundation; and
- \$25,000 in support of a new hospital and medical office facility – St. Joseph Hospital Foundation in Dickinson, North Dakota.

2015

- \$50,000 in support of a new safety training facility – North Dakota Safety Council in Bismarck, North Dakota;
- \$50,000 in support of building a new interactive science center – Gateway to Science Center in Bismarck, North Dakota;
- \$10,000 in support of expanding the obstetrics unit at the hospital – Mercy Medical Foundation in Williston, North Dakota;
- \$40,000 contribution in support of the new High Plains Cultural Center, plus a \$60,000 challenge grant for new monies raised toward construction costs/debt – Killdeer, North Dakota;
- \$10,000 in support of the Pathway of Hope program – Williston Salvation Army in Williston, North Dakota.

Page 6 

Questions

The Industrial Commission members thanked Mr. Anderson and Mr. Vande Bossche for their presentations.

The presentations ended at 12:21 p.m. and the Commission took a break for lunch provided by McKenzie County/Watford City.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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Present: Governor Jack Dalrymple, Chairman
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Present: A copy of the attendees is available in the Commission files

Governor Dalrymple called the Industrial Commission meeting to order at 12:45 p.m. following completion of a tour and presentations from McKenzie County and OneOK representatives and a short lunch break. The Commission took up Department of Mineral Resources business.

The Commission members thanked the Watford City and McKenzie County officials for the outstanding tour of the infrastructure of the area - nothing short of phenomenal. They also thanked them for the lunch.

Mr. Lynn Helms, Department of Mineral Resources Director, presented orders for the following cases heard on September 17, 2015 requesting authorization for the flaring of gas from certain wells completed in the Bear Creek-Bakken, Bear Den-Bakken, Cedar Coulee-Bakken, Corral Creek-Bakken, Haystack Butte-Bakken, Killdeer-Bakken, Little Knife-Bakken, Lost Bridge-Bakken and Murphy Creek-Bakken Pools, for a temporary period of time, and to allow the volumes of flared gas to be excluded from the calculations of statewide and county wide flare volumes:

Case 24475, Order 26841 - request for temporary authorization to flare gas for certain wells
Case 24476, Order 26842 - request for temporary authorization to flare gas for certain wells
Case 24477, Order 26843 - request for temporary authorization to flare gas for certain wells
Case 24478, Order 26844 - request for temporary authorization to flare gas for certain wells
Case 24479, Order 26845 - request for temporary authorization to flare gas for certain wells
Case 24480, Order 26846 - request for temporary authorization to flare gas for certain wells
Case 24481, Order 26847 - request for temporary authorization to flare gas for certain wells
Case 24482, Order 26848 - request for temporary authorization to flare gas for certain wells
Case 24483, Order 26849 - request for temporary authorization to flare gas for certain wells

Mr. Helms said in Cases 24475 through 24483 there are nine orders because they duplicate the nine cases that were heard in March and the Commission decided in April regarding XTO exemptions for flaring. He provided a handout. (The handout is available in the Commission files and is an exhibit from the hearing held on these cases.) He indicated that the map shows the affected XTO producing areas and the fields where relief is requested and on the back side of the handout is the list of wells for which they are requesting relief. This list is identical to the wells that were included in the relief that the Commission granted in April. It is 102 wells located in the fields that are highlighted on the map. In this case, XTO asked for those 102 wells plus an additional eight wells that they previously had connected to well site liquid stripping units. Those units have now been removed and moved to different locations. We are talking about 13,000 barrels of oil per day up to 14 million cubic feet a day would be the flared volume if they utilized the maximum amount of relief that they have requested.

As background information he said XTO's gas capture in this area is now at 74% so it is not reaching the 77% goal the Commission has in place. When this process began in April, their gas capture was at 64% so they have made progress. On a statewide basis, with this relief, XTO will be four-tenths of 1% above the 77% gas capture goal – in the absence of this relief; they will be 1% below. If you took away some of the other administrative exemptions, like the 14 day flow back period and several of those things that are in the gas capture guidance, they would be at 74%, the same statewide as they are here.

He indicated that the orders the staff is recommending does not grant the relief on the additional eight wells, it sticks with the 102 wells that were granted relief in April and it grants that relief for an additional six months meaning that this will be reviewed again in March or April of next year. That will be at approximately the same time that the gas capture goal goes from 77% to 80% so there is logic behind granting a six month extension versus XTO's request for this extension to go all the way through the commissioning of the Bear Creek plant which is supposed to be operational in October 2016. Mr. Helms indicated in summary the proposed orders grant the 14 million cubic feet per day relief for six months on the same 102 wells that the Commission granted in April.

In response to a question, Mr. Helms indicated that the completion of the Lonesome Creek plant will not help XTO. The completion of the Bear Creek plant will move them from their current 74% to 85% in this area but that is not until the third quarter 2016.

In response to a question, Mr. Helms said XTO will be at 85 percent when Bear Creek is done. We are assuming that this relief will lapse by then. He did note that if the Commission approves the proposed orders with six months relief XTO may be back one more time because Bear Creek will not be done by April. They went from 64% capture to 74% capture--we want to keep pressure on them to move that forward. In April they will be looking at an 80% goal. He indicated that he believes it was logical to do so. He is recommending that the Commission grant another six months and then have a look at it ahead of that change in gas capture goals and keep the pressure on XTO to find everything they possibly can to get to that 80% goal. Maybe they will be at 80% in this area by then which would be great.

In response to a question Mr. Helms indicated there are several things they might be able to do. They could delay completions in this area, to slow down drilling which they have already done--they have gone from 4 rigs to 2 rigs--allow some wells to go from NC status to TA status and there are some new and improved well site or compressor station gas capture technologies that they may want to try. He noted a test unit in Blue Buttes that not only strips the liquids but also burns a significant volume of the Methane and uses that to generate electricity. It is also his understanding that they are going to make an investment to increase some Hess compression that may provide some relief in this area. It may be possible to do some compression in the Killdeer area to push gas down to Little Knife. He said they may be back asking for relief in April but there are some things they can do between now and then.

In response to a question Mr. Helms indicated that XTO is able to use this relief for new wells because as these existing wells decline it makes room in the system for some new wells. In the time since April, they have actually brought two well pads on to the system. They were able to bring those new wells on due to decline of these older wells and it made room in the system with this relief in place.

In response to a question Mr. Helms stated that those new wells were brought because they were at the end of their NC status.

Governor Dalrymple said he liked using temporary waivers. He is okay with asking them to keep working at it anyway they can – probably in ways we don't even know about.

Governor Dalrymple indicated that there has been some confusion about how to calculate the statewide or countywide flaring percentages. There is a calculation, it is a flared volume percentage, it is what it is, and for some portion of that the Commission may grant a temporary exemption. Mr. Helms said that was correct. That number that is presented publicly every month is a gross number, no exemptions included in that number. If industry is meeting the gas capture goal in that monthly report that means they are meeting the goal with no exemptions included whatsoever. That's a total flared volume versus produced volume and that is how it is. Where these exemptions come into play is whether XTO is going to be forced to

restrict oil production or do something in this area as an individual company. That is why these exemptions work. It is on an individual company basis, statewide, county, field. Those numbers that are reported in regards to comparing industry to the flaring goals, those are total – there is no exemptions calculated into anything – that’s the real number.

It was requested that if they do come back in April it would be helpful to know what it is that they have done and tried but failed or were unable to do. Mr. Helms indicated that he will ask that they make it part of the official record and make sure that questions are asked and answered are part of the hearing.

Case 24475: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 26841 issued in Case 24475, be approved and effective this 22nd day of October, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 24476: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 26842 issued in Case 24476, be approved and effective this 22nd day of October, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 24477: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 26843 issued in Case 24477, be approved and effective this 22nd day of October, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 24478: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 26844 issued in Case 24478, be approved and effective this 22nd day of October, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 24479: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 26845 issued in Case 24479, be approved and effective this 22nd day of October, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 24480: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 26846 issued in Case 24480, be approved and effective this 22nd day of October, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 24481: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 26847 issued in Case 24481, be approved

and effective this 22nd day of October, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 24482: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 26848 issued in Case 24482, be approved and effective this 22nd day of October, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 24483: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 26849 issued in Case 24483, be approved and effective this 22nd day of October, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Helms presented a revised Gas Capture Guidance document for Order No. 24665 which includes the actions taken previously by the Commission and adds a 90-day volume credit for operators exceeding goals. (A copy is available in the Commission files.) He said this document is the March version that was adopted with the changes that were adopted last month in bold type and the underscored language is what he is proposing today. It includes the annual review each December that was adopted last month and the new gas capture goals also approved in September. (He indicated that it is his understanding that the first annual review will be done in December of 2016.)

The language that he is recommending be approved today (underscored in the document) is the language that allows operators to accumulate three months or 90 days credit. If they are exceeding the gas capture goal for 90 days, they can accumulate a volume of gas that they could apply in a month where some sort of extenuating circumstances caused them to be below whatever the gas capture goal was at the time. He gave an example of a washout of a pipeline and a postponement of getting right-of-way to bypass that pipeline. Those are the kind of things that the Commission would apply these credits to.

He said the concept is to reward companies that are doing better than the minimum – the ones that are at 90 percent capture when the goal is 77 percent. They can accumulate credits and if they hit a bad month or something like that pipeline, they could use those credits. He noted that this policy has a penalty part but it doesn't have anything for rewarding people who are bringing the overall statewide average up and exceeding the goals – that is what this language does.

Mr. Helms described how the credit program works. He said they will get credits only if they need it, only if they ask and only for three months. They can't transfer it to another operator or sell them – it is a pure reward for the operators that are exceeding the goals to give them a kind of an insurance policy against something bad happening such as a fire at a compressor station.

In response to a question regarding not letting the operators abuse the credits – using them whenever they want and just flaring, Mr. Helms said the staff had talked about that a great deal. The credits are only going to be able to be applied for the six extenuating circumstances that have been identified in this policy– surface landowner, tribal or federal government right-of-way delays, temporary midstream down-time for system upgrades and/or maintenance, federal regulatory restrictions or delays, safety issues, delayed access to electrical power or potential reservoir damage. The credits are limited; they are going to have to meet one of those tests.

In response to a question regarding where it the policy it says that, Mr. Helms said it does not say it. It was indicated that wasn't clear in what had been drafted and the Commission edited the document to include under 4 a "upon application by the operator." and a new "4 d - Credits may be applied only if one or more of the extenuating circumstances exist."

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission amends the North Dakota Industrial Commission Order 24665 Policy/Guidance to read as follows:

North Dakota Industrial Commission Order 24665 Policy/Guidance
Version 102215

Policy Goals:

- 1) reduce the flared volume of gas
- 2) reduce the number of wells flaring
- 3) reduce the duration of flaring from wells

Action items:

- 1) require Gas Capture Plans for increased density, temporary spacing, and proper spacing cases
- 2) require Gas Capture Plans for all applications for a permit to drill
- 3) semi-annual meetings with midstream gas gathering companies
- 4) annual review of gas capture goals, gas capture progress, and extenuating circumstances to be presented by Department of Mineral Resources each December**
- 5) develop a web-based pipeline incident report form to better assess right-of-way issues
- 6) direct the Pipeline Authority to track flaring on/off the Fort Berthold Indian Reservation
- 7) report capture status versus goals
- 8) conduct a hearing to review and revise Bakken, Bakken/Three Forks, and/or Three Forks Pool rules governing production curtailment

The initial horizontal well drilled in each spacing unit should be allowed to produce at its maximum efficient rate, regardless if the well is connected to a gas gathering system. Allowing such wells to produce at a maximum efficient rate will allow valuable information to be obtained in order to make decisions regarding future well and infrastructure requirements in the spacing unit.

Commission production records indicate the majority of gas flared in North Dakota is from wells already connected to a gas gathering system. Such wells should not be excluded from gas capture goals adopted by the Commission.

Well payout and economics should not be used to determine production restrictions.

Some spacing units are being developed where the operator is aware that the existing gas gathering infrastructure is insufficient to allow surplus gas to be processed through the gas gathering system. In instances where significant amounts of surplus gas are flared due to the insufficient collection system, production should be restricted unless significant amounts of surplus gas are captured for beneficial consumption, or utilized in a value-added process.

Some flared gas contains components that if improperly combusted could cause air quality degradation and health issues.

On the Fort Berthold Indian Reservation, many Bakken Pools are also within the jurisdiction of the Mandan Hidatsa and Arikara (MHA) Nation and Bureau of Land Management (BLM). In some cases, companies must comply with MHA Nation, BLM, and Commission rules. The Commission should work with federal and tribal authorities to ensure that restrictions imposed herein provide clarity and protection of correlative rights for the oil and gas companies operating in the respective jurisdictions.

The Commission establishes the following gas capture goals:

74% October 1, 2014 through December 31, 2014

77% January 1, 2015 through March 31, 2016

80% April 1, 2016 through October 31, 2016

85% November 1, 2016 through October 31, 2018

88% November 1, 2018 through October 31, 2020

91% beginning November 1, 2020

The gas capture percentage is calculated by summing monthly gas sold plus monthly gas used on lease plus monthly gas processed in a Commission approved beneficial manner, divided by the total monthly volume of associated gas produced.

In order to allow operators the maximum flexibility to manage their drilling, operation, and gas capture plans within the gas capture goals established by the Commission, the Commission will evaluate compliance with the gas capture goals statewide, by county, by field, then by well for each operator.

- 1) All infill horizontal wells, including overlapping spacing units, completed in a Bakken, Bakken/Three Forks, and/or Three Forks Pool are allowed to produce at a maximum efficient rate for 90 days.
- 2) The operator is allowed to remove the initial 14 days of flowback gas from the total monthly volume calculation.
- 3) The operator is allowed to remove from the total monthly volume calculation gas volumes flared from wells already drilled and completed on the date a force majeure event occurs if the event is properly documented in writing by the gas gathering company.
- 4) An operator is allowed to accumulate credits for volumes of gas captured during the most recent three months in excess of the current gas capture goal.
 - a. The commission may apply all or a portion of the credit to a month in which the operator cannot meet the current gas capture goal upon application by the operator.
 - b. Credits cannot be transferred to another operator.
 - c. Unused credits expire after three months.
 - d. Credits may be applied only if one or more of the extenuating circumstances exist.
- 5) The Commission recognizes the following as surplus gas being utilized in a beneficial manner that may be considered as captured gas:
 - a. Equipping the well(s) with an electrical generator that consumes surplus gas from the well
 - b. Equipping the well(s) with a system that intakes the surplus gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting the propane and heavier hydrocarbons
 - c. Equipping the well(s) with other value-added processes as approved by the Director which reduce the volume or intensity of the flare by more than 60%.

If an operator is unable to attain the Commission's gas capture goals at maximum efficient rate, well(s) will be restricted to 200 barrels of oil per day if at least 60% of the monthly volume of associated gas produced from the well is captured, otherwise oil production from such wells shall not exceed 100 barrels of oil per day.

Flexibility will be provided in the form of temporary exemptions from production restrictions after notice and hearing if the following extenuating circumstances are validated:

- 1) surface landowner, tribal, or federal government right-of-way delays
- 2) temporary midstream down-time for system upgrades and/or maintenance
- 3) federal regulatory restrictions or delays
- 4) safety issues
- 5) delayed access to electrical power
- 6) possible reservoir damage

Flexibility in the form of temporary exemptions from production restrictions may be considered for other types of extenuating circumstances after notice and hearing if the effect of such flexibility is a significant net increase in gas capture within one year of the date such relief is granted.

Penalty provisions:

Production and flaring data is two months old when filed (Jan 2014 data filed Mar 2014) and data is frequently amended.

Timely communication between operators and midstream companies as well as with the Commission is of the essence. Lack of compliance with the following requirements will be considered violations:

- 1) Failure to file an application for hearing with the Commission within the month following the month in which the operator was unable to attain the Commission's gas capture goals and oil production exceeded production restrictions may result in a civil penalty of \$1,000 per month up to a maximum of \$12,500 per month beginning at \$1,000 the first month and doubling each additional month that the operator is in violation.
- 2) Failure to implement production restrictions within the month following the month in which the operator was notified by Commission staff that gas capture goals were not attained and oil production from listed well(s) is to be restricted will result in a verbal notice of violation. The Commission will issue a written notice of violation with a compliance deadline if an operator fails to implement production restrictions for a second month. A third month in violation of production restrictions may result in a civil penalty of up to \$12,500 per well for each day the well has been in violation.

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

Mr. Helms presented a Policy/Guidelines for NDAC 43-02-03-55 Wells Not Completed to Temporary Abandoned Status. (A copy is available in the Commission files.) He distributed two handouts -- a copy of the administrative rule that allows for temporary abandonment of wells and a copy of the Department's current General Guidelines for Temporary Abandonment of Wells that is used by the staff in evaluating

these requests. He noted that there has been some questions and discussion about what is going to happen to the roughly 1,000 wells that are currently in not completed (NC) status with the Commission. He stated that NC status means the well has reached total depth and the rig has moved off but the well has not been completed. He explained that the Department's field inspectors record the date when the well reaches TD and the rig is finished with the well and then it switches from drilling status to NC status. Under 38-08-04-1(l) it can only stay in that status for one year – that is the maximum. Currently there are almost 1,000 wells in that status and beginning in December and running through March about 100 wells per month will reach the end of their one year legal time they can remain in NC status which means something has to be done to those wells.

He is asking that the Commission affirm that the Department can grant under its current rule and guidelines temporary abandoned status to those wells if they are applied for. He explained how the process would work--An operator has to submit a Sundry Form 4 requesting temporary abandoned status; the staff does a file review to make sure there are no objections; the operator has to prove mechanical integrity of the well (they have to pressure test the well to make certain that the well has integrity and that it is not going to leak during that year and cause some pollution or an environmental problem) and then temporary abandoned (TA) status can be granted for one year. This would be the second year because the operator is not going to apply until they reach the end of their NC year and feel they need to keep that well off line for some reason. It would be a second year – NC status for one year and TA status for the second year. The policy/guidelines require that the staff checks the well file to see if there are surface owner objections or objections from another working interest owner.

He noted that since this policy was put in place the Legislature took this issue up and in HB 1358 if a well stays in temporary abandoned status for seven years the surface owner then can demand a public hearing to review that temporary abandoned status. At this point Mr. Helms said he didn't think that provision needed to be added to the policy. It is state law and can be found in the North Dakota Century Code. Even before a well goes into temporary abandoned status the staff considers those things and talks with the surface owners and the operators of the well.

Mr. Helms was asked to clarify the following sentence in the rule -- “This status can only be given to wells that are to be used for purposes related to the production of oil and gas” -- as opposed to what other purpose?

Mr. Helms said in the past the Department has seen some people apply for TA status thinking they might convert a well to a fresh water well at some point in the future or use the well for natural gas storage or waste disposal. This rule limits it to a well that is going to be used for salt water disposal or production of oil and gas. It is very narrow. They would not be able to TA the well for just any reason.

In response to question Mr. Helms indicated that they have thought about how a mineral owner, surface owner or non-operating working owner would know that they can object to a well going to TA status after a year of NC status. Currently the Department posts on its website the well statuses every month so anybody can go in and check at any time to see if they have a well on NC status. If the Commission affirms these guidelines, this document will be added to the policy section on the website as an item of interest. The Department does not have a list of mineral interest owners so all we can do is identify the wells that are on NC status and identify this policy and rule and how it is going to be applied.

Mr. Helms said he spent some time before bringing this to the Commission visiting with a handful of our largest non-operating working interest owners as well as royalty owners and 100 percent said they would rather see the well temporarily abandoned and not produce than sell the oil at this price but that doesn't mean he has spoken to everybody. There may be someone with certain financial circumstances that would

like to sell this oil even at this price but 100 percent of the people he spoke to would prefer that the Commission allow these wells, with the minimum amount of effort necessary, to move into temporary abandoned status until the market corrects itself. Forcing these wells to be put on production at the end of their one year of NC will exacerbate the flaring situation.

In response to a question Mr. Helms indicated that under Section 6 Revocation of TA status Subsection 4 it states -- Consideration of mineral/landowner/field inspector concerns that are in the well file and field inspector notes in RBDMS. If there is a written objection by a mineral owner, land owner or a field inspector then the staff has to think about it and typically, in the past, he has revoked a request for TA status.

In response to a question if that would be his normal response at that point, Mr. Helms said yes.

The Commission members suggested that there be something very visible on the website letting the mineral owner/landowner/field inspector know that they have the right to object to a well being given TA status. Mr. Helms indicated that they will include a big yellow banner on the front page calling attention to this. That yellow banner is used to call attention to all the users of the website that there is something new they may want to look at. They will also look at perhaps including something in the link for mineral owners/surface owners.

It was noted that the granting of TA status isn't tied to the price of oil. However, if the price goes up there will be pressure to not grant further extensions of TA status. However, all the parties know that the operator has a sizable investment already in that well and they have all the motivation and need to recover their investment.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approves the following policy for NDAC 43-02-03-55 wells Not Completed to Temporary Abandoned Status:

General Guidelines for Temporary Abandonment of Wells

1. Proposed TA Approval Procedure

Prior to approving either written or verbal procedures, be sure that plug back of deeper zones is appropriately and adequately addressed.

1. The operator files proposed TA procedures or obtains verbal approval of TA procedures. If a verbal is given, the verbal form must be filled out for the well file.
2. The operator is required to provide the future intended use for the well. TA status may only be given to wells that are to be used for purposes related to the production of oil and gas.
3. To provide consistency with the current UIC policy, if SWD is identified as the intended future use for the well, surface casing must have been set at least 50 feet into the Pierre Shale. If surface casing is not adequate, the proposed TA procedures cannot be approved for SWD.
4. Placing isolation plugs inside casing above the known cement top behind casing should be avoided.
5. The perforations may be isolated with a CIBP, a CICR or some other mechanical tool. Isolation of the perforations with a balanced cement plug could be considered if a CIBP, CICR or some other mechanical tool are not considered viable options. If the isolation

method is a CICR, cement may not be required at time of TA. Whenever practical, isolation of perforated or open hole zones should meet permanent abandonment standards.

6. The preferred location of a mechanical plug is 50' to 100' above the top of the perforations. If a balanced cement plug is used to isolate perforations, it should extend at least 100' above the top of the perforations and must be tagged. Silica flour recommendations should be followed per NDIC General Guidelines for Plugging.

7. Wells must be inspected by the operator at least once per year for pressure. Note the operator must report the pressure and the respective inspection date from the most recent inspection on any request to extend the TA status.

8. The Field Inspector must witness and document the MIT on the Well Integrity Report. The Inspector should attempt to report all tools set in well, perforations squeezed, cement volumes and other pertinent data. The operator is required to file a sundry notice reporting the work done.

2. Subsequent Report of TA Procedures

1. The operator is required to submit for approval a subsequent report of the TA procedures.
2. Ensure MIT was approved or conditionally approved.
3. The operator is required to provide the future intended use for the well. TA status may only be given to wells that are to be used for purposes related to the production of oil and gas.
4. To provide consistency with the current UIC policy, if SWD is identified as the intended future use for the well, surface casing must have been set at least 50 feet into the Pierre Shale. If surface casing is not adequate, the TA status cannot be approved for SWD.
5. Wells must be inspected by the operator at least once per year for pressure. Note the operator must report the pressure and the respective inspection date from the most recent inspection on any request to extend the TA status.

3. TA Extension Requirements

1. The director may extend a well's TA status beyond one year. The operator must submit for approval a request to extend the TA status. A fee of one hundred dollars shall be submitted for each application to extend the TA status of any well.
2. The operator is required to provide the future intended use for the well. TA status may only be given to wells that are to be used for purposes related to the production of oil and gas.
3. To provide consistency with the current UIC policy, if SWD is identified as the intended future use for the well, surface casing must have been set at least 50 feet into the Pierre Shale. If surface casing is not adequate, the TA status cannot be extended for SWD.
4. Wells must be inspected by the operator at least once per year for pressure. The operator must report the pressure and the respective inspection date from the most recent inspection on any request to extend the TA status.

4. Mechanical Integrity Test (MIT) Requirements

1. Standard pressure requirement is 1000 psi with a maximum pressure drop of 10% in 15 minutes. If the well does not pass the standard test, it must be repaired or plugged.
2. Wells must be tested at least once every five years. Wells that have lost a significant amount of fluid since the previous MIT should be considered for more frequent testing.
3. Test procedures - follow field guidelines and safety precautions when performing MIT.

5. Inspections & Monitoring Requirements

Wells will be inspected by the operator at least once per year. Any pressure or leakage discovered by the operator must be reported to the NDIC immediately.

6. Revocation of TA Status

1. Failure of MIT:
Unable to reach test pressure or, Pressure drop more than 10% or,
Excess fluid required to reach test pressure.
2. Fails monitoring requirement in part 5 above.
3. Reason for TA no longer valid.
4. Consideration of mineral/landowner/field inspector concerns that are in the well file and field inspector notes in RBDMS.

7. Access to Well Sites

Reasonable access to TA well sites must be maintained.

8. TA Observation Wells

1. Operator files proposed TAO procedures for approval. Isolation of open zone shall be by tubing and a packer or some other acceptable method. Packer must be set below TOC. A plan for monitoring the reservoir must be provided and the reservoir monitoring results must be reported at least annually.
2. Inspection and all other requirements, where applicable, will be the same as for TA wells.

Note: The foregoing are guidelines only and may be altered for good cause to meet specific conditions.

Reference

Requirements of NDAC 43-02-03-55

The director may waive for one year the requirement to plug and reclaim an abandoned well by giving the well temporarily abandoned status. This status may only be given to wells that are to be used for purposes related to the production of oil and gas. If a well is given temporarily abandoned status, the well's perforations must be isolated, the integrity of its casing must be proven, and its casing must be sealed at the surface, all in a manner approved by the director. The director may extend a well's temporarily abandoned status beyond one year. A fee of one hundred dollars shall be submitted for each application to extend the temporary abandonment status of any well.

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

Mr. Helms presented draft comments for BLM Onshore Order 4 revisions. (A copy is available in the Commission files.) This is about how to measure crude oil. He noted that the draft comments repeat a lot of what the Commission said on Onshore 3 because they are germane. The Commission has two rules in place that address metering of crude oil in the State of North Dakota and specifically say that we'll apply those rules to federal wells unless the federal government has a different rule and want to apply their rule.

North Dakota has taken jurisdiction in this area and clearly needs to especially on wells that are in a spacing unit where there are no federal wells.

He stated that what the federal government has done is they have tried to address a rule that has been outdated for about fifteen years. The mistake they made is that they cite all the American Petroleum Institute (API) standards on how to measure crude oil and then they go on to repeat every single thing that is in the current standard in the rule. The API standards are updated all the time with the latest technologies and changes. So the minute API meets again with one of their committees and makes the slightest modification to a standard, this rule is obsolete. What the draft comments suggest is that the BLM do what the State of North Dakota does, cite the API standards and enforce them. Then your rule will be evergreen and BLM won't have to every fifteen or twenty years create an obsolete rule from an obsolete rule.

He summarized by saying that the draft comments include two things--the most significant being you don't reference the API standards and then repeat them word for word in your rule and secondly, North Dakota has rules that govern this and under a possible policy where they could give primacy to North Dakota for inspection and enforcement, we have got a rule we could enforce that covers all the same API standards that they reference and a rule that we intend to enforce on state and private wells and federal wells that are part of a spacing unit that includes state and private interests.

Governor Dalrymple suggested that you also include a more forceful statement in the draft comments noting that the proposed revisions are contradictory. Is the operator supposed to pay attention to the current API standards or what is stated in the rule? Their own document which says you are to follow the API standards could be contradictory to the current version of the published rule and that is a problem. Mr. Helms said he can certainly add that to that paragraph. He thought that was a good addition.

It was indicated that the submission date for comments is November 30. It was decided that the draft comments should be circulated between the Commission members and then a final draft be considered at the November Industrial Commission meeting.

In response to a question regarding how many pages the rule consists of, Mr. Helms said there are no numbers on the pages but when he printed it he thought it was about 110 pages.

Mr. Helms presented draft comments for BLM Onshore Order 5 revisions. (A copy is available in the Commission files.) He indicated that the draft comments are similar in the criticism of the rule but this is the rule on how to measure gas. It is almost 300 pages and it does the same thing. It cites the API and AGA standards and then proceeds to repeat them along with all the ways to even do the calculations and what a gas chromatograph is, etc. It has the same problems as the prior rule revisions. As of Monday this rule had not been published in the Federal Register so when it is published the Commission will have 60 days to comment. He will make the same change the Commission suggested in the prior comments and circulate the revised draft comments to the Commission members and then bring it back for the Commission's consideration in November. He said North Dakota has very clear rules and those rules just simply cite the API and AGA standards and that is what we enforce. The Department has three inspectors and that is all they do – they go out every single day of the week and watch people and how they are proving meters and what they are doing with gas and oil meters and watch them gauge tanks and make sure they are following those standards.

Mr. Helms presented the 2016 Oil and Gas Hearing Schedule.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approves the following 2016 Oil and Gas Hearing Schedule:

Schedule for Oil & Gas Hearings 2016
Bismarck, North Dakota
DMR Conference Room 1000 East Calgary Ave

<u>Hearing Date</u>	<u>Docket Closing Date</u>
January 20, 2016 January 21, 2016	December 11, 2015
February 24, 2016 February 25, 2016	January 22, 2016
March 23, 2016 March 24, 2016	February 19, 2016
April 27, 2016 April 28, 2016	March 25, 2016
May 19, 2016 (Thursday) May 20, 2016 (Friday)	April 15, 2016
June 22, 2016 June 23, 2016	May 20, 2016
July 27, 2016 July 28, 2016	June 24, 2016
August 24, 2016 August 25, 2016	July 22, 2016
September 28, 2016 September 29, 2016	August 26, 2016
October 19, 2016 October 20, 2016	September 16, 2016
November 16, 2016 November 17, 2016	October 14, 2016
December 14, 2016 December 15, 2016	November 11, 2016
January 18, 2017 January 19, 2017	December 16, 2016

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

Mr. Helms said he has two items to share with the Commission. (A copy is available in the Commission files.) He said the first one is a list of the Administrative Rules sections that are under review by staff right now. The plan is to bring these proposed rules to the Commission at their February meeting to get approval to publish the proposed rules for public comment. After public hearing the final proposed rules would be considered by the Commission and if approved would become effective October 1 of next year. The reason for doing this at a later date is the staff is waiting for the EERC report to direct the changes to underground gathering pipelines and spill reporting. If the Commission or their staffs want an additional rule reviewed, just let us know and we will add it to the list and address it in February.

Mr. Helms said the last item he wanted to call their attention to is what is taking place with Section 6 of House Bill 1358. He said he presented this information to the Energy Development & Transmission Committee last week as they had asked for an update on activities concerning HB 1358 Section 6. He stated that the stars on the map are the six sites that the Division is planning to do work on this year. Priority one is the 1358-1 in Billings County. (A copy of the map is available in the Commission files.)

In response to a question regarding the site in Bottineau County, Mr. Helms said this is the stubble field that has oil bubbling up to the surface. The Division's environmental consultant has now been there and they are in the process of identifying the ends of that pipeline. The project will be to purge the pipeline properly and then to dig up the contamination, remove it and reclaim the area.

In response to a question regarding if they can get to all of these, Mr. Helms said the two in Williams County they cannot do right now. These are flowing seismic holes from the 1970's and they have artisan flow, the ground is so wet that you cannot actually get right up to the hole. They are going to wait until freeze up on those two but all of the rest of them the Division has had vendors on the sites and they are putting together cost estimates.

In response to a question regarding if they can do all of the sites with the money available, Mr. Helms said there is only \$1.5 million and he is not certain at this point that they can finish all of them as well as the \$310,000 project the Commission approved last month which is the brine waste pit study by NDSU. The Division will certainly try to do some work on every one of them. The one we know that has to be finished before winter is the one where the old reserve pit is actually eroding off and falling into the Little Missouri River. The rest there will be work done. They will know more after they get the cost estimates.

In response to a question regarding the McKenzie County site, Mr. Helms said that is an Old Tiger Mike Silurian well that was drilled in 1979 or 1980 and the reserve pit was not properly reclaimed. The pit was trenched and buried. This was done prior to the requirement to line pits as well as the requirement to get all of the liquids out of the pits. The site has salinity problems at the surface. The water table must be high and it is coming up to the top and killing the vegetation – it more than likely needs to be excavated. The area is about the size of the room they are meeting in - not huge.

In response to a question Mr. Helms said that he expects that there will be more potential sites now that people are becoming aware of the law and learning about the work that is being done. He anticipates that as the Division makes progress on some of these sites there will be lots of sites added to the list. The law sets out how the Division is to prioritize these projects and will work on the ones that have the largest negative environmental potential immediately and work their way down the list.

In response to a question regarding how much is in the Abandoned Well Fund, Mr. Helms said \$10.8 million. There was \$2 million that was transferred to the Oil and Gas Research Fund to fund the Pipeline

Study Phases I and II and then \$500,000 was transferred for the Brine Pit Study and that took us from \$12.8 million to \$10.8 million. The Fund is forecasted to receive \$7.5 million more this biennium.

Mr. Helms said the last page of his handout is a study that the Division hopes to be able to add to the list. It is not currently on the list. It would be a demonstration project. One of the biggest long term problems in reclamation is soil compaction. It is not just an issue for well sites but an issue for coal mines and people that drive big tractors and combines up and down the ends of their fields. If we can learn some things about reversing soil compaction, it would apply to lots and lots of places in North Dakota. The Division has a proposal from NDSU to do this research at a cost of \$370,000. NDSU has some really innovative ideas to try and they want to try it on a half dozen recently reclaimed sites. What they want to try to do is simulate what happens in the Red River Valley – amazingly, the heavy equipment that is used in potato farming doesn't result in major compaction issues for farmers in the Red River Valley. NDSU researchers think there are some ways mechanically we can simulate that out in the west by using bio-solids or polymers or certain types of ripping processes to where we can get root growth much faster. It is exciting because it would apply to all of the reclaimed sites and also apply to other industries. He hopes there will be sufficient funding to get this work done.

Being no further Department of Mineral Resources business, Governor Dalrymple adjourned this portion of the meeting at 1:40 p.m. and the Commission took up Oil and Gas Research Program 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 October 22, 2015 beginning at 12:45 a.m.
McKenzie County Courthouse – County Commission Meeting Room
201 5th Street NW, Watford City, ND

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

Also
Present: A copy of the attendees is available in the Commission files

Governor Dalrymple called the Oil and Gas Research Program portion of the Industrial Commission meeting to order at 1:40 p.m. following completion of Department of Mineral Resources business.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the Financial Report as follows:

Oil and Gas Research Fund
Financial Statement
2015-2017 Biennium
October 22, 2015 Industrial Commission Meeting

	<u>Cash Balance</u>
July 1, 2015 Balance	\$ 4,419,836.98
Revenues through August 31, 2015 (2% of State's share of oil taxes)	\$ 1,792,885.75
Revenues from Abandoned Well Fund	\$ 1,500,000.00
Transfer to the Pipeline Authority Fund	\$ (00.00)
Expenditures through August 31, 2015	<u>\$(1,230,851.30)</u>
	\$ 6,481,871.43
Outstanding Administration Commitment*	\$ (522,410.42)
Outstanding Project Commitments as of August 31, 2015	<u>\$(9,905,054.67)</u>
Balance	<u>\$(3,945,593.66)</u>

Oil and Gas Research Fund
Continuing Appropriation Authority
2015-2017 Biennium

Uncommitted Balance July 1, 2015	\$ 759,360.59
Carried Over Unused Administration Allocation	\$ 72,009.72
Projected Income from Project Applications & Interest	\$ 20,000.00
Revenues (2% of State's Share of Oil Tax Revenues)	\$10,000,000.00
Transfer from the Abandoned Well Fund for two studies	<u>\$ 2,000,000.00</u>
	\$12,851,370.31
Transfer to Pipeline Authority	\$ (200,400.00)
Administration Commitment*	\$ (522,909.72)
Approved Project Commitments 2015-2017	\$ (750,000.00)
Legislative Mandated Studies	\$ (2,000,000.00)
Carried over Project Commitments for 2015-2017**	<u>\$(4,796,940.00)</u>
Available Funding	\$ 4,581,120.59

57-51.1-07.3. Oil and gas research fund - Deposits - Continuing appropriation.

There is established a special fund in the state treasury to be known as the oil and gas research fund. Before depositing oil and gas gross production tax and oil extraction tax revenues in the general fund, property tax relief sustainability, strategic investment and improvements fund or the state disaster relief fund, two percent of the revenues must be deposited monthly into the oil and gas research fund, up to ten million dollars per biennium. All moneys deposited in the oil

and gas research fund and interest on all such moneys are appropriated as a continuing appropriation to the council to be used for purposes stated in chapter 54-17.6.

*This includes the remaining amount of \$39,356.50 owed on the NDSU Workforce Study and Legislative Mandated \$100,000 Natural Gas Study

**This amount includes research/education funding carried over from prior biennia for:
Contract G-028-058 with \$1,100,000 to be expended in the 2015-2017 biennium;
Contract G-030-060 with \$3,027,250 to be expended in the 2015-2017 biennium;
Contract G-034-065 with \$669,690 to be expended in the 2015-2017 biennium.

She indicated that there is funding available should the Commission wish to fund the application that is being considered today.

Mr. Lynn Helms, Department of Mineral Resources Director, indicated that he was filling in for Brent Brannan who was unable to attend this meeting. He discussed the Oil and Gas Research Council recommendation on the following Grant Round 37 application - "Collection and Development of Actionable Reclamation Data Using Aerial Remote Sensing" submitted by Hell Creek Environmental; Amended Request for \$140,000. (A copy of the application and technical reviews is available in the Commission files.) He said the Council vote was 4 to 1 to fund.

He indicated that this project is an attempt to move from the current process of a human being walking every reclaimed site once or twice a year to look at how far along the reclamation process is and whether the bond can be released. Typically the release of a bond takes 10 years in North Dakota so a site could be visited 20 times by someone on foot over that 10 years. The initial phase of this project will be to use fixed wing aircraft and take all kinds of different photographs of sites to see if we can find the technology that will measure plant health and soil health. We anticipate a future proposal to mount the winning equipment on UAV's and use UAV's to fly the equipment over reclaimed sites twice a year.

He stated that he is excited about this project because the Department of Mineral Resources inspectors spend an enormous amount of time visiting bonded sites twice a year and they all have to be walked to; the roads are gone because road removal is part of the reclamation process. It takes a great deal of time. This project will develop the equipment that will allow the use of scientific measurements rather than measuring plant health visually on the ground. In response to a question if this will be supporting the use of technology through lidar or infra-red or optical signatures with a comparison to boots on the ground, Mr. Helms said that was correct.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Oil and Gas Research Council recommendation to fund the grant application "Collection and Development of Actionable Reclamation Data Using Aerial Remote Sensing" and to authorize the Industrial Commission Executive Director to execute an agreement with Hell Creek Environmental to provide Industrial Commission Oil and Gas Research Program funding in an amount not to exceed \$140,000. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Oil and Gas Research Program business, Governor Dalrymple adjourned this portion of the meeting at 1:45 p.m. and the Commission took up WAWSA 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 October 22, 2015 beginning at 12:45 a.m.
McKenzie County Courthouse – County Commission Meeting Room
201 5th Street NW, Watford City, ND

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

Also

Present: A copy of the attendees is available in the Commission files

Governor Dalrymple called the Western Area Water Supply Authority (WAWS) portion of the Industrial Commission meeting to order at 1:46 p.m. following completion of Oil and Gas Research Program business. The Commission thanked Mr. Wirtz for being part of the tour in the morning.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the Financial Report as follows: (A complete copy of the attachment is available in the Commission files.)

RE: Western Area Water Supply Authority - Industrial Sales - September, 2015 & Debt Repayment Report

Attached is the Western Area Water Supply Authority (WAWS) financial information for the month of September, 2015.

Pages 1 & 2, prepared by the Bank of North Dakota, reflects debt service payments through the month of September, 2015 and what has been paid so far in October.

The next 3 pages (pages 3, 4 & 5) I prepared based on the information provided by WAWS staff reflecting September revenues and expenses and net income. On page 3 you will see the capital improvement disbursements (highlighted in orange) and principal payments/prepayments (highlighted in yellow). Note WAWS has now begun to make principal payments on the second BND loan. Previously they were only making interest payments on this loan. Net income for the month of September was **(\$265,243.21)**. Page 6 is the net income report for the 2013-2015 biennium so you have the numbers for comparison. Page 7 is the balance sheet prepared by WAWS staff as of September 30, 2015. As noted on the Balance Sheet the Accounts Receivables are \$3,004,501.53.

If you have questions I will be available to review the numbers. Jaret Wirtz will be at the meeting to discuss the numbers from the month of September and to give you a forecast on water sales for the remainder of the year.

Mr. Jaret Wirtz, WAWS Executive Director, said there is a 400,000 barrel job that was done during the month of September that carried into October. The Commission should see a little bit of a bump in revenues in October because the job was billed in October. WAWS is seeing fewer wells being completed and increased competition throughout the area. At their current price it is difficult to be competitive.

In response to a question Mr. Wirtz said he would expect to have similar numbers in October, November and December. They had hoped to have that swing that they have usually seen in previous years in the Fall. With the increased amount of industrial water competition in the area that did not happen. The numbers may go up a little bit--over that million dollar mark--but they are not planning for that. Currently the Board and staff are working on next year's fiscal outlook. The revenue plan that WAWS is reviewing has these kinds of numbers for next year as well. If these numbers continue there will be a shortfall. The staff and Board will put together some information and meet with the BND. They hope to be able to use the prepayments that they paid (they are paid through June 2017 on the one BND loan) to reduce monthly costs. There may be a need to go back to the Legislature to discuss interest rates on loans.

In response to a question, Mr. Wirtz said the expenses couldn't be reduced. WAWS isn't building any capital projects. They have been holding off and keeping cash reserves on hand for shortfalls. The only other expense is the cost of water and that is based on what it costs to get the water to the delivery points throughout the area with a little markup for water loss.

In response to a question regarding financing plans, Mr. Wirtz said it is something that is vital as they move forward. At the last Water Commission meeting, WAWS was approved for a grant up to \$60 million and a \$10 million loan that will be repaid with domestic sales for a total of \$70 million. In order to get to the total of \$80 million and to be able to access the entire grant amount, WAWS will need another \$10 million loan. It makes the most sense for WAWS to look at BND for that loan. That would also be paid with domestic water sales. In order to not have a significant impact on domestic rates for their domestic customers, they would like to get the most optimal terms as possible--something for 20 to 30 years and as low of interest rate as possible.

In response to a question regarding if there was any legislative guidance on that, Mr. Wirtz said no. The Commission has the authority to approve that loan and since it is based on domestic sales WAWS has that authority to do that as well. He will be visiting with the Commission and BND to work out those terms so WAWS can maximize these dollars to fund the vital and needed projects that had to be cut due to the decrease in projections of revenues into the Water Resource Trust Fund.

Mr. Wirtz presented a map and chart. (The handout is available in the Commission files.) He said the chart reflects a list of the projects that would be funded with the \$60 million of grant funding and then the bottom part of the list is the additional \$20 million of projects that would be funded with loans. He provided more detail on the following projects:

- MCWRD - Watford City South By-Pass Transmission Main
- MCWRD - Tobacco Garden - Rural Distribution
- MCWRD - North of Arnegard - Rural Distribution
- R&T - Transmission Main - Tioga

In response to a question regarding having any industrial projects, Mr. Wirtz said no. He did note that the south bypass line does help with the industrial water capacity with all the industrial activity in the Watford City area but the project is being sized to meet the higher domestic needs. He stated that he had provided this information so the Commission understands how critical it is that WAWS obtain another \$10 million BND loan so that WAWS can access that entire \$60 million Water Commission grant.

Being no further WAWSA business, Governor Dalrymple adjourned this portion of the meeting at 2:00 p.m. and the Commission took up Housing Finance Agency 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 October 22, 2015 beginning at 12:45 a.m.
McKenzie County Courthouse – County Commission Meeting Room
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Present: Governor Jack Dalrymple, Chairman
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Also

Present: A copy of the attendees is available in the Commission files

Governor Dalrymple called the Housing Finance Agency portion of the Industrial Commission meeting to order at 2:00 p.m. following completion of WAWSA business.

Ms. Jolene Kline, Housing Finance Agency Executive Director, discussed the Housing Finance Agency Advisory Board's recommendation authorizing the use of Agency funds in the amount of \$50,000 for the Rehab Accessibility Program (RAP) funding as follows:

REHAB ACCESSIBILITY PROGRAM (RAP)

Staff is recommending that \$50,000 be made available from Agency reserves to allow for a continuation of funding for the Rehab Accessibility Program (RAP) and the program be administered in accordance with the attached criteria. This amount is included in the Agency fiscal 2016 budget to fund this program.

The RAP has been offered since 1996 at various funding levels ranging from \$25,000 to as high as \$100,000 depending on demand and Agency financial capacity. The purpose of the RAP is to provide assistance to enable homeowners or tenants with physical disabilities the preferred option to remain in their homes by helping to fund accessibility improvements.

There are no proposed changes for the fiscal 2016 program criteria as objectives are being met with the success of this program.

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 authorize the Housing Finance Agency staff to utilize \$50,000 of Agency reserves to allow for a continuation of funding for the Rehab Accessibility Program (RAP) and that the program be administered in accordance with the following criteria:

Rehab Accessibility Program (RAP)
Planning and Housing Development Division

GENERAL PROVISIONS

Grant funds can only be used to make accessibility improvements to properties occupied by lower-income North Dakotans with physical disabilities. Examples of qualifying improvements include, but are not limited to, ramps, door levers, walk-in/roll-in showers, grab bars and widening doorways.

Accessibility improvements can be made to either rental property or single-family homes. Project costs for improving rental properties that are not directly attributable to lower-income disabled households may be pro-rated for grant eligibility based on the percentage of eligible units to total project units. Verification of a rental property's reserve account may be requested.

Eligibility is limited to households with incomes not exceeding 80 percent of HUD county median income adjusted for family size; however, NDHFA's first priority will be lowest income households. (Income will be verified with income tax returns, benefit statements or similar documentation.) The Agency's second

priority will be applicants without other available funding options. NDHFA's final priority is to ensure grants are awarded statewide.

Grants are limited to one per rental property or single-family home in a fiscal year. Applications will be reviewed on a monthly basis; those not funded will be returned. Best efforts will be made to award twenty-five percent of the annual allocation each quarter.

The maximum RAP grant is \$4,000. Matching funds of at least 25 percent of the total project costs are required. NDHFA dollars cannot be used as a source of matching funds.

Reimbursement of the cost of any work completed prior to the application approval is not an eligible use of grant funds. NDHFA reserves the right to inspect the property, both before approval and after project completion.

Application

Applications are available directly from the NDHFA. Interested parties may contact the Agency at (701) 328-8080, (800) 292-8621, (800) 366-6888 (TTY), info@ndhfa.org or by mail: NDHFA, PO Box 1535, Bismarck, ND 58502-1535. Evidence of project cost estimates and income eligibility must accompany the application.

COMPLIANCE

Recipient Requirements

Grant funds will be disbursed after submission of a certification of project completion by the grantee. The certification must be received by NDHFA within six months of the grant award and include evidence of actual project costs. Final award is contingent upon costs meeting those included in the application. Checks will be issued made payable to the grantee and contractor(s).

Modification to the RAP Program

In order to address unforeseen circumstances, NDHFA reserves the right to waive certain program requirements or administrative procedures including, but not limited to, the maximum grant amount and the match requirement. All waivers must be approved by the NDHFA executive director.

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

Ms. Kline discussed the Housing Finance Agency Advisory Board's recommendation to approve internal funding of the Downpayment and Closing Cost Assistance Program (DCA) with Agency resources as follows:

RE: Change in Source of Funding for DCA Program

The North Dakota Housing Finance Agency Advisory Board recommends that the Industrial Commission approve internal funding of the DCA program with Agency resources.

The Downpayment and Closing Cost Assistance Program (DCA) has been funded through HUD's HOME program since 1995 and is available to be used with FirstHome standard loans. HOME is administered by the state's Division of Community Services (DCS). The HOME set-aside for DCA has ranged from \$150,000 to \$350,000 in the previous five years. In calendar year 2014 we provided \$233,086 in DCA assistance to 58 households. We are

on pace for a similar amount in 2015. DCA is restricted to households with income at or below 80% of median and allows these households to receive purchasing assistance and receive the lowest FirstHome interest rate for their first mortgage.

There have been many changes to the HOME program over the last 20 years at both the federal and state level. The cumulative changes have added to the administrative costs for not only the Agency but also our participating lenders.

If approved, future funding for DCA will be accounted for within MRB bond issues. Benefits of this change:

- No program audits performed by DCS (done every two years)
- No accountability to the HUD HOME program
- No separate accounting for funds and administrative costs through the DCS program, HOMENet
- Future program changes can be determined solely by the Agency
- DCS can allocate DCA HOME funds for other HOME activities

We will keep most of the requirements and restrictions currently in place related to eligibility for the program to keep the cost of the program at historical levels. Staff has undertaken a review of the program requirements to identify specific areas we can change that will reduce administrative burdens.

She noted that the DCA program allows the Agency to offer downpayment assistance of 3% of the cost of the loan available to the lower income homebuyers. Because of the changes to the HOME program if the Agency continues to use HUD funds there is potential liability on recapture--if one the Agency's homebuyers moves out of their home so it ceases to be their primary residence and if they are in an area where that home can't sell and they rent it out, the Agency would not normally require that the DCA loan be paid back but HOME could recapture that amount from the Agency. This change would have no effect on the homeowner. It will also free up those dollars that the Department of Commerce had been providing to the Agency for other eligible activities in the state.

It was noted that since the 2008-2009 financial crisis there is more scrutiny on downpayments and the Agency needs to be prepared to answer questions about any reduction in downpayments.

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 authorize the Housing Finance Agency staff to utilize Agency resources for the funding of the Downpayment and Closing Cost Assistance Program (DCA). On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Kline discussed the Housing Finance Agency's Executive Director's request to extend the Financial Advisor Agreement until May 31 2018 as follows:

RE: Financial Advisor Engagement Extension

NDHFA's Financial Services Agreement with Caine Mitter and Associates (Caine Mitter) will expire May 31, 2016. I am requesting this agreement be extended to May 31, 2018. On February 17, 2012, a Request for Proposals (RFP) was circulated to seven firms who provide

state housing finance agency advisory services. The Financial Advisor Review Committee had recommended and the Industrial Commission accepted the recommendation that Caine Mitter provide financial advisory services for the Agency.

Caine Mitter has provided financial advisor services to NDHFA since January 1, 2003. The firm has staff specializing in issuance documentation, swap pricing, and mortgage backed security pricing, in addition to many other areas specific to the Agency's business. The firm has provided sound advice and consultation on all matters of public finance, debt issuance, management of the Agency financial assets, and the exploration of new program development.

Caine Mitter is a registered municipal advisor as required by the Commodities Futures Trading Commission and also serves as the Agency's Qualified Independent Representative. Additionally, they assist and provided valuable insight during the review and selection of the Agency's underwriting team and bond counsel. The Agency has been very satisfied with the work and services provided by Caine Mitter under the Financial Services Agreement. I consider an extension of the agreement for another two years to be in the best interests of the Agency.

Even though their current engagement does not expire until May 31, 2016, we are requesting an extension now to allow us time to go through a RFP process should your approval not be given.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Housing Finance Agency Advisory Board and extend the Housing Finance Agency's Financial Services Agreement with Caine Mitter and Associates until May 31, 2018. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Kline discussed the Federal Home Loan Bank Mortgage Partnership Finance (MPF) Participating Financial Institution Resolution as follows:

RE: Federal Home Loan Bank Mortgage Partnership Finance (MPF) Participating Financial Institution Resolution

The North Dakota Housing Finance Agency requests the Industrial Commission adopt a resolution in a substantial form as the attached MPF Participating Financial Institution Resolution.

The Agency is pursuing becoming authorized to sell mortgages to the Federal Home Loan Bank through its MPF division. The MPF program would provide the Agency with an alternate secondary market for Roots loans. Currently Roots loans are purchased with either taxable bond proceeds or securitized and sold in a Ginnie Mae mortgage backed security.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission adopt the following Resolution for Mortgage Partnership Finance including the authorization of the Commission's Executive Director and Secretary to certify the signatures of the Housing Finance Agency staff named in the Resolution:

Resolution of the North Dakota Industrial Commission
And Certificate of Authorized Signatures

Resolved, that either Patrick Nagel, Chief Financial Officer and Dave Flohr, Director, Homeownership Division of the Industrial Commission of North Dakota acting as the North Dakota Housing Finance Agency (“PFI”), be and they hereby are authorized to: (1) execute the Federal Home Loan Bank of Des Moines (“Bank”) Mortgage Partnership Finance Participating Financial Institution Agreement (“PFI Agreement”) substantially in the form of the PFI Agreement presented at this meeting incorporated herein by reference and such further amendments, agreements, documents, or instructions as may be requested by the Bank in connection with the PFI Agreement; (2) take such action from time to time in connection with such PFI Agreement as they may deem necessary, advisable or proper, including, but not limited to, entering into Master Commitments, Delivery Commitments and individual mortgage loan transactions; and (3) delegate in writing from time to time to one or more officers or employees of this PFI or of its affiliates, acting individually, the authority to take any of the actions specified in (1) and (2) above on behalf of this PFI.

Resolved Further, that the Secretary of this PFI be and hereby is authorized and directed to certify to the Bank that these resolutions have been duly adopted by the Board of Directors of this PFI at a regular meeting or duly called special meeting and are in conformity with the charter and bylaws or other government instruments of this PFI and further to certify to the Bank (i) a copy of these resolutions, (ii) the names of the present signers of this PFI authorized to act as aforesaid, and (iii) that the specimen signatures provided to the Bank of the signers authorized to act under these resolutions are true and correct signatures of such signers.

Resolved Further, that these resolutions shall remain in full force and effect commencing on the date hereof and continuing until the discharge of all obligations of this PFI under the PFI Agreement. These resolutions supersede any existing resolution on file with the Bank which may be construed to apply to Mortgage Partnership Finance Program transactions. The authorizations set forth herein shall be construed as effective until receipt by the Bank of written notice of their amendment or revocation.

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

Ms. Kline discussed the summary report on Issuance of Multifamily Revenue Bonds as follows:

RE: Summary Report on Issuance of Multifamily Revenue Bonds

On June 30, 2015 the Industrial Commission executed an Authorizing Resolution, authorizing the issuance of Multifamily Revenue Bonds not to exceed \$10,000,000 along with following operative documents

- (a) the Preliminary Official Statement
- (b) the Trust Indenture
- (c) the Bond Purchase Agreement
- (d) the Loan Agreement

and authorized the Executive Director and Chief Financial Officer to execute documents in final form so long as changes fell within the approved parameters of the documents as drafted.

Transaction summary as authorized

Meadowlark Heights is a 96 unit 100% Section 8 multifamily residential rental property in Minot, North Dakota. The units are 100% rent and income restricted to 60% area median income and below. Meadowlark Heights is a 42 year old property requiring major deferred capital needs.

The tax exempt revenue bond transaction is a short term cash collateralization transaction. The agency is providing conduit financing and acting as a pass through. Through this process the developer will close on a HUD FHA 223(f) loan simultaneously with bond closing. The bond proceeds are placed in a trust account and advanced as construction draws take place. The draw proceeds are then placed into a Ginnie Mae Mortgage Backed Security and sold with the cash from sale and placed back into the trust account. At all times the bond will be 100 percent cash collateralized. Permanent financing is a HUD FHA 223 (f) loan and will replace bond proceeds. The short term bond transaction satisfied IRS requirements to allow the project to access 4% Federal Low Income Housing Tax Credits (4% LIHTC Credits)

The developer, Integra Property Group, received a conditional commitment from the Agency for \$547,481 in 4% LIHTC Credits. The proposal is for an acquisition/rehabilitation of the property with total project cost, including acquisition, of \$18,419,361. The capital improvements proposed are approximately \$37,000 per unit. The developer intends the bond proceeds to be a short-term construction financing mechanism with permanent financing from Pillar in the form of an FHA 223(f) loan.

Final Issuance Summary

The bond transaction closed on August 31, 2015 with no substantial changes to final documents. A copy of the Official Statement is provided as an attachment.

Issue Summary

\$9,000,000

NORTH DAKOTA HOUSING FINANCE AGENCY
MULTIFAMILY BOND ISSUANCE
SERIES 2015

Purpose Proceeds of the Bonds were used to finance acquisition, rehabilitation and equipping of the Meadowlark Heights Apartments Project, a 96 unit 100% Section 8 multifamily residential rental property.

Pricing Date August 15, 2015

Closing Date August 31, 2015*

Maturity Date September 1, 2016*

Interest Rate 0.40 per annum

Rating S & P rating A-1+

Note:

*Bond term was reduced from eighteen to twelve months.

*Closing and maturity date were one month later than presented due to HUD underwriting delays.

Ms. Kline reported there were no deviations from the resolution that was authorized, the bond amount was ultimately \$9,000,000 rather than the \$10,000,000 authorized. It was a good learning experience for staff in that the Agency had not done a multi-family bond issue in thirty years.

Ms. Karlene Fine discussed the Housing Finance Agency Advisory Board appointments as follows:

RE: HFA Advisory Board Appointments/Reappointments

North Dakota Century Code 54-17-07.1 states “the commission shall appoint a six-member advisory board consisting of representatives of lenders, the residential real estate industry, the mobile home and manufactured housing industry, and homeowners and buyers, and in consultation with such board may adopt rules and regulations . . .”

It has been some time since I brought you recommendations regarding appointments to the Housing Finance Agency Advisory Board. Since that time two Board members have resigned - Ron Jordan, Fargo, who represented lenders and Bonnie Knight, New Town, who represented homeowners/buyers.

Currently serving on the Board is:

- Ninetta Wandler of Dickinson who has been serving on the Housing Finance Agency Advisory Board since 2004 as the representative of the residential real estate industry.
- Lisa Rotvold of Hillsboro who has been serving on the Housing Finance Agency since 2004 as a homeowner/buyer representative. Lisa works with Beyond Shelter, Inc. in Fargo.
- Jim Farnsworth of Bismarck who has been serving on the Housing Finance Agency Advisory Board since 2010 as the representative for the manufactured housing industry.
- Gerald Eid of Fargo who has been serving on the Housing Finance Agency Advisory Board since 1994 as the representative of the homebuilders/residential real estate industry.

All of these individuals have been serving well beyond the term of their last appointment or reappointment. So I have now put this on my “to do” list with the following plan:

- Contact the North Dakota Association of Realtors, North Dakota Manufactured Housing Association, North Dakota Bankers Association and Independent Community Banks of North Dakota, and North Dakota Association of Builders to request nominations to fill the residential real estate industry, lenders, and manufactured housing positions on the Advisory Board. *I know I will be asked if the Commission is looking for new names or is the Commission willing to consider reappointments.* It would be my recommendation to allow current board members who are interested in continuing to serve submit their names if their association wishes them to do so.
- The law isn’t specific as to how many representatives from each of the identified categories should be named. For example the residential real estate industry category has two representatives -- Realtor and homebuilder. At one time there were two lenders -- one from the banking community and one from the savings and loan industry. Since there is no longer a savings and loan industry prior Commissions have named two individuals in the homeowner/homebuyer category with one from the Native American community and one individual representing entities that focus on affordable housing such as Beyond Shelter. I would recommend that the Commission continue to name two representatives for the residential real estate industry--Realtors and homebuilders as both of these groups are vital to the real estate industry. *However, I haven’t asked you the question of whether you would prefer that more than one position on the Advisory Board go to the lender community? Primarily the lenders that have served on the Advisory Board have focused on the mortgage lending for single family homes and having a commercial lender on the Board would be helpful as the Agency works on multi-family projects.* If more lenders are named to the Board, then there would be one position left for the homeowner and buyers category. *Do you want me to reach out*

to the same groups and request recommendations for the homeowner/homebuyer category?

- *Because you are just getting this memorandum you may want some time to think about my questions.* Unless directed otherwise I will proceed with getting nominations from the two banker associations since that position is vacant and the question of reappointment won't come up and if you accept my recommendation regarding reappointments I will proceed with getting names from the Manufactured Housing, Homebuilders and Realtors associations.

My goal would be to have at a minimum some names for you from the lending community in November or at the latest December. Based on your guidance I will move forward with getting names of interested individuals in the other categories

Ms. Fine, Ms. Kline and the Commission discussed the various questions raised in the memo. The consensus of the discussion was that Ms. Fine should go ahead and reach out to the constituent groups and if they want to recommend the current member for reappointment that would be fine with the Commission. As to the make-up to the Board, Ms. Fine should proceed with seeking an additional member from the lending community -- with a focus on the commercial lending.

In response to a question regarding the longest servicing member, Ms. Fine stated that would be Gerry Eid who has been on the Board since 1994. There is no limit. It was noted that the Commission may want to consider at some point having a term limit.

In response to a question, Ms. Kline stated that the current four Advisory Board members are active participants.

Ms. Fine stated that she will proceed as directed and hoped to give this higher priority.

Governor Dalrymple indicated to Ms. Kline that the Commission was very proud to see the Housing Finance Agency projects in Watford City. They look great. Ms. Kline stated that developing those housing projects would not have happened without a partnership. There is state money and federal money in those projects and the Housing Finance Agency was involved but city and county involvement is critical in developing an affordable housing project. Watford City and McKenzie County stepped up in a big way--she thanked those entities for their partnership in the projects.

Being no further Housing Finance Agency business, Governor Dalrymple adjourned this portion of the meeting at 2:20 p.m. and the Commission took up Public Finance 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 October 22, 2015 beginning at 12:45 a.m.
McKenzie County Courthouse – County Commission Meeting Room
201 5th Street NW, Watford City, ND

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

Also

Present: A copy of the list of attendees is available in the Commission files

Governor Dalrymple called the Public Finance Authority portion of the Industrial Commission meeting to order at 2:20 p.m. following completion of Housing Finance Agency business.

Ms. DeAnn Ament, Public Finance Authority Executive Director, discussed the Request for Proposal for bond counsel. (A draft of the RFP is available in the Commission files.)

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that DeAnn Ament, Public Finance Authority Executive Director, be authorized to issue a Request for Proposal for Bond Counsel services for the Public Finance Authority on behalf of the Industrial Commission and the Attorney General. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, discussed the appointment to the North Dakota Public Finance Authority Advisory Committee as follows:

RE: PFA Advisory Committee appointments

The North Dakota Public Finance Authority Policy P-2A states that the Industrial Commission shall appoint a three-member Advisory Committee to review information and make recommendations to the North Dakota Public Finance Authority Executive Director and the ND Industrial Commission.

The policy states that the individuals appointed to this Committee must have background in municipal finance and/or economic development.

As you are aware there is currently a vacancy on the Advisory Committee as a result of the death of Wade Williams. Wade's area of expertise was municipal finance with a focus on the needs of counties.

I am pleased to recommend Linda Svihovec, McKenzie County Auditor/Treasurer to fill the current vacancy on the Advisory Committee. Linda brings considerable experience to the board in the area of municipal finance -- serving in a county position since 1990 and currently serving as the McKenzie County Auditor/Treasurer. A copy of her biographical information is attached.

The other two members of the Committee – Keith Lund and Robert Frantsvog bring expertise in municipal finance and economic development as well as legislative experience. One is from north central ND (Minot) and one from eastern ND (Grand Forks). Linda would represent the western side of the state.

Therefore, it is my recommendation that the Industrial Commission name Linda Svihovec to the Public Finance Authority Advisory Committee for a three-year term extending to July 1, 2018.

Since it has been some time since the Commission reaffirmed its appointments of Keith Lund and Robert Frantsvog I would also recommend that Robert Frantsvog's current term be extended to July 1, 2016 and Keith Lund's current term be extended to July 1, 2017.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Linda Svihovec be appointed to the Public Finance Authority Advisory Committee for a term extending to July 1, 2018 and that Robert Frantsvog's current term on the Committee be extended to July 1, 2016 and Keith Lund's current term on the Committee be extended to July 1, 2017. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Ament reported on the approval of two loans by the Public Finance Authority Advisory Committee for the cities of Oberon (increase of \$55,000) and Lehr (\$79,065) as follows:

Re: Oberon, Clean Water State Revolving Fund
Lehr, Drinking Water State Revolving Fund

Under current policy, the Public Finance Authority can make loans under the State Revolving Fund Program in an amount not to exceed \$1,000,000 and under the Capital Financing Program in an amount not to exceed \$500,000 without seeking the final approval of the Industrial Commission. Within this policy, once the loan has been funded, the Public Finance Authority is required to provide the details of the loan to the Industrial Commission. Accordingly, the Public Finance Authority and its Advisory Committee used this policy to approve the following loan.

The committee reviewed an application from the City of Oberon is requesting an increase of \$55,000 to the previously approved \$175,000 loan (loan total \$ 230,000) under the Clean Water State Revolving Fund Program to finance the removal and replacement of the City's only sanitary sewer lift station. Total construction costs are estimated at \$330,000 with CDBG providing a \$100,000 grant. The requested term for the CW SRF loan is 30 years. The City of Oberon will issue revenue bonds payable from sewer user fees.

The committee reviewed an application from the City of Lehr requesting a \$79,065 loan under the Drinking Water State Revolving Fund Program to finance the emergency replacement of well #1. Total construction costs are estimated at \$250,000. The difference, \$170,935, between the total cost and the loan amount will be paid for with a Community Development Block Grant (CDBG). This project is eligible for \$47,500 of forgiveness, so the net financing will be \$31,565. The requested term for the CWSRF loan is 20 years. The City of Lehr will issue revenue bonds payable user from fees.

The Public Finance Authority's Advisory Committee approved these requests at their October 16, 2015 meeting.

Being no further Public Finance Authority business, Governor Dalrymple adjourned this portion of the meeting at 2:24 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 October 22, 2015 beginning at 12:45 p.m.
McKenzie County Courthouse – County Commission Meeting Room
201 5th Street NW, Watford City, ND

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

Also

Present: Andrea Travnicek, Governor’s Office
Eric Hardmeyer, Bank of North Dakota
Todd Steinwand, Bank of North Dakota
Bob Humann, 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 2:34 p.m. following completion of Public Finance Authority business and a short break.

Mr. Eric Hardmeyer, Bank of North Dakota President, presented the 2016 BND Holiday Schedule.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the 2106 Bank of North Dakota Holiday Schedule as follows:

**BANK OF NORTH DAKOTA
2016 HOLIDAY SCHEDULE**

The 2016 holidays will be observed by the Bank of North Dakota and the Federal Reserve Bank of Minneapolis and its Helena Branch on the following dates:

New Year’s DayFriday, January 1
Martin Luther King Jr. DayMonday, January 18
Presidents DayMonday, February 15
Memorial DayMonday, May 30
Independence DayMonday, July 4
Labor DayMonday, September 5
Columbus DayMonday, October 10
Veterans DayFriday, November 11
Thanksgiving DayThursday, November 24
Christmas DayMonday, December 26
(actual holiday Sunday, December 25)

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

Mr. Eric Hardmeyer introduced Mr. Todd Steinwand stating it was his first Commission meeting.

Mr. Hardmeyer presented the Third Quarter 2015 Performance Highlights. (A copy is available in the Commission files.) He highlighted the following points:

- \$7.8 billion in assets at the end of the quarter – up \$447 million from projections which is driven by deposits
- Deposits are still up by \$575 million over projections however, those have come down since month end. Closer to the budgeted amount of \$7.5 billion today.
- Loans are up \$252 million over budgeted amount, a lot of that growth is coming in the commercial area. Farm loans are up. The Bank is working on a new farm program that he plans on bringing to the Commission in November for consideration. Residential is up as well as student loans. The volume of student loans is driven by the DEAL One Program – it continues to be a great success.

In response to a question on the DEAL One loans, Mr. Hardmeyer said the variable rate is 1.79% plus you can get a .25% reduction if you go to ACH direct. The fixed loan rate is over 5%. Eighty percent of the borrowers are selecting the variable rate. The Bank also has the additional feature in that rates can only go up by one percent per year which is another reason why borrowers like this program.

Mr. Hardmeyer continued with the Performance Highlights report and reviewed the income statement.

- Through September the Bank made \$102 million which is approximately \$34 million a quarter and if that continues for the last quarter the Bank will be at \$132 to \$133 million for the year. He noted that there are two triggers that come into play with the Bank's earnings – one is to build a financial center if their earnings exceed \$125 million and to give the Housing Finance Agency another \$5 million for HIF money if the Bank makes \$130 million.
- Interest income is up by \$6 million which is a function of additional loan volume and continued low deposit rates.
- Operating expenses are \$4.7 million below budget.
- Leverage ratio – the Bank's benchmark is 8.5 percent equity – the Bank has been above that throughout the whole year and it is now at 9.11 percent. It looks like the Bank will end the year at around ten percent capital. The rest of the North Dakota banks are at about 9.52 percent so equity will continue to grow and as the assets shrink, that means the ratio is going to increase.
- Net loans to earning assets – this is a function of how many of the Bank's assets are in loans--55.8 percent and has been growing throughout the year. The Bank wants to continue to see that percentage grow. Goal is to be around 65 to 70 percent.
- Loan origination shows the total loans approved and committed to throughout the year. Commercial loans up \$200 million from last year with a lot of that being state institution political subdivisions. School construction loans at \$37 million which is a new program the Bank did with legislative authorization. Ag loans are on par with last year although the Bank's ag lenders are a lot busier than last year. Residential loans have a significant increase over last year due to BND being more competitive with pricing. Student loans – the DEAL One consolidation program \$145 million. In total the Bank has done \$448 million of loans this year which is twice what the Bank has done in any of the previous four years.
- The School Construction Program is a new slide the Commission will see every quarter. The Bank can do \$250 million in financing with the program - \$125 million the first year. The Bank is providing \$7.8 million for the biennium in interest buy down reducing the rates on these loans. He stated that the Bank is not anticipating using that entire \$125 million authorization the first year--currently at \$72 million.
- The federal student loan portfolio continues to drop as the Bank continues to book more DEAL One loans. The delinquency rate on the federal program is about 15.4 percent and that is comparable to what you see nationally. In regards to the DEAL One program, because of the

requirement for co-borrowers, it has a lower delinquency rate. Residential, commercial and farm portfolios are all in good shape.

- The Bank's allowance for loan losses is at \$67 million.
- College SAVE is down from the end of 2014 which is due to the market decline in the third quarter. Continue to see contributions of \$12.3 million. North Dakota accounts continue to grow with almost 2,000 more so far in 2015. North Dakotans have \$84.4 million in College SAVE money set aside for their children and grandchildren to go to school.

Mr. Hardmeyer presented the non-confidential Bank of North Dakota Advisory Board August 20, 2015 meeting minutes.

Being no further Bank of North Dakota business, Governor Dalrymple adjourned this portion of the meeting at 2:52 p.m. and the Commission took up Transmission Authority business.

Following the confidential portion of the meeting, the Commission reconvened in non-confidential session at 3:37 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 loans identified as Attachments 25 - 26. 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 the meeting at 3:38 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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Held on October 22, 2015 beginning at 12:45 a.m.
McKenzie County Courthouse – County Commission Meeting Room
201 5th Street NW, Watford City, ND

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

Also

Present: A copy of the attendees is available in the Commission files

Governor Dalrymple called the Transmission Authority portion of the Industrial Commission meeting to order at 2:52 p.m. following completion of Bank of North Dakota non-confidential business.

Mr. Tyler Hamman, Transmission Authority Director, presented the Transmission Authority Annual Report. (A copy of the Annual Report is available in the Commission files.) He noted the following items:

- A non-project item is the announcement by Basin Electric Power Cooperative and Western Area Power Administration that they were going to join the Southwest Power Pool Regional Transmission Organization with that integration taking place on October 1. Basically all of the state is now covered by a regional transmission organization.

- A few specific projects:

CapX 2020 - a \$2 billion investment in transmission lines. Of particular interest to North Dakota is the Fargo-St. Cloud-Monticello line that would alleviate reliability concerns in the Red River Valley as well as St. Cloud and Alexandria, MN. That line was put into service on April 2, 2015. The Brookings County-Hampton line was put into service on March 26. The rest of the CapX projects are on schedule for 2017.

Minnkota Power Cooperative Project - Center to Grand Forks line

Put into service in August 2014. The \$353 million, 250-mile line transports energy from the Milton R. Young Station near Center, N.D., to Minnkota Power Cooperative's service territory in eastern North Dakota and northwest Minnesota. The project also enabled 500 MW of wind energy from the Bison Wind Farm to be transmitted over an existing high-voltage direct current line to northeastern Minnesota.

Basin Electric Power Cooperative Western ND Project

Basin Electric has completed the necessary studies and started construction on a 200-mile 345-kv line from the Antelope Valley Station (AVS) to connect to substations near Grassy Butte and Williston, and end near Tioga, North Dakota at the Neset 345-kV Substation. There should be 140 miles completed to the Judson (Williston area) substation and energized by the end of this month. Remaining segments to Neset are expected to be completed by 2017.

He noted that the other significant issue on the horizon is the Clean Power Plan. The Commission and Mr. Hamman discussed the impacts of the Clean Power Plan on the State of North Dakota.

Ms. Karlene Fine presented the Transmission Authority financial report. (A copy of the financial report is available in the Commission files.)

Attorney General Stenehjem said the Clean Power Plan is a rule and there are numerous problems with it. He learned this morning that the rule is going to be published in the Federal Register tomorrow which means the State needs to act fast. There will be a filing of a petition as soon as the rule appears in the Federal Register. In due course the State will likely ask for a stay of the rule and to do that we need a number of declarations and affidavits. That is what will be discussed as part of attorney consultation.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the provisions of North Dakota Century Code §44-04-19.1 and 44-04-19.2 the Industrial Commission proceed into executive session at 3:17 p.m. for attorney consultation and discussion of

attorney work product in regards to potential Clean Power Plan litigation. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

The Commission then proceeded into confidential session at 3:02 p.m.

Governor Dalrymple called the meeting back to order at 3:14 p.m. following completion of Transmission Authority confidential business.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the following Resolution be approved as follows:

**Resolution of the
North Dakota Industrial Commission**

Whereas, In 2005 the North Dakota Legislature established the North Dakota Industrial Commission (Commission) as the North Dakota Transmission Authority (Authority). Section 17-05-04 of the North Dakota Century Code states the purpose of the Authority is to diversify and expand the North Dakota economy by facilitating development of transmission facilities to support the production, transportation and utilization of North Dakota electric energy.

Whereas, The United States Environmental Protection Agency (EPA) has proposed a rule entitled the Clean Power Plan that would cause harm to the work of the Authority and the State of North Dakota is contemplating litigation challenging the EPA rule;

Now, therefore, the Industrial Commission delegates to the Transmission Authority Director the authority to submit a declaration on behalf of the Authority in any litigation by the State of North Dakota stating the impacts to the Authority's mission and its directive from the North Dakota Legislature.

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

Being no further Transmission Authority business, Governor Dalrymple adjourned this portion of the meeting and closed the meeting at 3:15 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.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary