

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on November 12, 2015 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

Present: Governor Jack Dalrymple, Chairman
Attorney General Wayne Stenehjem

Also

Present: Cory Chorne, WAWSA
Jaret Wirtz, WAWSA
Members of the Press

Governor Dalrymple called the Industrial Commission meeting to order at 1:00 p.m. and the Commission took up Western Area Water Supply Authority business.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the Western Area Water Supply Authority October financial report and Debt Reduction Report as follows: (A complete copy of the report is available in the Commission files.)

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

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

Page 1 prepared by the Bank of North Dakota, reflects debt service payments through the month of October, 2015 and what has been paid so far in November. Joel has noted that WAWS has paid ahead on the BND \$50 million loan by approximately \$13 million. The next 3 pages (pages 2, 3 & 4) I prepared based on the information provided by WAWS staff reflecting October revenues and expenses and net income. On page 2 you will see that there were no capital improvement disbursements (highlighted in orange) and the principal payments made in October (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 the \$50 million BND loan. Net income for the month of October was \$47,469.93 before making their principal payments. Page 5 is the balance sheet prepared by WAWS staff as of October 31, 2015. As noted on the Balance Sheet the Accounts Receivables are \$2,401,492.66 which is included in the assets of \$4,063,791.41.

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 October.

The Commission and Mr. Wirtz discussed the amount of principal payments made every month on the outstanding debt. Mr. Wirtz indicated that they have never missed making a principal payment -- even in those months where WAWS showed a loss. When WAWS had higher revenues they made prepayments on one BND loan.

In response to a question, Mr. Wirtz said based on the forecast they are currently developing they will not be able to make any more prepayments until in 2017. With the slowdown in activity they will need to work with the Bank of North Dakota regarding the current principal payments. The industrial account currently has \$1.6 million in cash and \$2.4 million in accounts receivable so they have enough cash to make current principal payments for the near term.

In response to a question regarding Mr. Wirtz indicated that there shouldn't be any bad debt problems in the \$2.4 million in accounts receivable. Those problem collections have already been identified and taken off the books and are in the collection process. He gave an example where they put a lien on a well and

that got the attention of the company and they paid their outstanding bill. He indicated that the bigger oil companies always seem to pay--after 60 days. He outlined how they daily monitor the water sales; what they require for purchases if they have concerns about the purchaser--prepayments, credit cards, personal guarantees, cash, etc. He indicated that they have worked out payment plans with some purchases that got in over their head.

In response to a question Mr. Wirtz stated that their level of accounts receivable depends on their level of sales--it usually reflects the amount that is due in 60 days. The \$2.4 million accounts receivable reflects the current level of sales. The accounts receivables have been higher in previous months -- as high as \$4+ million - when the revenues were higher.

In response to a request, Ms. Fine indicated that she would provide copies of the Accounts Receivable monthly report to the Commission members. Mr. Wirtz reviewed the WAWS's collection process -- he noted that the costs for collections legal services are paid through the WAWS domestic account.

In response to a question Mr. Wirtz stated that they have an audit every calendar year--currently Brady Martz is doing the audit. Brady Martz worked on the audit earlier this year and they are waiting for the draft audit. The auditor does two separate audits -- one for the domestic sales and one for the industrial sales but it is for WAWS overall. Ms. Fine stated she would provide the most recent audit when it is received to the Commission.

In response to a question, Mr. Wirtz indicated that the domestic sales does include commercial/industrial accounts. They have defined industrial sales as industrial water sold for the production and exploration of oil and gas. Water sold at the depots for dust control or agricultural use goes to the domestic account.

Ms. Fine discussed a rate adjustment for a portion of the WAWS system as follows: (A complete copy with attachments is available in the Commission files.)

RE: Rate adjustment

Mr. Wirtz has requested the Industrial Commission amend the rate reimbursement document that was previously approved by the Commission on January 9, 2015. (See Exhibit A) Jaret indicated that this change is needed due to the new configuration of the metering and service associated with a portion of line on the north side of the system in Williams County. Williams Rural Water District (WRWD) will now be operating and maintaining this portion for the line as well as being responsible for the water distributed and metered through the line.

Mr. Wirtz indicated that WRWD is currently charging its customers \$8.55 for water on this line. However, WAWS is not proposing that kind of up charge in this case. WAWS is requesting a \$0.28/1000 gallon increase to the \$3.31/1000 gallon rate that is currently being charged for a total of \$3.59/1000 gallons. This would be an 8.5% increase of the \$3.31 which is based on 5% for water loss and 3.5% for administration. This is the same percentage of reimbursement that is used in McKenzie County on the transmission line from Williston to Watford City (\$3.87 up-charged to \$4.20). Jaret has provided an updated map reflecting this change in rate. (See Exhibit B)

Jaret will go over this information at the meeting and provide additional information that I have requested.

It was moved by Attorney General Stenehjem and seconded by Governor Dalrymple that the Industrial Commission accept the recommendation of the Western Area Water Supply Authority

Board and approve an increase in the reimbursement rate for a portion of the Western Area Water Supply Authority system from \$3.31/1000 gallon to \$3.59/1000 gallons for the line going to Epping effective August 1, 2015.

In response to a question Mr. reviewed how they make the determination of costs and how it is allocated to the various member entities. He indicated that this is consistent with what they are doing with the other member entities. He reviewed the map and the various amounts that are charged based on the cost of the water and the costs for delivery of that water to those areas. He asked that the rate adjustment be made effective as of August 1, 2015 as that was the date that the metering was changed. The net cost for making that change retroactive is \$7,791.00.

On a roll call vote, Governor Dalrymple and Attorney General Stenehjem voted aye and Commissioner Goehring was absent and not voting. The motion carried.

Being no further Western Area Water Supply Authority business, Governor Dalrymple adjourned this portion of the meeting at 1:20 p.m. and the Commission took up State Mill business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on November 12, 2015 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

Present: Governor Jack Dalrymple, Chairman
Attorney General Wayne Stenehjem

Also
Present: Vance Taylor, State Mill
Ed Barchenger, State Mill
Ed Nagel, State Auditor's Office
Jolene Kline, Housing Finance Agency
Members of the Press

Governor Dalrymple called the State Mill portion of the Industrial Commission meeting to order at 1:20 p.m. following completion of Western Area Water Supply Authority business.

Mr. Vance Taylor, State Mill President and General Manager, introduced Mr. Ed Nagel from the State Auditor's Office.

Mr. Ed Nagel, Auditor's Office, presented the North Dakota State Mill Fiscal Year 2015 Audit. (A copy of the audit is available in the Commission files.) He wanted to express his appreciation to the Mill who made the audit go smoothly. He said the Auditor's Office has issued a clean opinion as it has been in years past. He stated that it was the State Auditor's Office's opinion that the financial statements were presented fairly in accordance with generally accepted accounting principles. The audit includes the State Auditor's report on internal control and on compliance and it was a clean opinion. The Auditor's Office had no internal control weaknesses and there were no compliance findings. Mr. Nagel reviewed the financial statements and noted that the net income for the year was \$16.6 million prior to the transfers to the General Fund, Agricultural Products Utilization Fund and the Industrial Commission. He reviewed the amounts of the transfers. He said the responses to the questions that the Legislative Audit and Fiscal Review Committee asks all auditors to answer were all positive as they have been in the past. He reviewed the schedule of appropriations.

Mr. Vance Taylor presented the North Dakota State Mill FY 2016 First Quarter Report as follows:

**North Dakota Mill
Review of Operations
1st Qtr. Ended
September 30, 2015**

Summary

The mill experienced a profit of \$3,390,960 in the first quarter compared to a profit of \$4,537,524 last year.

	<u>9/15</u>	<u>9/14</u>
Profits	\$ 3,390,960	\$ 4,537,524
Sales	69,425,088	78,030,836
Cwt Shipped:		
Spring	2,926,673	2,878,374
% to Total	93.0%	91.7%
Durum	<u>219,801</u>	<u>264,803</u>
Total	<u>3,146,474</u>	<u>3,138,208</u>
Bag Shipments	655,798	707,991
% to Total	20.8%	22.6%

Tote Shipments	32,533	26,549
% to Total	1.0%	0.8%
Family Flour	76,887	91,581
% to Total	2.4%	2.9%
Organic Flour	44,546	18,213
% to Total	1.4%	0.6%
Wheat/Durum Bought:		
Spring /Winter	5,670,900	6,304,237
Durum	<u>403,859</u>	<u>441,876</u>
Total	<u>6,074,759</u>	<u>6,746,113</u>

Sales

Sales for the first quarter were \$69,425,088 compared to \$78,030,836 last year, a decline of 11.0%. The price of grain settled with suppliers at the mill for the first quarter of the year is \$1.03 per bushel lower than last year. Shipments of 3,146,474 cwts. in the first quarter are 8,266 cwts. above last year. Bag shipments of 655,798 cwts. are 7.4% below last year. Family flour shipments reached 76,887 cwts., a decrease from last year's first quarter shipments of 91,581 cwts. Organic flour shipments were 44,546 cwts., an increase of 26,333 cwts.

Operating Costs

Operating costs for the first quarter were \$6,392,084 compared to \$6,542,844 last year, a decrease of \$150,761. Total flour production for the first quarter was 5.5% below last year's first quarter. Operating cost per cwt. of production was \$2.16 per cwt., compared to \$2.09 last year, an increase of 3.3%.

Profits

The mill had profits of \$3,390,960 in the first quarter compared to \$4,537,524 last year. This is a decrease of 25.3%. Gross margins as a percent of gross sales for the quarter was 14.2% compared to 14.3% last year.

Risk Management Position

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

Position Report 30-Sep-15

Period	Hedge Ratio
Dec-15	0.8
Mar-16	1.1
May-16	1.0
Jul-16	0.9
Sep-16	0.8
Dec-16	1.0
Net Position	0.9

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Mr. Taylor said profits for the first quarter were \$3,391,000 which is a 25 percent decrease from the exceptional record profits the Mill had the first quarter of last year of \$4,537,000 mainly due to overall lower basis gains and in general driven by low grain prices than the previous year. He reviewed shipments and purchases. The business discussion and outlook – he reviewed sales, costs and gross margins as a percentage of gross sales.

Mr. Taylor said the hedge ratio on September 30th was 0.9 with the Mill's monthly hedge ratios all at close to one. Going forward into the second quarter he continues to see good customer demand resulting in strong run time for the mills. The Mill is running 24/7 which is normal for this time of year. October shipments going into next quarter was a new record for a single month slightly over 1.2 million cwts. This year's wheat crop is higher in protein, has great milling qualities and is working great for our customers but is providing lower basis gains driven by lower overall grain prices.

Mr. Taylor gave an update on G-Mill project. (Copies of pictures are available in the Commission files.) He said they had about a ten day total from start to finish on the slip. It was nice to get that milestone behind us before the cold weather hit. They are still tracking for completion somewhere around mid-summer so hopefully the mill will be running in late summer of next year. He provided some details regarding the amount of concrete that was used and the number of people that were needed as the slip was being done.

Mr. Taylor stated on the grain unloading project the Mill is getting close to being through the engineering process with it going to bid soon and the construction starting on both pieces of that project in the spring. The goal is to have this project completed before harvest time next year.

Being no further State Mill business, Governor Dalrymple adjourned this portion of the meeting at 1:36 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 November 12, 2015 beginning at 1:00 p.m.
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Present: Governor Jack Dalrymple, Chairman
Attorney General Wayne Stenehjem

Also

Present: Jolene Kline, Housing Finance Agency
Pat Nagel, Housing Finance Agency
Max Wetz, Housing Finance Agency
John Fox, Attorney General's Office
Mindy Piatz, Brady Martz
Lynn Helms, DMR
Bruce Hicks, DMR - Oil and Gas Division
Members of the Press

Governor Dalrymple called the Housing Finance Agency (Agency) portion of the Industrial Commission meeting to order at 1:36 p.m. following completion of State Mill business.

Ms. Jolene Kline, Housing Finance Agency Executive Director and Mr. Pat Nagel, Housing Finance Agency Chief Financial Officer, presented the following resolutions:

Supplemental General Authorization Resolution (2015 Series DE) – Mr. Nagel said this is a single family transaction for \$75 million. As of Monday the Agency has used \$61 million of the \$75 million through reservations. The interest rate the Agency currently has on the mortgages is 3.2% for government and 3.65% for conventional. This transaction does allow the Agency to achieve full spread under IRS laws. The Agency is allowed to earn 1 1/8th. The Agency's cost of funds will be about 2 1/8th on the transaction. In today's environment it is really hard to achieve those spreads so the Agency is pleased with the transaction. It appears the Agency will be purchasing about 479 loans with that and the funds are almost used up.

It was moved by Attorney General Stenehjem and seconded by Governor Dalrymple that the Industrial Commission adopt the following resolution:

STATE OF NORTH DAKOTA
NORTH DAKOTA HOUSING FINANCE AGENCY
HOUSING FINANCE PROGRAM BONDS
HOME MORTGAGE FINANCE PROGRAM
2015 SERIES D - \$50,000,000
2015 SERIES E - \$25,000,000

**SUPPLEMENTAL
GENERAL AUTHORIZATION RESOLUTION**

WHEREAS, the Industrial Commission of North Dakota (the "Commission"), acting in its capacity as a state housing finance agency, i.e., the North Dakota Housing Finance Agency (the "Agency"), is empowered by the provisions of the North Dakota Century Code Chapter 54-17 (the "Act") to establish and has established a home mortgage finance program to contract to purchase from lenders mortgage loans made to persons or families of low or moderate income to finance the purchase or substantial rehabilitation of owner occupied, residential dwelling units; and

WHEREAS, the Commission adopted the Housing Finance Program General Bond Resolution of 1994, on July 21, 1994, as amended (the "General Resolution") wherein Wells Fargo Bank, National Association, Minneapolis, Minnesota, was appointed trustee (the "Trustee"), which General Resolution was accepted by the Trustee, and which General Resolution is hereby ratified and confirmed; and

WHEREAS, the General Resolution authorizes the issuance and sale of the captioned 2015 Series D Bonds (the “2015 Series D Bonds”) and 2015 Series E Bonds (the “2015 Series E Bonds”, and together with the 2015 Series D Bonds, the “Bonds”) pursuant to the Act, the application of the proceeds of which will provide funding for the captioned Home Mortgage Finance Program (the “Program”) contemplated by the Act in furtherance of the Program for the providing of decent, safe, and sanitary housing for persons and families of low or moderate income; and

WHEREAS, the Commission acting as the Agency, pursuant to that 2015 General Authorization Resolution adopted by the Commission on January 9, 2015 (the “General Authorization Resolution”), regarding the authorization of and the negotiation and sale of the Bonds, appointed as its agents the Executive Director, the Director of Homeownership Programs, and the Chief Financial Officer of the Agency (the “Authorized Officers”) for the purpose of negotiation of the terms of sale of the Bonds, subject to the limitations set out in the General Authorization Resolution, and to sign such agreements as are required for the issuance of the Bonds on behalf of the Commission after such terms of sale had been negotiated and to sign such certificates and other documents as are necessary and customary to complete the sale of the Bonds and to enter into an agreement for their sale by the Agency and purchase by the Underwriters (as hereinafter defined, and which are so designated by an Authorized Officer); and

WHEREAS, the Commission has determined that the execution of an interest rate swap agreement or agreements is necessary or expedient in conducting the business of the Agency; and

WHEREAS, the Authorized Officers did negotiate the sale of the 2015 Series D Bonds on November 10, 2015 and intend to negotiate the sale of the 2015 Series E Bonds upon the adoption of this Resolution, within the limitations set out in the General Authorization Resolution as to maximum principal amount, final maturity and maximum interest rate; and

WHEREAS, the Agency has negotiated and intends to execute an ISDA Master Agreement dated as of November 12, 2015, including the Schedule and Credit Support Annex thereto, and two Confirmations thereto, one dated as of November 12, 2015 and the other expected to be dated December 24, 2015, all between Wells Fargo Bank, National Association and the Agency (collectively, the “Hedging Agreements”) and has determined that such Hedging Agreements are in compliance with the interest rate swap policy established by the Agency; and

WHEREAS, in furtherance of the above stated objectives, the Commission, the Agency and Wells Fargo Bank, National Association, RBC Capital Markets, LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Raymond James & Associates, Inc., as the purchasers of the 2015 Series D Bonds (the “Underwriters”) and Wells Fargo Bank, National Association, as purchaser of the 2015 Series E Bonds, have caused to be prepared and presented to the Commission for adoption after the sale of the Bonds pursuant to the terms of the Purchase Contracts described below, but prior to delivery of the Bonds, the following documents in final form (unless otherwise indicated) (collectively, the “Closing Financing Documents”):

- A. 2015 Series D Bond Resolution and 2015 Series E Bond Resolution, each in substantially final form, attached hereto as Attachments A and B, respectively;
- B. 2015 Series D Purchase Contract, dated November 10, 2015 by and between the Commission and the Underwriters, and the 2015 Series E Purchase Contract, to be dated November 12, 2015 by and between the Commission and Wells Fargo Bank, National Association, attached hereto as Attachments C and D, respectively;
- C. Preliminary Official Statement with respect to the 2015 Series D Bonds, dated November 4, 2015, attached hereto as Attachment E;

- D. Official Statement, with respect to the 2015 Series D Bonds, in substantially final form, dated November 10, 2015, attached hereto as Attachment F; and
- E. the Hedging Agreements (described above), including in particular the two confirmations, in substantially final form, attached hereto as Attachment G.

WHEREAS, it appears that each of the Closing Financing Documents is in the appropriate and final form (or substantially final form, subject to determination of the final terms in accordance with this Supplemental General Authorization Resolution) and is an appropriate document to be approved or executed and delivered by the Commission or the Agency, as may be necessary for the purpose intended; and

WHEREAS, in the judgment of the Commission, it is advisable that the Agency by its Executive Director, its Director of Homeownership Programs, or its Chief Financial Officer, jointly or severally, be authorized, and are hereby so authorized, to do all things necessary to complete the transaction described herein, and in the Closing Financing Documents.

NOW BE IT HEREWITH RESOLVED:

1. The execution and delivery of the Closing Financing Documents and the sale of the Bonds to the Underwriters and to Wells Fargo Bank, National Association, as specified in and in accordance with the terms set out in the respective Purchase Contracts, is hereby authorized and the officers, agents and employees of the Commission and the Agency are hereby authorized, empowered and directed to take any actions required to effect the transactions contemplated therein and to finalize the terms of and execute any instruments (including any continuing disclosure agreement and tax certificates or forms) and take any actions required to effect the issuance of the Bonds, and to apply the monies received by the Commission from the bond proceeds in such manner as is necessary to give effect to the Program.
2. All prior acts of the officers, agents and employees of the Commission and the Agency which are in conformity with the purpose and intent of the General Resolution, the General Authorization Resolution and this Supplemental General Authorization Resolution in furtherance of the sale of the Bonds shall be and the same hereby are in all respects approved, ratified and confirmed.

On a roll call vote, Governor Dalrymple and Attorney General Stenehjem voted aye and Commissioner Goehring absent and not voting. The motion carried.

Supplemental General Authorization Resolution (2015 Series F) – Mr. Nagel said that last summer the Agency was authorized to purchase non first-time homebuyer loans under the Roots Program. The loans would be low to moderate income but they don't qualify for the tax exempt financing because they are not first home. The Agency has been able to securitize and sell the bulk of those loans into a Ginnie Mae security. However, some of the conventional loans the Agency can't securitize and sell. This is a \$25 million transaction to be used for these conventional loans. As of today about \$13 million is already on the books and there is a fair amount in the pipeline.

It was moved by Attorney General Stenehjem and seconded by Governor Dalrymple that the Industrial Commission adopt the following resolution:

STATE OF NORTH DAKOTA
NORTH DAKOTA HOUSING FINANCE AGENCY
HOUSING FINANCE PROGRAM BONDS

HOME MORTGAGE FINANCE PROGRAM
2015 SERIES F - \$25,000,000

**SUPPLEMENTAL
GENERAL AUTHORIZATION RESOLUTION**

WHEREAS, the Industrial Commission of North Dakota (the "Commission"), acting in its capacity as a state housing finance agency, i.e., the North Dakota Housing Finance Agency (the "Agency"), is empowered by the provisions of the North Dakota Century Code Chapter 54-17 (the "Act") to establish and has established a home mortgage finance program to contract to purchase from lenders mortgage loans made to persons or families of low or moderate income to finance the purchase or substantial rehabilitation of owner occupied, residential dwelling units; and

WHEREAS, the Commission adopted the Housing Finance Program General Bond Resolution of 1994, on July 21, 1994, as amended (the "General Resolution") wherein Wells Fargo Bank, National Association, Minneapolis, Minnesota, was appointed trustee (the "Trustee"), which General Resolution was accepted by the Trustee, and which General Resolution is hereby ratified and confirmed; and

WHEREAS, the General Resolution authorizes the issuance and sale of the above-captioned 2015 Series F Bonds (the "Bonds") pursuant to the Act, the proceeds of which will provide funding for the North Dakota Roots Program of the captioned Home Mortgage Finance Program (the "Program") contemplated by the Act in furtherance of the Program for the providing of decent, safe, and sanitary housing for persons and families of low or moderate income; and

WHEREAS, the Commission acting as the Agency, pursuant to that 2015 General Authorization Resolution adopted by the Commission on January 9, 2015 (the "General Authorization Resolution"), regarding the authorization of and the negotiation and sale of the Bonds, appointed as its agents the Executive Director, the Director of Homeownership Programs, and the Chief Financial Officer of the Agency (the "Authorized Officers") for the purpose of negotiation of the final terms of sale of the Bonds, subject to the limitations set out in the General Authorization Resolution as supplemented and amended hereby to increase the principal amount of long-term bonds which may be issued thereunder, and to sign such agreements as are required for the issuance of the Bonds on behalf of the Commission after such terms of sale had been negotiated and to sign such certificates and other documents as are necessary and customary to complete the sale of the Bonds and to enter into an agreement for their sale by the Agency and purchase by the Underwriter (as hereinafter defined, and which is so designated by an Authorized Officer); and

WHEREAS, the Commission has determined that the execution of an interest rate swap agreement or agreements in conjunction with the issuance of the Bonds is necessary or expedient in conducting the business of the Agency; and

WHEREAS, the Authorized Officers intend to formally negotiate the initial interest rate on, and sale of, the Bonds on or about December 7, 2015 within the limitations set out in the General Authorization Resolution (as hereby supplemented and amended) as to, final maturity and maximum interest rate, with a variable interest rate, subject to tender by bondholders, and in a principal amount not to exceed \$25,000,000; and

WHEREAS, the Agency expects to enter into a Standby Bond Purchase Agreement (the "Standby Bond Purchase Agreement") with the Federal Home Loan Bank of Des Moines to provide liquidity for any Bond tenders; and

WHEREAS, the Agency negotiated and executed an ISDA Master Agreement dated as of July 30, 2009, between Royal Bank of Canada and the Agency (the "ISDA Master Agreement"), and pursuant thereto intends to enter into a Confirmation in conjunction with the sale of the Bonds to effectively result in a fixed interest rate on the Bonds; and

WHEREAS, in furtherance of the above stated objectives, the Commission, the Agency and RBC Capital Markets, LLC, as the purchaser of all of the Bonds (the "Underwriter"), have caused to be prepared and presented to the Commission for adoption in connection with the sale and delivery of the Bonds, the following documents in substantially final form (collectively, the "Closing Financing Documents"):

- A. 2015 Series F Bond Resolution, attached hereto as Attachment A;
- B. 2015 Series F Purchase Contract, attached hereto as Attachment B, by and between the Commission and the Underwriter;
- C. Official Statement, attached hereto as Attachment C;
- D. Remarketing Agreement, attached hereto as Attachment D, by and between the Commission and the Underwriter;
- E. Confirmation to ISDA Master Agreement, attached hereto as Attachment E; and
- F. Standby Bond Purchase Agreement, attached hereto as Attachment F; and

WHEREAS, it appears that each of the Closing Financing Documents is in the appropriate and substantially final form and is an appropriate document to be finalized (reflective of the final negotiated terms of the Bonds), approved and executed and delivered by the Commission or the Agency, as may be necessary for the purpose intended; and

WHEREAS, in the judgment of the Commission, it is advisable that the Agency by its Executive Director, its Director of Homeownership Programs, or its Chief Financial Officer, jointly or severally, be authorized, and are hereby so authorized, to do all things necessary to finalize and complete the transaction described herein, and the Closing Financing Documents.

NOW BE IT HEREWITH RESOLVED:

1. The principal amount of bonds authorized to be issued by the General Authorization Resolution is hereby increased by \$25,000,000, and the execution and delivery of the Closing Financing Documents and the determination of the initial interest rate on the Bonds, and the final principal amount thereof (not to exceed \$25,000,000) and the sale of the Bonds to the Underwriter, in accordance with the terms set out in the Closing Financing Documents, is hereby authorized and the officers, agents and employees of the Commission and the Agency are hereby authorized, empowered and directed to take any actions required to effect the transactions contemplated therein and to finalize the terms and execute the Closing Financing Documents and any instruments and take any actions required to effect the issuance of the Bonds and to apply the monies received by the Commission from the Bond proceeds in such manner as is necessary to give effect to the Program.
2. All prior acts of the officers, agents and employees of the Commission and the Agency which are in conformity with the purpose and intent of the General Resolution, the General Authorization Resolution and this Supplemental General Authorization Resolution in furtherance of the sale of the Bonds shall be and the same hereby are in all respects approved, ratified and confirmed.

On a roll call vote, Governor Dalrymple and Attorney General Stenehjem voted aye and Commissioner Goehring absent and not voting. The motion carried.

Ms. Mindy Piatz, Brady Martz, presented the Housing Finance Agency's Fiscal Year 2015 Audit. (A copy of the audit is available in the Commission files.) She said their firm had issued a clean opinion with no modifications to the report. She pointed out that a new accounting principal--GASB 68--was adopted this year relating to accounting and financial reporting for pensions. The management's discussion and analyses – this item is prepared by Mr. Nagel and goes over the financial highlights of the Agency over the past year. The statement of net position – under noncurrent liabilities there is a net pension liability this year for \$1.6 million as a result of the implementation of the new accounting standard--GASB 68. The questions from the Legislative Audit and Fiscal Review Committee – all the comments are positive and a clean report. The auditor's report on internal control over financial reporting and compliance and other matters for an audit conducted under government auditing standards – it is an unmodified or a clean opinion so there were no material weaknesses identified during our audit nor were there any compliance matters that were required to report as part of the audit. The auditor's report on compliance for the major programs that were tested in accordance with OMB Circular A1-33 so this is our opinion on compliance with the federal grants that were tested and for fiscal year 2015 the two grants they reviewed as part of the audit were the very low to moderate income housing loans program and the rental housing for lower income families – the report is a clean opinion. The agency met all the compliance requirements that we are required to test as part of the audit. There were no material weaknesses we identified in internal control over compliance of both programs. Overall, all the auditor's reports are clean, the audit went smooth, Ms. Kline, Mr. Nagel and staff do a great job of getting everything ready for the audit.

Ms. Piatz presented the Housing Incentive Fund's Fiscal Year 2015 Audit. (A copy of the audit is available in the Commission files.) She said their firm issued a clean opinion or unmodified opinion so the financials are fairly stated and in accordance with generally accepted accounting principles. There were no material weaknesses in internal control that were identified during the audit nor were there any compliance matters that the auditor is required to disclose. The last report is for the comments and questions from the Legislative Audit and Fiscal Review Committee – all the responses here were positive and it is a clean report.

Ms. Kline reported on the Low Income Housing Tax Credits program. This year, for the first time, they had two funding rounds -- one in the spring when they allocated \$2.7 million and then on September 30 the Agency did a forward commitment process of the 2016 credit authority. The Agency had about \$2.7 million of 2016 credit authority that the Agency could forward commitment and they received over \$5.1 million in requests. There were 9 different projects and the Agency was able to fund 5 of the 9 projects. The projects that were funded are located in Watford City, Belcourt, Fargo, Wahpeton and Bismarck. The unfunded projects were in Bismarck, Minot, Fargo and West Fargo. The unfortunate thing for the one Fargo project that was not funded is that it was submitted as a two phased project to provide alternative housing for people from the high-rise. They had submitted two applications both for 39 units. That was the first phase to create new units and transition 78 households out of the high-rise. The second of their projects just simply did not score high enough. It was a very competitive round – one point made a difference whether a project got funded. In some cases there were ties where the Agency had to use their tie breaker system. This will slow the transition process out of the high-rise because the Agency simply ran out of federal money again. The Agency did one of the projects so 39 of the roughly 200 households will have a new home eventually.

In response to a question regarding what kind of a weakness the other project that was turned down had, Ms. Kline said there really wasn't any weakness. One of the factors in the ranking system is a geographic distribution formula and it is designed to spread the credits around the state so no one community receives all of the credits. When the Agency funded the first project the second project then got points that knocked them out of the running. It is unfortunate.

In response to a question Ms. Kline said the Fargo Housing Authority's plan was a five year process. They were going to use this year's funding round with federal tax credits to get the first 78 households out of the high-rise and then next year they were going to use federal tax credits to again move another group of households. Their third step in the process was going to be using the next generation of HIF, if it is reauthorized, as well as the sale proceeds from the building itself to fund the units for the final group of households. Eventually there is not going to be enough revenue to keep the high-rise operational. She couldn't answer the question as how the Fargo Housing Authority was going to deal with that issue.

In response to a question of what would happen to the high-rise building, Ms. Kline said there is a developer that thinks the building can be repurposed for condos – upper end condos and consolidating some of those units. It would basically be a total rehabilitation.

Being no further Housing Finance Agency business, Governor Dalrymple adjourned this portion of the meeting at 1:51 p.m. and the Commission took up Department of Mineral Resources business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA

A handwritten signature in blue ink, appearing to read "Karlene Fine".

Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on November 12, 2015 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

Present: Governor Jack Dalrymple, Chairman
Attorney General Wayne Stenehjem

Also

Present: Lynn Helms, DMR
Bruce Hicks, DMR - Oil and Gas Division
Ed Murphy, DMR – Geological Survey
Alison Ritter, DMR
Ron Ness, ND Petroleum Council
Members of the Press

Governor Dalrymple called the Department of Mineral Resources portion of the Industrial Commission meeting to order at 1:52 p.m. following completion of Housing Finance Agency business.

Mr. Lynn Helms, Department of Mineral Resources Director, presented orders for cases heard on October 21 and 22, 2015 as follows:

Case 24517, Order 26883 - request for temporary authorization to flare gas for a certain well, Case 24522, Order 26888 - request for temporary authorization to flare gas for a certain well – (Handouts for both cases are available in the Commission files.) Mr. Helms said these two orders are similar so he will discuss them together. They are both requests from Marathon asking for a temporary exemption from Order 24665 – the gas capture plans. The circumstances are that both of these locations are on Fort Berthold Indian Reservation on the Van Hook Arm, both involve allotted lands and as a result the standard surface owner terms where the surface owner has to grant an easement for a flow line doesn't apply. The Bureau of Indian Affairs has said Marathon has to go through the right-of-way process in order to lay a flow line to gather the natural gas. There is a small gap--in one case it is about 150 feet and in the other case it is approximately 400 feet. In the one case the surface owner has refused to sign a right-of-way and the matter is in tribal court. Marathon asked for as much time as the Commission would give them.

Mr. Helms indicated that it is the staff's recommendation that Marathon be given relief from Order 24665 for six months. The concept of these exemptions is that they be temporary. The reason he thinks six months is reasonable is that Marathon only looked at well site gas capture units of approximately the size that they currently have in operation. The staff looked on the EERC technology website and there are 11 additional service providers that make units of a smaller size that are scalable. The staff would like Marathon over the six month period to look at these other units and see if that changes their request. The other factor is that the well site gas capture is currently uneconomic because they are only getting three cents a gallon for the natural gas liquids. All of the Marathon gas capture units that they are using right now have a 300,000 cubic feet minimum and both of these sites are half or less of that amount. They also have to relook at the economics of those well site units because right now they are basing that decision on three cents per gallon for the liquids. Ultimately, however, they need to get connected. The staff doesn't think that is where prices are going to stay long term, there is a good possibility that natural gas liquids will increase in value over the winter. By next April this picture might look very different. That is why the order being recommended grants the relief for six months but in the findings includes what he just talked about so when Marathon comes back in six months, if they come back because this is unresolved, they will have to relook at the value of natural gas liquids and also relook at some other technology providers that provide well site gas capture units.

In response to a question, Mr. Helms said it is ultimately a decision of the tribal court. The surface owners in Section 3 and 4 have said there is no amount of money – they simply do not want a pipeline, there is no amount of money that would convince them to allow it.

The Commission, Mr. Helms and Mr. Hicks discussed a number of factors with these two proposed orders:

- Current gas capture goal is 77%; April 1 gas capture goal is 80%;
- Current level of flaring is 76.5% which is under the current 77% goal;
- Approval of the proposed orders would place Marathon at 77.1%;
- Marathon has no credits available;
- Lonesome Creek is scheduled to be operating before the end of January, 2016;
- Steps that Marathon has already taken to be in compliance -- reduced their rig count from 7 to 2; and postponed 9 completions;
- Once Lonesome Creek is operating they will be at 80%+ perhaps as high as 89%;
- Could the operator have expected the delays in getting the right-of-ways;
- Delay in getting a decision from the Tribal Court--has been pending for 3 years;
- Delay in getting a letter of forgiveness from the BIA;
- It is unknown whether they could get a force majeure letter from the midstream operator because of other potential problems with take-or-pay contracts;
- Additional Marathon requests (7) that are scheduled to be heard in November;
- Prior actions by the Commission in approving applications with right-of-way issues and which are allowed under Order 24665;
- Another issue Marathon is facing along with other operators -- the rolling curtailments in this area of the state;
- There are no gas capture plans because these wells predate the Order 24665;
- Isn't there anything else that Marathon can do throughout their entire operations to meet the gas capture goal?
- If the Commission does nothing it is likely that Marathon will receive a notice that their October production is below the gas capture goal which means they would be directed to restrict production in January;
- Marathon anticipates getting the two wells connected in the next six months;
- Will each and every little right-of-way problem throughout the Basin going to become our problem--isn't that part of operating in the oil and gas business?

It was suggested that the Commission look at 3 months. Temporary reliefs should be made according to what the Commission is being told. It can always be revisited.

Case 24517: It was moved by Attorney General Stenehjem and seconded by Governor Dalrymple that Order 26883 issued in Case 24517, granting the requested relief until January 31, 2016, be approved and effective this 12th day of November, 2015. On a roll call vote, Governor Dalrymple and Attorney General Stenehjem voted aye and Commissioner Goehring absent and not voting. The motion carried.

Case 24522: It was moved by Attorney General Stenehjem and seconded by Governor Dalrymple that Order 26888 issued in Case 24522, granting the requested relief until January 31, 2016, be approved and effective this 12th day of November, 2015. On a roll call vote, Governor Dalrymple and Attorney General Stenehjem voted aye and Commissioner Goehring absent and not voting. The motions carried.

Case 24559, Order 26925 - request for relief from policy regarding the drilling of section line wells – (A handout is available in the Commission files.) Mr. Helms said Exhibit 3 which shows the complex situation that XTO is asking the Commission to address. They want to drill a well bore at the same time that they develop or continue the development of Sections 13 and 24. The difficulty is that it is a section line overlapping spacing unit and it overlaps onto a 2,560 acre spacing unit on the west side which has no

development in it and they want to drill this well before there is any development or pooling of Sections 14, 23, 26 and 35. If they do that somebody's correlative rights will be negatively affected. The order being recommended denies the application.

Case 24559: It was moved by Attorney General Stenehjem and seconded by Governor Dalrymple that Order 26925 issued in Case 24559, be denied and effective this 12th day of November, 2015. On a roll call vote, Governor Dalrymple and Attorney General Stenehjem voted aye and Commissioner Goehring absent and not voting. The motion carried.

Mr. Helms discussed the Case No. 24191, Order No. 27047 regarding a request for reconsideration of Commissioner Order No. 26556 signed by Mr. Helms in regards to spacing. (A handout is available in the Commission files.) He said this case involves an overlapping spacing unit that EOG requested. The spacing unit incorporates all of Section 13 and half of Section 14. The proposed wells are only going to produce from the east half of Section 14 and west half of 13 yet EOG asked to space this on a 960 acre spacing unit which would give the mineral owners in Section 13 twice the share in the wells of the mineral owners in Section 14. The order he signed allowed them to drill the wells but on a 640 overlapping spacing unit which would have split the wells 50/50. The petition for reconsideration presented all these other cases that have been granted but, in every one of those cases, the well bores were divided about equally amongst the spacing units that were included. The relief that was granted in those cases is consistent with the 640 acre spacing that was granted in this case. He is asking the Commission to deny the petition for reconsideration and leave the spacing at 640 acres.

Case 24191: It was moved by Attorney General Stenehjem and seconded by Governor Dalrymple that Order 27047 issued in Case 24191, denying the petition for reconsideration be approved and effective this 12th day of November, 2015. On a roll call vote, Governor Dalrymple and Attorney General Stenehjem voted aye and Commissioner Goehring absent and not voting. The motion carried.

Mr. Helms discussed the proposed comments on the Bureau of Land Management rule to replace Onshore Order 4. He said the Commission looked at this last month and the request was made to allow the Commission members and their staffs some time to review and comment. He did receive some very constructive comments. This version of the comments is ready to go. He said Governor Dalrymple asked that the comments point out that the requirements of the BLM rule are likely to be contradictory in addition to duplicating North Dakota's rule. That was incorporated into these final comments along with some suggestions from the Attorney General's staff which were very helpful changes. He said they are due November 30 at the Department of the Interior. Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, stated the Agriculture Commissioner's Office did not give her their comments yet so she drafted a motion to be contingent upon signatures.

It was moved by Attorney General Stenehjem and seconded by Governor Dalrymple that the Industrial Commission, subject to final approval being granted by signature, submits the following comments due by November 30, 2015 on the Bureau of Land Management's proposed rule to replace Onshore Oil and Gas Order Number 4 (Order 4)--which sets minimum standards for measurement of oil--with new regulations:

U.S. Department of the Interior, Director (630)
Bureau of Land Management
Mail Stop 2134 LM, 1849 C St., NW
Washington, DC 20240,

Minutes - Page 4
November 12, 2015

Attention: Regulatory Affairs - 1004-AE16
Federal eRulemaking Portal: <http://www.regulations.gov>.

Dear Bureau of Land Management:

The North Dakota Industrial Commission (NDIC) appreciates this opportunity to provide comments on the Bureau of Land Management proposed rule to replace Onshore Oil and Gas Order No. 4, Measurement of Oil.

The State of North Dakota is ranked 2nd in the United States among all states in the production of oil and gas. North Dakota produces approximately 400 million barrels of oil per year and 465 billion cubic feet of natural gas per year.

The NDIC, Department of Mineral Resources, Oil and Gas Division administers North Dakota's comprehensive oil and gas regulations found at North Dakota Administrative Code (NDAC) Chapter 43-02-03. These regulations include requirements for the drilling, producing, and plugging of wells; restoration of drilling and production sites; perforating and chemical treatment of wells, including hydraulic fracturing; spacing of wells; operations to increase ultimate recovery such as cycling of gas, maintenance of pressure, and introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the ND UIC Program; Oil and Gas Metering systems, measurement of oil, and all other operations for the production of oil or gas.

Mineral ownership of North Dakota lands upon which oil and gas development has occurred consists of approximately 85% private lands, 9% federal lands, and 6% state lands. Many of the private lands are split estate lands with more than 30% of potential development on lands where the surface is privately owned underlain by federal minerals and therefore affected by the proposed rule.

North Dakota has a unique history of land ownership that has resulted in a significant portion of the state consisting of split estate lands that could be adversely affected by the proposed rule. Unlike many western states that contain large blocks of unified federal surface and federal mineral ownership, the surface and mineral estates in North Dakota were at one time more than 97% private and state owned as a result of the railroad and homestead acts of the late 1800s. During the depression and drought years of the 1930s, numerous small tracts in North Dakota went through foreclosure. The federal government through the Federal Land Bank and the Bankhead Jones Act foreclosed on many farms taking ownership of both the mineral and surface estates. Many of the surface estates were later sold back to private parties, but some or all of the mineral estates were retained by the federal government. This resulted in a large number of small federally-owned mineral estate tracts scattered throughout western North Dakota. Federal mineral estates impact more than 30% of the oil and gas spacing units that are typically recognized as a communitized area (CA) by the BLM. In North Dakota, there are a few large blocks of federal mineral ownership or trust responsibility where the federal government also manages the surface estate through the U.S. Forest Service or Bureau of Indian Affairs; such as on the Dakota Prairie Grasslands in southern McKenzie and northern Billings Counties as well as on the Fort Berthold Indian Reservation. However, even within those areas federal mineral ownership is interspersed with private and state mineral or surface ownership. Therefore, virtually all federal management of North Dakota's oil and gas producing region consists of some form of split estate.

Given North Dakota's unique land ownership situation, the proposed rule to replace Onshore Oil and Gas Order No. 4 could have significant impacts on North Dakota's ability to administer its oil and gas

regulatory program. The state of North Dakota intends to defend its sovereign jurisdiction over oil and gas regulation in any manner necessary.

The impacts of the proposed rule on North Dakota's ability to administer its oil and gas regulatory program are explained below:

Excessive length, detail, and lack of flexibility: North Dakota regulations for metering oil and gas (NDAC 43-02-03-14.2) and for oil measurement (NDAC 43-02-03-48) apply to private, state and federal wells, but give precedence to federal rules on federal oil and gas wells if federal rules differ from state rules. Both state rules and federal rules reference American Petroleum Institute (API) standards for oil measurement. However, the proposed rule incorporates very specific references to 21 sections of those standards and then proceeds to repeat all, or nearly all, of the standard in the text of the proposed rule. The resulting rule contains unnecessary detail making it too long and filled with too much technical language. As a result the requirements of the proposed rule may be contradictory and will frequently be out of date when new oil measurement technologies develop, and oil measurement standards are improved or modified.

The North Dakota Industrial Commission recommends that the following repetitive, detailed, and potentially contradictory or conflicting sections of the proposed rule, along with references to them, be eliminated:

3174.6
3174.8
3174.10
3174.11

Sincerely,

North Dakota Industrial Commission

On a roll call vote, Governor Dalrymple and Attorney General Stenehjem voted aye and Commissioner Goehring absent and not voting. The motion carried.

Mr. Helms discussed the comments on Bureau of Land Management rule to replace Onshore Order 5 revisions. He said this is essentially the same thing. Governor Dalrymple had asked that we include that the requirements in the proposed rule would be contradictory and we included that. We also incorporated the comments from the Attorney General's staff. We think this is ready to go but likewise we have not heard from the Agriculture Commissioner's staff. This one is not due until December 14.

It was moved by Attorney General Stenehjem and seconded by Governor Dalrymple that the Industrial Commission, subject to final approval being granted by signature, submits the following comments on the Bureau of Land Management's proposed rule announced on October 2, 2015 to update and replace Onshore Oil and Gas Order No. 5, (Order 5)--which governs the measurement of natural gas produced from Onshore Federal and Indian leases--with new regulations:

U.S. Department of the Interior, Director (630)
Bureau of Land Management
Mail Stop 2134 LM, 1849 C St., NW
Washington, DC 20240

Attention: Regulatory Affairs - 1004-AE17

Federal eRulemaking Portal: <http://www.regulations.gov>.

Dear Bureau of Land Management:

The North Dakota Industrial Commission (NDIC) appreciates this opportunity to provide comments on the Bureau of Land Management proposed rule to replace Onshore Oil and Gas Order No. 5, Measurement of Gas.

The State of North Dakota is ranked 2nd in the United States among all states in the production of oil and gas. North Dakota produces approximately 400 million barrels of oil per year and 465 billion cubic feet of natural gas per year.

The NDIC, Department of Mineral Resources, Oil and Gas Division administers North Dakota's comprehensive oil and gas regulations found at North Dakota Administrative Code (NDAC) Chapter 43-02-03. These regulations include requirements for the drilling, producing, and plugging of wells; restoration of drilling and production sites; perforating and chemical treatment of wells, including hydraulic fracturing; spacing of wells; operations to increase ultimate recovery such as cycling of gas, maintenance of pressure, and introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the ND Underground Injection Control Program; Oil and Gas Metering systems, measurement of gas from gas wells, and all other operations for the production of oil or gas.

Mineral ownership of North Dakota lands upon which oil and gas development has occurred consists of approximately 85% private lands, 9% federal lands, and 6% state lands. Many of the private lands are split estate lands with more than 30% of potential development on lands where the surface is privately owned underlain by federal minerals and therefore affected by the proposed rule.

North Dakota has a unique history of land ownership that has resulted in a significant portion of the state consisting of split estate lands that could be adversely affected by the proposed rule. Unlike many western states that contain large blocks of unified federal surface and federal mineral ownership, the surface and mineral estates in North Dakota were at one time more than 97% private and state owned as a result of the railroad and homestead acts of the late 1800s. During the depression and drought years of the 1930s, numerous small tracts in North Dakota went through foreclosure. The federal government through the Federal Land Bank and the Bankhead Jones Act foreclosed on many farms taking ownership of both the mineral and surface estates. Many of the surface estates were later sold back to private parties, but some or all of the mineral estates were retained by the federal government. This resulted in a large number of small federally-owned mineral estate tracts scattered throughout western North Dakota. Federal mineral estates impact more than 30% of the oil and gas spacing units that are typically recognized as a communitized area (CA) by the BLM. In North Dakota, there are a few large blocks of federal mineral ownership or trust responsibility where the federal government also manages the surface estate through the U.S. Forest Service or Bureau of Indian Affairs; such as on the Dakota Prairie Grasslands in southern McKenzie and northern Billings County as well as on the Fort Berthold Indian Reservation. However, even within those areas federal mineral ownership is interspersed with private and state mineral or surface ownership. Therefore, virtually all federal management of North Dakota's oil and gas producing region consists of some form of split estate.

Given North Dakota's unique land ownership situation, the proposed rule to replace Onshore Oil and Gas Order No. 5 could have significant impacts on North Dakota's ability to administer its oil and gas regulatory program. The State of North Dakota intends to defend its sovereign jurisdiction over oil and gas regulation in any manner necessary.

The impacts of the proposed rule on North Dakota's ability to administer its oil and gas regulatory program are explained below:

Excessive length, detail, and lack of flexibility: North Dakota regulations for metering oil and gas (NDAC 43-02-03-14.2) and for measurement of natural gas produced from gas wells (NDAC 43-02-03-59) apply to private, state and federal wells, but give precedence to federal rules on federal oil and gas wells if federal rules differ from state rules. Both state rules and federal rules reference American Petroleum Institute (API) and American Gas Association (AGA) standards for gas measurement. However, the proposed rule incorporates very specific references to 9 sections of those standards and then proceeds to repeat all, or nearly all, of the standard in the text of the proposed rule. The resulting rule contains unnecessary detail making it too long and filled with too much technical language. As a result the requirements of the proposed rule may be contradictory and will frequently be out of date when new natural gas measurement technologies develop, and natural gas measurement standards are improved or modified.

The North Dakota Industrial Commission recommends that the following repetitive, detailed, and potentially contradictory or conflicting sections of the proposed rule, all references to them, as well as all definitions and acronyms contained within 3175.10 that pertain to them, be eliminated:

- 3175.70
- 3175.80
- 3175.90 – 3175.94
- 3175.100 – 3175.104
- 3175.110 – 3175.121
- 3175.125 & 3175.126
- 3175.130 – 3175.135
- 3175.141 – 3175.144
- Appendix 1.A to Subpart 3175
- Appendix 1.B to Subpart 3175
- Appendix 2 to Subpart 3175

Sincerely,

North Dakota Industrial Commission

On a roll call vote, Governor Dalrymple and Attorney General Stenehjem voted aye and Commissioner Goehring absent and not voting. The motion carried.

Mr. Helms discussed draft comments on the Environmental Protection Agency's Methane Emission Reduction Rules -- proposed new Source Performance Standards (NSPS) EPA-HQ-OAR-2010-0505; Draft Control Techniques Guidelines EPA-HQ-OAR-2015-0216; Proposed Source Determination Rule EPA-HQ-OAR-2013-0685 and Proposed Federal Implementation Plan for Implementing Minor New Source Review Permitting in Indian Country EPA-HQ-OAR-2014-0606. He said the Commission had previously requested another 180 days to review these proposed rules. EPA granted a three week extension so the comments are due December 7. It is a four part rule.

Mr. Helms indicated that these draft comments have not been circulated to all the Commission members or to their staffs. There are comments on each part of the rule. Mr. Helms summarized the rule and the draft comments for each part of the proposed rule:

The first part deals with the proposed New Source Performance Standards that EPA is proposing as part of this rule. There is going to be a real problem with the way they have defined their standards because

they've used undefined terms like "technically infeasible" and they defined flowback periods and gas capture or separator flowback stage and collection systems stage operationally as when is it technically feasible to flow the well through a separator, when is it technically feasible to connect it to a pipeline. The Commission's rules have numeric standards 14 days and 90 days and the Commission has the gas capture Order that follows that. The Commission has good hard numeric standards. The recommendation is that they go to that. We think it would be very helpful for industry to get rid of that level of uncertainty. They also use wildcat wells, delineation wells, non-wildcat wells, non-delineation wells, non-wildcat low pressure wells and non-delineation low pressure wells – all sorts of squishy operational standards. The Commission's Order 24665 just exempts the first well in the spacing unit and then expects all other wells to connect. Then EPA is requiring compliance within 60 days of the publication of this rule and the first survey within 30 days – based on North Dakota weather patterns that could likely end up impossible. Finally, they did not do a federalism analysis; they said this won't affect state rules – so they ignored the fact that the Commission has an Order that governs this so on that alone they should withdraw and do some additional work.

The second part is control technique guidelines – the main beef here is the record keeping requirements are unbelievable. They want each operator to keep five years of records of every serial number of every tank and piece of equipment on a facility, every time it is repaired, every time it is replaced. It is an incredible amount and it is unnecessary. They are also requiring that within 15 days of detection of a leak you have to repair or replace and resurvey. In North Dakota weather, that can be impossible. He has made some recommendations of how they can change that.

The third part is the source determination rule. Ever since the Clean Air Act came out, EPA has been trying to aggregate facilities to force oil and gas facilities into getting Title V or PSD permits and this is another attempt to do that. They offered two options: one being interrelatedness, meaning that if they connect to the same pipe they are going to be interrelated and guaranteed we are going to have to have Title V or PSD permits for every well that is drilled; the second option was if they are within a quarter of a mile of each other. The Commission's Orders 14497 and 14498 dating back to 2010 set up energy corridors where the well pads are along a single road and put the wells close together so you shrink the footprint and you don't harm the wildlife and the environment. They want to force that apart by putting this quarter mile rule in. His recommendation is just follow what the statute says. The Clean Air Act provides a definition of a facility, just adhere to the statutory language don't try to write a new rule with a new definition.

Finally, the fourth part deals with EPA telling tribes how to implement Title V and PSD permits on tribal land. His comment is that the State of North Dakota has agreements with the tribes to deal with tax revenue sharing and regulation and this will disrupt those agreements. Every case they said they didn't need to do a federalism review because they stated they were not affecting states like North Dakota and that is just not right – that is incorrect so that is what these comments layout.

Mr. Helms suggested that the Commission could approve the comments under the same parameters that they approved on the Onshore 4 and 5 - upon staff review and signature the Commission's approval is granted. He said if it comes to the point where the State has to litigate this, which it easily could, having the Commission's approval and signatures is very significant.

It was moved by Attorney General Stenehjem and seconded by Governor Dalrymple that the Industrial Commission, subject to final approval being granted by signature, submits the following comments on the Environmental Protection Agency's Methane Emission Reduction Rules -- proposed new Source Performance Standards (NSPS) EPA-HQ-OAR-2010-0505; Draft Control Techniques Guidelines EPA-HQ-OAR-2015-0216; Proposed Source Determination Rule EPA-HQ-

OAR-2013-0685 and Proposed Federal Implementation Plan for Implementing Minor New Source Review Permitting in Indian Country EPA-HQ-OAR-2014-0606:

Air and Radiation Docket and Information Center
Environmental Protection Agency
Mail code 28221T
1200 Pennsylvania Ave, NW
Washington, DC 20460

Dear Sirs:

Re: 2015 PROPOSED RULES AND DRAFT CONTROL TECHNIQUE GUIDELINES FOR THE OIL AND NATURAL GAS INDUSTRY

- Proposed Oil and Natural Gas Sector: Emission Standards for New and Modified Sources - Docket ID number **EPA-HQ-OAR-2010-0505**

The North Dakota Industrial Commission (NDIC) appreciates this opportunity to comment on the 2015 Proposed Rules and Draft Control Technique Guidelines for the Oil and Natural Gas Industry as follows:

The State of North Dakota is ranked 2nd in the United States among all states in the production of oil and gas. North Dakota produces approximately 400 million barrels of oil per year and 465 billion cubic feet of natural gas per year.

The NDIC, Department of Mineral Resources, Oil and Gas Division administers North Dakota's comprehensive oil and gas regulations found at N.D. Admin. Code Chapter 43-02-03. These regulations include regulation of the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and chemical treatment of wells, including hydraulic fracturing; the spacing of wells; operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the ND Underground Injection Control Program; and all other operations for the production of oil or gas.

The proposed rule could have significant impacts on North Dakota's ability to administer its oil and gas regulatory program. The State of North Dakota intends to defend its sovereign jurisdiction over oil and gas regulation in any manner necessary.

The impacts of the proposed rule on North Dakota's ability to administer its oil and gas regulatory program are explained below:

Operational standard verses NDIC defined numeric standard: North Dakota regulations for gas capture clearly define the initial flowback stage of well completions as 14 days. The proposed rule defines the flowback stage as the time when it is "technically infeasible" for a separator to function. In addition, North Dakota regulations for gas capture clearly define the separator flowback stage for a well completion as 90 days. The proposed rule defines this stage as the

time when it is “technically infeasible” to route the recovered gas into a gas flow line or collection system, re-inject the recovered gas, use the recovered gas as an on-site fuel source, or use the recovered gas for another useful purpose. The proposed rule does not define “technically infeasible.” This results in a clear conflict between the proposed rule which contains undefined operational standards and existing North Dakota rules which contain a clearly defined numerical standard.

Wildcat well, delineation well, non-wildcat well, non-delineation well, non-wildcat low pressure well, non-delineation low pressure well: North Dakota regulations for gas capture clearly define the first well in the spacing unit as exempt from the gas capture and production requirements imposed by NDIC Order No. 24665. The proposed rule defines two subcategories of hydraulically fractured wells: (1) Nonexploratory and non-delineation wells, also known as development wells; and (2) exploratory (also known as wildcat wells) and delineation wells. An exploratory well is the first well drilled to determine the presence of a producing reservoir and the well’s commercial viability. A delineation well is a well drilled to determine the boundary of a field or producing reservoir. This results in a clear conflict between the proposed rule which contains well definitions that are logical for conventional resource development, but not for unconventional development and existing North Dakota rules which contain a clearly defined standard.

Compliance required within 60 days of publication of the final rule in the Federal Register and the first survey of equipment required within 30 days of well completion: The time frame is too short. The well completions covered in the proposed rule are spread over thousands of square miles and weather conditions in North Dakota can be very severe and dangerous for extended periods of time.

Federalism: The proposed rule states that it does not have federalism implications. The federalism analysis states the rule will have no substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The analysis further alleges these final rules primarily affect private industry and would not impose significant economic costs on state or local governments. This conclusion is incorrect. As explained in these comments, the proposed rule will conflict with the NDIC’s current regulations.

The NDIC recommends the following:

- 1) Allow each state to develop clear numerical standards to define completion stages and impose appropriate gas capture requirements for each stage.
- 2) Eliminate the well definitions in the proposed rule or provide additional definitions that are appropriate for unconventional resources like the Bakken and Three Forks formations.
- 3) Amend the compliance deadline from within 60 days to within 180 days of publication of the final rule in the Federal Register.
- 4) Amend the first survey requirement from within 30 days to within 90 days of well completion.

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November 12, 2015

- 5) EPA should withdraw the rule or postpone implementation until the required consultation with state and tribal governments can be conducted and properly documented in the administrative record.

Sincerely,
North Dakota Industrial Commission

Air and Radiation Docket and Information Center
Environmental Protection Agency
Mail code 28221T
1200 Pennsylvania Ave, NW
Washington, DC 20460

Dear Sirs:

Re: **2015 PROPOSED RULES AND DRAFT CONTROL TECHNIQUE GUIDELINES FOR THE OIL AND NATURAL GAS INDUSTRY**
- Draft Control Techniques Guidelines – Docket ID number: **EPA-HQ-OAR-2015-0216**

The North Dakota Industrial Commission (NDIC) appreciates this opportunity to comment on the 2015 Proposed Rules and Draft Control Technique Guidelines for the Oil and Natural Gas Industry as follows:

The State of North Dakota is ranked 2nd in the United States among all states in the production of oil and gas. North Dakota produces approximately 400 million barrels of oil per year and 465 billion cubic feet of natural gas per year.

The NDIC, Department of Mineral Resources, Oil and Gas Division administers North Dakota's comprehensive oil and gas regulations found at N.D. Admin. Code Chapter 43-02-03. These regulations include regulation of the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and chemical treatment of wells, including hydraulic fracturing; the spacing of wells; operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the ND Underground Injection Control Program; and all other operations for the production of oil or gas.

The proposed rule could have significant impacts on North Dakota's ability to administer its oil and gas regulatory program. The State of North Dakota intends to defend its sovereign jurisdiction over oil and gas regulation in any manner necessary.

The impacts of the proposed rule on North Dakota's ability to administer its oil and gas regulatory program are explained below:

Appendix A.5, B.5, C.6, G.8, H.5 Record Keeping and Reporting Requirements: The record keeping requirements of the proposed rule are far too voluminous for any kind of reasonable inspection and enforcement to be conducted. Additionally, the annual and semi-annual reporting of the extensive identification and inspection information required by the rule on a nationwide basis will create an unusable, costly, and burdensome records retention and inspection process for the EPA.

Section 4.5.1.1, 4.5.1.2, 5.3.1.1, 5.4, 5.5.3, 5.5.4, 6.2.1, 6.3.2.2, 6.4.2, 9.5.2, D.2, G.5.9, G.5.10, G.8, I.2, Technically achievable, technically feasible, technically infeasible, or technically practical: The proposed rule uses these undefined terms numerous times. This creates uncertainty with regards to the meaning and enforcement of the term and, like the NDIC guidelines under NDIC Order No. 24665, should provide for “extenuating circumstances” beyond the well operator’s control.

Section 9.4, 9.5, 9.5.2, G.5.2, G.5.9, G.8, I.2 Repair within 15 days of detection and resurvey no later than 15 days after repair or replacement: The proposed time frame is too short. The production equipment components contained in the proposed rule are spread over thousands of square miles and weather conditions in North Dakota can be very severe and dangerous for extended periods of time.

Federalism: The proposed rule states that it does not have federalism implications. The federalism analysis states the rule will have no substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The analysis further alleges these final rules primarily affect private industry and would not impose significant economic costs on state or local governments. This conclusion is incorrect. As explained in these comments, the proposed rule will conflict with the NDIC’s current regulations.

The NDIC recommends the following:

- 1) Eliminate all Record keeping and reporting requirements except the requirement to maintain a log of the last 2-3 years of inspections, repairs, and maintenance activities for storage vessels, pneumatic controllers, compressors, covers, closed vent systems, VOC control devices, and pneumatic pumps.
- 2) Define technically achievable, technically feasible, technically infeasible, and technically practical.
- 3) Change all repair and resurvey time period limits from 15 days to 90 days.
- 4) EPA should withdraw the rule or postpone implementation until the required consultation with state and tribal governments can be conducted and properly documented in the administrative record.

Sincerely,
North Dakota Industrial Commission

Air and Radiation Docket and Information Center
Environmental Protection Agency
Mail code 28221T
1200 Pennsylvania Ave, NW
Washington, DC 20460

Dear Sirs:

RE: 2015 PROPOSED RULES AND DRAFT CONTROL TECHNIQUE GUIDELINES FOR THE OIL AND NATURAL GAS INDUSTRY

- Proposed Source Determination for Certain Emission Units in the Oil and Natural Gas Sector Rule – Docket ID number: **EPA-HQ-OAR-2013-0685**

The North Dakota Industrial Commission (NDIC) appreciates this opportunity to comment on the 2015 Proposed Rules and Draft Control Technique Guidelines for the Oil and Natural Gas Industry as follows:

The State of North Dakota is ranked 2nd in the United States among all states in the production of oil and gas. North Dakota produces approximately 400 million barrels of oil per year and 465 billion cubic feet of natural gas per year.

The NDIC, Department of Mineral Resources, Oil and Gas Division administers North Dakota's comprehensive oil and gas regulations found at N.D. Admin. Code Chapter 43-02-03. These regulations include regulation of the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and chemical treatment of wells, including hydraulic fracturing; the spacing of wells; operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the ND Underground Injection Control Program; and all other operations for the production of oil or gas.

The proposed rule could have significant impacts on North Dakota's ability to administer its oil and gas regulatory program. The State of North Dakota intends to defend its sovereign jurisdiction over oil and gas regulation in any manner necessary.

The impacts of the proposed rule on North Dakota's ability to administer its oil and gas regulatory program are explained below:

Definition of source: The proposed rule offers two options for defining emissions source. The definitions describe how sources could be aggregated to increase permitting requirements. The first option "functional interrelatedness" combines all operations from the well head to the processing plant into one source. Those operations are often performed by multiple non-related parties. In addition, the interrelatedness proposal will require a Prevention of Significant Deterioration (PSD) permit for any set of three or more well pads that are functionally interrelated. This would require a PSD permit modification for every application for permit to drill which would constitute a clear conflict with North Dakota jurisdiction over oil and gas resources within the state. The second option, "adjacency", combines pollutant emitting activities separated by a distance of ¼ mile or less. Those operations may be performed by multiple non-related parties. For an unconventional play like the Bakken and Three Forks formations, wells need to be located in close proximity along energy corridors to reduce environmental footprint. In addition, the adjacency proposal will require a Title V permit for any two well pads within ¼ mile of each other, and will require a Prevention of Significant Deterioration (PSD) permit for any set of three or more well pads that are within ¼ mile of each other. This would require a Title V or PSD permit modification for every application for permit to drill which would constitute a clear conflict with North Dakota jurisdiction over oil and gas resources within the state and with the requirements under NDIC Order Nos. 14497 and 14498 which establish well spacing requirements that reduce environmental footprint through the creation of energy corridors.

Federalism: The proposed rule states that it does not have federalism implications. The federalism analysis states the rule will have no substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirement to

obtain permits for new major sources is imposed by the Clean Air Act. This proposed rule, if made final, would interpret those requirements as they apply to the oil and natural gas sector. Thus, Executive Order 13132 does not apply to these proposed regulation revisions. In the spirit of Executive Order 13132 and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comments on this proposed action from state and local officials. As discussed above this conclusion is incorrect.

The NDIC recommends that EPA withdraw the proposed rule and: 1) adhere to the statutory language in the Clean Air Act section 111(a)(3) to define source for the Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Major Source (Title V) programs, and 2) conduct the required consultation with state and tribal governments and properly document such consultation in the administrative record.

Sincerely,
North Dakota Industrial Commission

Air and Radiation Docket and Information Center
Environmental Protection Agency
Mail code 28221T
1200 Pennsylvania Ave, NW
Washington, DC 20460

Dear Sirs:

RE: 2015 PROPOSED RULES AND DRAFT CONTROL TECHNIQUE GUIDELINES FOR THE OIL AND NATURAL GAS INDUSTRY

- Proposed Review of New Sources and Modifications in Indian Country: Federal Implementation Plan for Managing Air Emissions from True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country – Docket ID number: **EPA-HQ-OAR-2014-0606**

The North Dakota Industrial Commission (NDIC) appreciates this opportunity to comment on the 2015 Proposed Rules and Draft Control Technique Guidelines for the Oil and Natural Gas Industry as follows:

The State of North Dakota is ranked 2nd in the United States among all states in the production of oil and gas. North Dakota produces approximately 400 million barrels of oil per year and 465 billion cubic feet of natural gas per year.

The NDIC, Department of Mineral Resources, Oil and Gas Division administers North Dakota's comprehensive oil and gas regulations found at N.D. Admin. Code Chapter 43-02-03. These regulations include regulation of the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and chemical treatment of wells, including hydraulic fracturing; the spacing of wells; operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the ND Underground Injection Control Program; and all other operations for the production of oil or gas.

The proposed rule could have significant impacts on North Dakota's ability to administer its oil and gas regulatory program. The State of North Dakota intends to defend its sovereign jurisdiction over oil and gas regulation in any manner necessary.

The impacts of the proposed rule on North Dakota's ability to administer its oil and gas regulatory program are explained below:

Conflict with existing agreements between Three Affiliated Tribes and North Dakota: North Dakota regulations for natural gas capture have been enforced on the Fort Berthold Reservation under multiple tax and regulatory agreements between the state and tribes. The proposed rule will increase the number and complexity of conflicts with North Dakota regulations and the existing negotiated agreements.

The NDIC recommends that the proposed rule recognize and give deference to existing state and tribal agreements for natural gas permitting and regulation.

Sincerely,
North Dakota Industrial Commission

On a roll call vote, Governor Dalrymple and Attorney General Stenehjem voted aye and Commissioner Goehring absent and not voting. The motion carried.

Mr. Helms said EPA is making the determination about federalism time after time and it becomes obvious that they are not even looking or asking the states whether the states have rules or regulations in place to regulate these matters and how they could complement those instead of conflict with them. He thinks it does open the door pretty wide to litigation if it were necessary.

Mr. Ed Murphy presented and discussed the DMR - Geological Survey Quarterly Report. (A copy of the report is available in the Commission files.) In addition to the regular reports he commented on the status of the Core Library Addition project and reported on the digs that took place the past summer.

Mr. Helms alerted the Commission that there has been a significant amount of activity with PHMSA over the last week in terms of activity on crude by rail discussions and the Commission's Oil Conditioning Order 25417. It appears that they are planning a massive data release sometime in the not too distant future. The staff has spent many hours hosting PHMSA inspectors to show them what kind of inspections the Division inspectors do in regards to oil conditioning as well as sharing data with them and talking about how that Order is enforced and how the enforcement is going.

Being no further Department of Mineral Resources business, Governor Dalrymple adjourned this portion of the meeting at 2:51 p.m. and the Commission took up Building Authority business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on November 12, 2015 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

Present: Governor Jack Dalrymple, Chairman
Attorney General Wayne Stenehjem

Also

Present: Eric Hardmeyer, Bank of North Dakota
Lori Gabriel, Bank of North Dakota
Bob Humann, Bank of North Dakota
Darrell Lingle, Eide Bailly
Members of the Press

Governor Dalrymple called the North Dakota Building Authority portion of the Industrial Commission meeting to order at 2:52 p.m. following completion of Department of Mineral Resources business.

Mr. Darrell Lingle, Eide Bailly, presented the North Dakota Building Authority Audit - June 30, 2015. (A copy of the audit is available in the Commission files.) He said their firm issued an unmodified opinion on the financial statements which is the same opinion they have had in prior years. The independent auditor's report on internal control over financial reporting and on compliance with laws and regulations and other matters in accordance with government auditing standards – there were no matters to report regarding internal control over financial reporting. In regards to the rest of the financial statements – very consistent with the prior years as well and no matters of internal control or any other types of significant items noted during the course of the audit and they had no prior year findings - a clean audit.

Being no further Building Authority business, Governor Dalrymple adjourned this portion of the meeting at 2:54 p.m. and the Commission took up Student Loan Trust business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on November 12, 2015 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

Present: Governor Jack Dalrymple, Chairman
Attorney General Wayne Stenehjem

Also

Present: Eric Hardmeyer, Bank of North Dakota
Lori Gabriel, Bank of North Dakota
Bob Humann, Bank of North Dakota
Darrell Lingle, Eide Bailly
Members of the Press

Governor Dalrymple called the Student Loan Trust portion of the Industrial Commission meeting to order at 2:54 p.m. following completion of North Dakota Building Authority business.

Mr. Darrell Lingle, Eide Bailly, presented the North Dakota Student Loan Trust Audit - June 30, 2015. (A copy of the audit is available in the Commission files.) He said their firm issued an unmodified opinion on the financial statements as of June 30, 2015 which is the same opinion they have had in the prior years as well. The independent auditor's report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards – there were no matters to report regarding internal control over financial reporting and also there were no matters to report on internal control over compliance with laws and regulations. Our independent auditors report on compliance for major federal programs and report on internal control over controls over compliance required by OMB Circular A1-33 – in regards to major federal programs it is their opinion the Student Loan Trust complied in all material respects with the compliance requirements applicable to their major federal programs – so no issues with regards to specific tests over the major federal program and we had no control matters related to compliance with the major federal programs as well - a clean audit.

Being no further Student Loan Trust business, Governor Dalrymple adjourned this portion of the meeting at 2:55 p.m. and the Commission took up Bank of North Dakota business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on November 12, 2015 beginning at 1:00 p.m.
Governor's Conference Room
Bismarck, ND

Present: Governor Jack Dalrymple, Chairman
Attorney General Wayne Stenehjem

Also

Present: Eric Hardmeyer, Bank of North Dakota
Lori Gabriel, Bank of North Dakota
Bob Humann, Bank of North Dakota
Darrell Lingle, Eide Bailly
Members of the Press

Governor Dalrymple called the Bank of North Dakota portion of the Industrial Commission meeting to order at 2:55 p.m. following completion of Student Loan Trust business.

Mr. Eric Hardmeyer, Bank of North Dakota President, introduced Mr. Darrell Lingle, Eide Bailly, who presented the following audits:

PACE Fund - June 30, 2015 (A copy is available in the Commission files.) He said their firm issued a clean opinion. The independent auditor's report on internal control over financial reporting and compliance with laws and regulations in accordance with government auditing standards – no matters to communicate regarding internal control over financial reporting and no matters to communicate regarding compliance with laws and regulations. No items to report of any significant nature, no control matters to report and no prior year auditing findings that needed to be followed up on in the current year.

AgPACE Fund - June 30, 2015 (A copy is available in the Commission files.) He said their firm issued an unmodified opinion on the financial statements. The independent auditor's report on internal control over financial reporting and compliance with laws and regulations in accordance with government auditing standards had no matters to report. There were no matters to report on internal control over financial reporting and no matters to report related to controls over compliance with laws and regulations. No items to report of any significant nature, no control matters to report and no prior year auditing findings that needed to be followed up on in the current year.

Rebuilders Loan Program - June 30, 2015 (A copy is available in the Commission files.) He said their firm had issued an unmodified opinion on the financial statements. The independent auditor's report on internal control over financial reporting and compliance with laws and regulations in accordance with government auditing standards – no matters to report on internal control over financial reporting and no matters to report related to controls over compliance with laws and regulations. A clean audit with no matters of any significant that were identified during the course of the audit and no prior year audit findings that required resolution during the current year. In response to a question Mr. Hardmeyer, Bank of North Dakota President, stated the Bank has not made any loans under this program since 2013. The Bank is in the collection mode.

Medical Facility Infrastructure Loan Program - June 30, 2015 (A copy is available in the Commission files.) He said their firm had issued an unmodified opinion on the financial statements. The independent auditor's report on internal control over financial reporting and compliance with laws and regulations in accordance with government auditing standards – no matters to report on internal control over financial reporting and no matters to report regarding controls over compliance with laws and regulations. No items to report of any significant nature, no control matters to report and no prior year auditing findings that needed to be followed up on in the current year.

In response to a question, Mr. Hardmeyer said there were two medical facility infrastructure loan programs. This audit was done on the legislative program created by the 2013 Legislature. The Legislature appropriated \$50 million out of the Strategic Investments and Improvement Fund and

established this program to be administered by the Bank. The Bank has been making loans through this program and the entire \$50 million has been committed. There is an ongoing need for this program so the Bank developed the Medical PACE Fund to be available this biennium to be a companion to Medical Facility Infrastructure Fund. The funds are going out slowly but the dollars are all committed. Mr. Bob Humann, Bank of North Dakota, said the two largest projects are the Bowman and Watford City medical facilities and those projects just started construction.

Attorney General Stenehjem reported he was at Microsoft headquarters in Fargo yesterday and the message he got was that the DEAL One program is enormously popular especially with the population where you have a lot of recent graduates come in and say they can get their loans down to two percent (and even lower if they use direct deposit). This is just one of the things the State can do that is really helpful in recruiting and retaining staff. It was very popular. Mr. Hardmeyer said the Bank just went over a threshold of \$300 million that has been funded in that program and another \$11 million is in the pipeline. It has been enormously successful. We continue to market that program but a lot of it seems to be driven by word of mouth and social media.

Mr. Hardmeyer presented the Farm Financial Stability Loan Program. (The name of the program is different than what was listed on the agenda.) He indicated that this is a program that the Bank has been working on for several months. The Bank staff has been talking to the local bankers and farm borrowers. There are a number of them that are concerned with the low commodity prices and how those low prices have affected their working capital and balance sheets. Bank staff met with several groups including both the banking associations and the Credit Review Board. The Bank believes that this proposed program is something that fits within the Bank's mission and would be helpful in a very meaningful way to provide some stability-- some support to the agriculture community. He indicated that Mr. Humann and Mr. Steinwand had spent a great deal of time developing the parameters for this program and the Bank is pleased to bring forward a recommendation today.

Mr. Humann discussed the Farm Financial Stability Loan Program and the details of the Program.

- Bank staff had visited with the North Dakota Bankers Ag Committee and North Dakota Ag Credit Review Board. Response was that there is going to be a need. A survey was sent out to the North Dakota Bankers and the Independent Community Bankers agriculture committees. The survey results show there is a need for this type of program. The Bank also used results that NDSU had put together from some agricultural outlook conferences that they held in four locations throughout the State where they actually surveyed the ag lenders that were in attendance and that definitely showed the Bank that there would be a need for this type of a program.
- He reviewed the process that the Bank had used in developing the proposed program -- used the Farm Financial Assistance Program that had been implemented in 1997 and used over the years for various farm disaster situations.
- Farmer Eligibility - In order to be eligible for the program the farmer would have to show some kind of a cash flow shortage in either the crop years of 2014 or 2015. A new requirement is that the lead lender would also have to provide an operating line for the crop year 2016. The Bank wants to make sure these are borrowers that the lead lenders feel have long term viability and that they have a commitment to the borrower. The lead lender does show commitment to the borrower by keeping 25% of the loan. The other 75% can be sold to the Bank of North Dakota. The Bank could purchase 75% of a chattel or real estate loan; up to \$750,000 on the chattel side and up to \$1.5 million for the real estate. He indicated that these levels were developed based on the survey results the Bank received from the local banks.
- Interest rates - the Bank is offering a variable rate that is 1% below the Bank's base rate --it would be a rate of 2.25% today. The fixed rate option is 3.75% fixed for five years. He pointed out that on the variable rate option the Bank has put a 1% annual rate cap. The Bank believes that is an

attractive feature for these farm borrowers and also aligns better with the Bank's actual cost of money. The other condition in regards to the interest rate is that the lead lender cannot charge more than 2% over the Bank's base rate on their 25% of the loan. The Bank wants to make sure this is an overall below market rate for the farmer.

In response to a question regarding how many of these loans they can make within the \$300 million program, Mr. Humann said if the Bank ended up doing an average of \$1.5 million to each of the applicants there could be as many as 200 loans. He was hoping the Bank did not get to the \$300 million mark--he was hoping that farmers had ideal harvest conditions and the yields were better than currently anticipated. He said the biggest year the Bank had with their farm disaster loan programs was 105 loans in 2007.

Mr. Hardmeyer stated that the difference here from the other programs the Bank has offered is that this is the first time the Bank has ever come out with a program based on low commodity prices. Before, there has always been some kind of natural disaster. This is commodity price driven situation. What the Bank is hearing is compelling so they developed this program to see if the Bank could assist the agriculture community.

Governor Dalrymple said he thought they have the program crafted very well and he liked the fact that they are asking the lead lender to step up for the operating line. That keeps the lead lender in the loop very nicely; the rates are terrific. If you just have the right values on those chattels and real estate, the Bank will be fine.

Attorney General Stenehjem said this program fits precisely within the mission of the Bank.

Mr. Hardmeyer explained how the Bank had determined the amount available for the program. He stated the Bank had looked at their capital, their current loan loss allowance and what they will need to increase the loan loss allowance for the riskier loans and determined that \$300 million is a prudent amount for this program.

There was discussion on the lead lender's participation, whether the 75/25 split was the appropriate level, where levels will probably end up based on the size of the loans, the lead lender's commitment to the borrower, etc. It was noted that the purpose of this program is to provide stability and some relief to the farmers.

In response to a question Mr. Hardmeyer explained how the Bank was going to publicize the program--press releases; this will be a part of the Bank's monthly "direct line call" with local lenders; and will be discussed with local lenders with the Bank's lender calling program. The Bank staff is going to be making a lot of contacts with lenders prior to the roll out of the program on December 1.

Governor Dalrymple said the Bank has done a great job of knowing what's going on out there with the agricultural community and getting out ahead of it – that is good.

It was moved by Attorney General Stenehjem and seconded by Governor Dalrymple that the Industrial Commission accept the recommendation of the Bank of North Dakota Advisory Board and approve the Farm Financial Stability Loan Program as outlined below in the following memorandum:

Farm Financial Stability Loan Program

Program Background: BND was approached by the Industrial Commission and a number of ND lenders to develop a program to help their farm customers for the reasons listed under Program Purpose below. BND Management met with the NDBA Ag Committee and ND Ag Credit Review Board to discuss program parameters and potential usage. BND surveyed 21 members of the NDBA and ICBND Ag Committees with a summary of the results as follows:

- 15 Respondents
- 2 Banks had comments on the proposed parameters: 1) Provide a servicing fee for Lead Lender, suggested our loan limits were too high, and suggested a net worth limitation. and 2) Possibly consider a LTV of 80% on chattels.
- 13 of the 15 respondents provided potential loan volume of \$70.6 million for chattels and \$71.3 million for real estate. Two of the Banks wanted to get a better feel for how 2015 may end up for their farm borrowers.

Based on the survey sampling of an estimated 20% of ND Lenders (Banks, CU's, FCS), there could potentially be \$700 million of potential loan volume. This feels extremely high and a more likely forecast would be more in the range of \$200-300 million.

NDSU Outlook Conference for Agricultural Lenders Results: This conference was held in October of 2015 covering four locations, Grand Forks, Minot, Bismarck and Fargo. Two of the survey questions asked where: 1) How much of your loan portfolio is projected "not" to cash flow in 2016, 2) What percentage of your borrowers do you anticipate are going to be terming out, restructuring, or refinancing in 2016? The results and number of responses from each location is summarized below.

	Not Cash Flow		Term out	Responses
	>50%	15-25%	>20%	
Grand Forks	41%	36%	74%	91
Minot	8%	29%	46%	62
Bismarck	11%	26%	35%	79
Fargo	21%	20%	51%	111

Program Purpose: This program will provide financial relief by providing below market interest rates and extended terms to North Dakota farmers who have been impacted by low commodity prices or below average crop production. **BND has set up a pool of \$300 million for the program. Funds will be allocated on a first come basis until the pool used.**

Eligibility: The borrower must be a North Dakota resident whose principal occupation is farming. Evidence of a cash flow shortage in 2014 or 2015 must be provided. Borrower must show the ability to repay and have an operating line approved for 2016 crop year.

Use of proceeds: The loan may be used to replenish working capital, term out operating carryover, restructure existing term debts to provide cash flow relief.

Loan amount/limit: The BND participation amount may be up to 75% of a chattel or real estate loan, not to exceed \$750,000 on chattel or \$1.5 million on real estate.

Interest rate and fees:

Interest rates:

- Variable at 1.00% below BND's Base Rate (Currently 3.25%-1%=2.25%)
Annual rate increase capped at 1% annually. Rate floor of 2.25%.
- Fixed at 3.75% for 5 years

- The interest rate charged by the Lead Lender's share of the loan may not exceed BND's Base Rate plus 2%.

Fees: BND will receive a \$250 origination fee and the Lead Lender will have the option of adding a .25% service fee on BND's loan participation.

Collateral: Maximum loan to value ratio of 75% on chattels and real estate. Both programs require BND and lead Financial Institution to hold a first lien/mortgage position.

- All other debt of the Originating lender which shares an interest in the collateral described shall be subordinate to this note as long as BND is a participant in this credit facility.

Loan Terms:

- Chattel: Up to a 10 year amortization with up to a 5 year balloon
- Real estate: Up to a 25 year amortization with up to a 5 year balloon

Program Timeline:

- Begin on December 1, 2015 with an application deadline of June 30, 2016

BND's Loan Program Maximum:

- \$300 million on a first come basis.

On a roll call vote, Governor Dalrymple and Attorney General Stenehjem voted aye and Commissioner Goehring was absent and not voting. The motion carried.

Mr. Hardmeyer presented the non-confidential Bank of North Dakota Advisory Board September 17, 2015 meeting minutes.

Mr. Hardmeyer discussed the following memorandum:

RE: Chief Credit officer recommendation

As you may recall, I reviewed with you the organization changes at BND that will enable BND to fulfill our responsibilities as it relates to our 2015-2017 strategic plan. Critical to that change is the hiring of the Chief Credit officer. (See attached organization chart and position description).

I am pleased to recommend to you an excellent individual for this position, Kirby Evanger. Kirby has been with BND for the last year serving as our Risk Manager. Prior to that Kirby worked for several areas bank in the areas of Risk Management and Chief Credit Officer.

Kirby has accepted the offer, subject to your approval. Kirby will be a Senior Vice President with the title; Chief Credit Officer, and a beginning salary of \$165,000.

Your approval is recommended.

Mr. Hardmeyer reported on the restructuring that had been taking place at the Bank. He noted that originally Bob Humann was going to serve in the role of Chief Credit Officer. However, a few weeks ago Bob expressed an interest in the role of working with banks and asked to be put in the position of Financial Institutions Market Manager in the new Bank organizational structure. Mr. Hardmeyer stated that this is a different position for Mr. Humann but one he has asked to take and is comfortable with. Within the Bank, Kirby Evanger has been serving as the Director of Risk Management. Mr. Evanger's strength is as a Chief Credit Officer and prior to joining the Bank he spent eight years doing that type of work. That is why he is recommending that Kirby be named as a Senior Vice President and Chief Credit Officer at a salary of \$165,000. There is no learning curve for Mr. Evanger and he is well qualified for the position.

It was moved by Attorney General Stenehjem and seconded by Governor Dalrymple that the Industrial Commission accept the recommendation of the Bank of North Dakota Advisory Board and Bank of North Dakota President Hardmeyer and name Kirby L. Evanger as Senior Vice President/Chief Credit Officer at an annual salary of \$165,000 with an adjustment following a probationary period with an effective date as negotiated by BND President Hardmeyer and Mr. Evanger. On a roll call vote, Governor Dalrymple and Attorney General Stenehjem voted aye and Commissioner Goehring was absent and not voting. The motion carried.

In response to a question, Mr. Hardmeyer stated that the Risk Manager position is still open. He noted that the three market manager positions are in the process of being filled. Bob Humann will be the Financial Institutions Manager; Shirley Glass is filling the Education Market Manager position and the other position that will concentrate their work with political subdivisions should be filled in the next week or so.

Governor Dalrymple stated that there are some cities that are eligible for the State Water Commission's Water Supply and Flood Control Grant Programs. The Water Commission's standard policy is a 60/40 cost share – the Water Commission provides 60 percent and the municipality provides 40 percent. He has been informed that in the case of Grafton, Minot and a couple other communities that they can't provide the local cost share. He asked the Bank to look at ways that it may be able to assist these communities through their lending programs. He noted that in the case of water supply, there is a revenue stream there that can be pledged. Flood control is a little more difficult; there is no revenue stream but it is still a problem. He indicated that he would be looking into other things as well such as the Revolving Loan Fund and other possibilities including the Resources Trust Fund Water Infrastructure Loan Program.

Mr. Hardmeyer updated the Commission on the Infrastructure Program. The application deadline is November 30. So far they have had a pre-application indication of approximately 8 or 9 projects that might qualify. He anticipates funding requests in the amount of \$70 to \$80 million.

Mr. Hardmeyer said the Bank had hired the architect -- JLG -- for the financial center building. The Commission members and Bank management discussed the plans that are being developed so that the financial center building is consistent with the Bank's current building's architecture and landscaping. The Commission members expressed an interest in visiting with the architect and seeing the concept that is being developed.

Being no further Bank of North Dakota business, Governor Dalrymple adjourned this portion of the meeting at 3:33 p.m. and the Commission took up confidential business.

Following the confidential portion of the meeting, the Commission reconvened in non-confidential session at 3:45 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 a loan identified as Attachment 23. In non-confidential session, on a roll call vote, Governor Dalrymple and Attorney General Stenehjem voted aye and Commissioner Goehring was absent and not voting. The motion carried.

Being no further Bank of North Dakota business, Governor Dalrymple adjourned the meeting at 3:50 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary