

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on August 26, 2015 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also

Present: 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 monthly financial report and debt reduction report along with a capital projects update as follows: (A complete copy of the report is available in the Commission files.)

RE: Western Area Water Supply Authority - Industrial Sales - July, 2015 and Debt Repayment Report

Attached is the Western Area Water Supply Authority (WAWS) financial information for the month of July, 2015. We are beginning a new biennium so this report reflects just the one month. I have included the net income report (Page 5) for the 2013-2015 biennium so you can compare the July numbers with the June numbers and with July numbers a year ago.

Page 1, prepared by the Bank of North Dakota, reflects debt service payments through the month of July.

The next 3 pages (pages 2, 3 & 4) I prepared based on the information provided by WAWS staff reflecting July revenues and expenses and showing net income. Capital improvement disbursements (highlighted in orange) and prepayments (highlighted in yellow) on Page 2 are noted separately. Excluding the capital expenditures the net income for the month of July was \$382,931.26. With the capital expenditures the net income was \$253,303.94. This is a significant improvement from last month's numbers. Page 5 is the net income report for the 2013-2015 biennium so you have the numbers for comparison. Page 6 is the balance sheet prepared by WAWS staff as of July 31, 2015. As noted on the Balance Sheet the Accounts Receivables are \$2,808,069.32. Page 7 shows the status of the approved capital projects and the balances still outstanding if the projects go forward.

Mr. Jaret Wirtz, Western Area Water Supply Authority Executive Director, said the month of July was up from June but not near what WAWS saw last year which is expected with the reduction in price and slowdown in western North Dakota. This month, in August, WAWS is trending to have a similar month to July. The depots seem to be pretty steady month to month – they have leveled off. Where the Commission will see fluctuations is with the direct pipeline connections either the temporary ones that fluctuate or the permanent ones have some water use all the time but if the company is doing heavy fracturing they will show an increase which results in fluctuations in their purchase of water.

In response to a question regarding direct connections versus depots, Mr. Wirtz said when WAWS started out that first year it was probably 90% trucked, 10% piped either overland or permanently piped; the next year it was probably closer to that 70% trucked, 30% piped and last year when it was really busy about 50% trucked 50% piped. Now WAWS is seeing all the fracturing being done with overland or underground piping. Very few fractures are purchasing water from the depots. The numbers from the depots are mostly maintenance water and some water used for drilling or production. Any fracturing water now is being delivered through a pipe. In the future, the maintenance water demands will be higher than

the fracture water demands. It is a good thing that it has gone to pipe because it has taken a lot of trucks off the road.

In response to a question regarding the capital projects, Mr. Wirtz said the Indian Hills Tank that was put on the south side of the river in McKenzie County is complete, in service, operational and holding water. It has been a nice improvement to the south side. This summer there have been some really hot days and high demands and WAWS was able to shut the water supply off to the south and just idle off those tanks for a while. It is good to have that extra capacity especially with the amount of water Watford City is taking now and the industrial demands on the south side. In regards to the Camera Surveillance Project the cameras are installed and they are working through some issues with getting blurry pictures on those depots where there are more than one or two lanes.

Mr. Wirtz said water pricing is still an issue as more and more private developers are installing permanent pipelines, especially in McKenzie County which is the hot zone now. Previously there was a limited amount of water supply but that isn't the case anymore. There are at least four large water suppliers that put in hundreds of miles of industrial water pipelines and brought more water into areas where previously WAWS was the main supplier of water – in the Watford City and Keene areas. Previously there really wasn't any water other than WAWS water and now there are a couple of industrial water pipelines. There is considerable competition and everyone knows what the WAWS price is. That is one thing that continues to be an issue on capturing some of those sales that WAWS believes it would normally be getting. It is something he will continue to look at and keep the Commission involved with and monitor as time goes on. It was indicated that those sales are being made for fracking but not necessarily for maintenance. He indicated that customers do like the fresh potable water--the consistent source for maintenance flows and putting water downhole. He would not recommend any change in the depot price.

Governor Dalrymple said we all have to remember that WAWS is in the business of selling water and WAWS is going to have to review its pricing from time to time. WAWS may have situations where you will need to have different categories of prices based on volume or variations in WAWS's costs or length of contract, etc. He noted that this is a quasi-public spirited utility supported by state funds and we want to be sure we are very transparent about our pricing so the people can know what the price is.

Being no further Western Area Water Supply Authority business, Governor Dalrymple the meeting at 1:12 p.m. and the Commission took up Outdoor Heritage Fund 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 August 26, 2015 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also

Present: Wade Moser, Outdoor Heritage Fund
Tom Hutches, Outdoor Heritage Fund
Michael Findley, Ducks Unlimited
Eric Lindstrom, Ducks Unlimited
Jay Almlie, EERC
Tom Erickson, EERC
Andrea Travnicek, Governor's Office
Jason Nisbet, Governor's Office
Michelle Mielke, Department of Agriculture
Members of the Press

Governor Dalrymple called the Outdoor Heritage Fund portion of the Industrial Commission meeting to order at 1:13 p.m. following completion of Western Area Water Supply Authority business.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary noted that she had provided the Commission with a copy of the **draft** minutes from OHF Model Project Subcommittee meeting held on August 18, 2015 along with a copy of the Emmons County application that was approved during the last grant round. The **draft** minutes were as follows:

The Outdoor Heritage Fund Model Project Subcommittee met on August 18, 2015 with the following members present:

*Dr. Tom Hutchens
Jim Melchior
Wade Moser
Patricia Stockdill*

Also in attendance were:

*Rhonda Vetsch, Emmons County Soil Conservation District
Terry Steinwand, Game and Fish
Kevin Kading, Game and Fish
John Devney, Delta Waterfowl
Jonas Davis, Ducks Unlimited
Keith Trego, ND Natural Resources Trust
Andrea Travnicek, ND Governor's Office*

Dr. Tom Hutchens was elected to serve as Chairman of the Subcommittee.

After presentations by Rhonda Vetsch, Emmons County Soil Conservation District, and Kevin Kading and Terry Steinwand, Game and Fish Department, and discussion by the subcommittee members and others in attendance the following action was taken by the Outdoor Heritage Fund Model Project Subcommittee:

It was moved by Wade Moser and seconded by Jim Melchior that the Outdoor Heritage Fund Advisory Board ask that the local Soil Conservation Districts take the lead, along with identifying willing partners, in putting conservation proposals together (similar to the Emmons County Grant Round 5 proposal) that would:

1. **Identify expiring Conservation Reserve Program (CRP) contracts and convert these lands to production by installing practices (water, fences & management) that would promote leaving these lands in grass (or reseeding specific species to improve the grass stand) that will make them useful for grazing.**
2. **Identify existing grasslands that need improvements (water, fences & management) through installing conservation practices and management changes.**
3. **Identify tracts of poor quality tillable and saline land that should be converted to grass for grazing, haying, and wildlife by implementing the appropriate conservation practices.**
4. **Identify participant's names and contact information and make them available for public access requests.**

These lands be given a high priority in funding through the Outdoor Heritage Fund by providing cost share for installing conservation practices as well as provide funds to the local Soil Conservation Districts for additional staffing to implement these projects.

The goal is to provide more acres of high quality productive grassland that will benefit both livestock and wildlife.

On a roll call vote, Moser, Melchior, Stockdill and Hutchens voted aye and no one voted nay. The motion carried unanimously.

Some of the points discussed included:

- *Applicants could be one soil conservation district or multiple soil conservation districts;*
- *Applicants could be an entity other than a soil conservation district but should work with a soil conservation district, needs to be a clear understanding of who is in charge and who is liable as it relates to oversight/management;*
- *Details on what management requirements are included in the Emmons County proposal such as weed control, haying dates, active management by the applicant such as two visits a year with the landowner at the land site;*
- *When payments are made;*
- *What should be done in those areas where grazing/haying is not cost effective such as around Cando or Forman;*
- *What are the risks if the landowner does not properly manage the lands after already receiving payments;*
- *Importance of having grassroots partnerships;*
- *Consider open, flexible projects that meet the needs of the producers;*
- *Success will be promoting proper management of the land--the producer has to manage the land and not just implement a best management practice and then not manage the land;*
- *This proposal isn't the answer to all the issues but is a start and one where we believe there is sufficient funding within the Outdoor Heritage Fund to begin the implementation of moving CRP acres into working lands that benefit both the producer and the wildlife interests;*
- *A different proposal may be needed for wetland or saline areas;*
- *Land rental payments; incentive payments; when are they needed; this model concept does not include land rental payments being made by the Outdoor Heritage Fund; don't believe it is necessary at this point; if partners are willing to make the land rental payments the application will be looked at but is not preferred;*
- *A different proposal with incentive payments may be needed where lands are productive but that should come at a later date;*
- *Some concerns about whether there is the manpower to initiate the best management practices;*

- *If adopted by the Commission and the OHF Advisory Board how will it be rolled out?*

It was clearly stated that this model project does not exclude any other proposal from being submitted and considered. This model project has been developed based on questions from applicants as to what we are looking for in the “larger” countywide/regional/statewide projects.

Karlene was asked to find a date for another meeting -- to look at the concepts that Terry Steinwand had presented, in particular the concept for state lands.

Dr. Tom Hutchens, Chairman of the Subcommittee, provided a report on the meeting of the Outdoor Heritage Fund Model Project Subcommittee. The purpose of the subcommittee was to try and design a model for cover replacement across the state to make up for some of the CRP losses. Of the six members that showed an interest and were appointed to the subcommittee, only four could make the first meeting. They did agree on one type of model. He noted that the Subcommittee had gotten input from individuals that were not members of the Subcommittee including Rhonda Vetsch, Terry Steinwand, Kevin Kading, John Devney, Jonas Davis and Keith Trego. He indicated that Rhonda Vetsch representing the Emmons County Soil Conservation District presented a model project that really helped the Subcommittee start the discussion. That project is a win/win for producers as well as wildlife.

Dr. Hutchens reviewed the particulars of the proposed model that was approved by the Subcommittee as follows:

- 1) To identify expiring CRP and to try and convert these lands to production by the infrastructure installation costs and practices for water and fence development and to help the operator therefore, utilize this grazing/haying system within their own operation.
- 2) To identify existing grasslands that needs improvements such as water, fences and management through installing conservation projects.
- 3) To identify tracts of poor quality tillable and saline lands to try to get incentives in place to change that into grass cover.
- 4) To identify the participants involved so that their contact information would be out there for public access requests.

Dr. Hutchens said this is a very particular project and he stressed that because this does not involve ongoing support payments or land rental payments it would be very cost effective. He pointed out that feature of the model also limits it and several other scenarios in areas of conservation where there needs to be progress. One of those would be in trying to save wetlands especially the evanescent or type one wetlands and good farm ground. Another would be a producer that can't use the haying and grazing options within their operation. Therefore, it is his intent that the Subcommittee would have more meetings to talk about the very issue of support payments and incentive payments. He said that there is a real difference of opinion at the Advisory Board level about that very item which impacts the budget and what the Advisory Board can do.

Dr. Hutchens said there was one other issue that needed more discussion. This particular project model suggests that the SCD's – Soil Conservation District – would manage these projects. They could have partners but the project would have to be managed by the Soil Conservation Districts. There is a concern that many of the Soil Conservation Districts are really limited by their expertise, staff size and dollars. It would be very hard to see that they are going to be the primary movers on “go big” programs that are needed if we are going to seriously talk about cover in the state. As Chairman of the subcommittee, he didn't think we have the latitude or legal authority to show preferential treatment to one particular group. He stated that he wanted to make sure that issue is discussed at a meeting when all six of the members could be present.

Dr. Hutchens asked the Industrial Commission to possibly review what the Subcommittee has already decided might represent one good model of a cover proposal but he didn't know that they are really ready to ask for full endorsement until the Subcommittee has a chance to talk about what other models may also be part of a package that they would bring in front of the Industrial Commission for approval. He is hoping that at the end of two or three Subcommittee meetings that they'll be able to come back with a set of guidelines or proposals that will truly make a difference in making up for some of the acres being lost as the federal CRP goes away.

Governor Dalrymple thanked Dr. Hutchens for coming to explain the situation. He stated that with this particular model regarding grasslands and grazing you are getting pretty close to something that is good. But he thinks maybe they could tighten it up a little bit more and possibly bring a little bit more clarity into it. He stated that there is another part that the Subcommittee needs to address and that would be to focus on wildlife habitat enhancement. He would like to see a model where private land or land owned by other entities can come forward to enhance conservation, generally tree plantings, food plots, water dugouts – that directly relate to wildlife benefit. It needs to include an enhanced cost share for the participant, an incentive to participate. Finally, the grant should cover the cost for some of the administrative work that has to take place. That is a big impediment--you need somebody to coach you through the process and that should be an allowable expense under the grant program. There is also a question if you do enhanced wildlife habitat – what's in it for the landowner and what's in it for the hunter in terms of access. He said there is a lot of interest in this, including legislators. Representative Porter is very interested in some kind of a model that can be repeated so you are not just giving one grant one time – you have a model that can be done over and over; we have maybe different models, SCD or possibly something different for nonprofits. He asked the Subcommittee, when they reconvene, to take up that additional concept. He indicated that he plans to have something specific for the Subcommittee to work on and discuss.

The Commission discussed the need to provide some funding for technical assistance.

Dr. Hutchens said one of the issues they had regarding the dollars was to allow Soil Conservation Districts to partner with other organizations, entities, NGOs and there may be question there then of who would be in charge when those OHF dollars are involved.

Commissioner Goehring said the cover on the CRP acreage that's coming out within the state - is it cover that you are trying to establish or maintain for the land or is that for the wildlife? What are the thoughts of the Subcommittee? What is its approach because it is going to result in a different goal and outcome with the rural community?

Dr. Hutchens said that's an extremely insightful point and that is where we are looking for some direction. His role on the Outdoor Heritage Fund Advisory Board is primarily conservation with a very important agricultural interest because agricultural producers have to sign off on everything that is going to happen. He said that he believes most wildlife biologists would agree that essentially any cover is good and that we are not trying to put the prairie necessarily back to native. We don't even require dense nesting cover to get to our goals. Winter wheat is a great example of cover. The cover crops that can be grazed are a great example of cover and it is ultimately up to the farmer to say yes we are going to do that or no, we are not.

Commissioner Goehring suggested that the State's diversity makes it better for providing wildlife habitat. He noted statistics on the number of deer licenses being issued and the pheasant population and the habitat that supports all types of wildlife in the state. The State is doing it right given the fact that agriculture owns, operates and manages 90 percent of the land in North Dakota. If we can do things to enhance the agricultural operation that enhances the land that supports some of those species of vegetation that will

enhance wildlife production and yet complements what we have in livestock operations – we're far better off to create that better environment for everybody.

Governor Dalrymple encouraged the Subcommittee to approach this as sort of a Part A Model which is really oriented to grasslands and then Part B that is aimed right at wildlife habitat. The two are complementary but they can also be quite different in terms of what you are trying to do in any specific project. To make sense out of it, you have to have a two-part approach which can work very well. The two actually go together beautifully.

Governor Dalrymple also stated that personally he believes the Commission should be focused on grant money as an incentive to achieve project outcomes. When the projects are complete, they are complete, they have permanent value. He said he was leery about ongoing payments to landowners over an extended period of time.

In response to a question regarding if those funds could be used for creating wildlife/stock ponds or stock ponds/wildlife ponds, drilling water wells, providing water, enhancing water features, Dr. Hutchens said yes. He indicated that there have been a number of proposals; some were funded and some haven't been funded mainly based upon cost considerations. Water in the ground is better for wildlife, but that's not to say that there's not benefit for wildlife even with tank water.

Attorney General Stenehjem said he concurs with what the Governor said. He makes a very good point about not committing ongoing revenue stream because it eliminates the possibility of any other projects in the future because the money will all be spoken for if you have real long term arrangements.

Governor Dalrymple said he is also talking with the Land Commissioner and the Land Board about having participation with the state lands.

Dr. Hutchens said that is going to be a topic that they'll be addressing in the coming meetings. The discussion about cross fencing on state lands was presented by Director Steinwand as a possibility for increasing cattle production but at the same time adding better use for nesting ground birds. The numbers for North American Song Birds that are ground bird nesters are going way down. There are tremendous needs that are actually bigger than North Dakota and North Dakota is seen as one of the best last places. He indicated that he understood what the Commission is saying about the ongoing support payments – there is a huge desire for that in the farming community. If the Commission is not supportive of ongoing payments then there will be some projects we can't consider. Programs like the working wetlands program where there are those evanescent wetlands that get in the farmers way and when it is dry we say farm them and when it is not we pay them the going rental rates to leave them alone. That program was oversubscribed. He hoped that there are programs that the Commission would consider allowing ongoing support payments because that water is key for so many birds.

Governor Dalrymple said the reality is that the federal government deals in billions of dollars and North Dakota is dealing in tens of thousands of dollars so it is just a completely different scale. We need to keep talking to our congressional delegation about funding a good CRP program.

Being no further Outdoor Heritage Fund business, Governor Dalrymple the meeting at 1:36 p.m. and the Commission took up State Mill business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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Agriculture Commissioner Doug Goehring

Also

Present: Vance Taylor, State Mill
Ed Barchenger, State Mill
DeAnn Ament, Public Finance Authority
Jason Nisbet, Governor's Office
Members of the Press

Governor Dalrymple called the State Mill portion of the Industrial Commission meeting to order at 1:37 p.m. following completion of Outdoor Heritage Fund business.

Mr. Vance Taylor, State Mill President and General Manager, reviewed the 2016 Strategic Plan. He said accomplishments from last year's strategic plan include completing the design and engineering of the Mill's G-Mill expansion and flour bin projects which are now under construction and passing the ISO-22000 Certification audit which is important to the Mill and the Mill's customers.

He reviewed the proposed 2016 plan and noted that it is separated into five major strategic issues. He reviewed each of the strategic issues and gave examples of how they are planning to work on each particular issue. He noted that the plan helps the Mill stay focused on the Mill's goals for the year.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission adopts the North Dakota State Mill 2016 Strategic Plan as follows:

**North Dakota Mill & Elevator
Strategic Plan FY 2016**

Strategic Issue 1

Promote and Support North Dakota Agriculture, Commerce and Industry

A. Develop and Market New Agricultural Products

1. Identify and promote new spring wheat and durum products
2. Develop and market new white wheat products
3. Evaluate retail mixes

B. Increase State Mill Demand for Conventional and Organic Spring Wheat and Durum

1. Continue to grow our conventional spring wheat and durum business
2. Continue to grow our organic spring wheat and organic durum business
3. Focus on continuing to grow the whole wheat business
4. Assist current customers in the growth of their business and seek out new customers

C. Work with the Dakota Pride Cooperative, NCI, and other Agricultural Organizations

1. Assist Dakota Pride with identity preserved projects and Ag Identity joint ventures.
2. Facilitate Dakota Pride exports through the ND Trade Office
3. Explore additional partnerships for Dakota Pride Cooperative members
4. Identify and develop projects with other North Dakota agricultural organizations
5. Identify and promote synergies within NDM and NCI initiatives

D. Identify and Target New Export Opportunities

1. Increase export sales to current customers
2. Identify new conventional and organic export customers

Strategic Issue 2

Identify and Respond to Emerging Issues in the Flour Mill Industry

- A. Respond to Changing Grain Market Conditions and Increased Volatility**
 - 1. Investigate ways to refine our grain market risk management procedures
 - 2. Develop risk measurement calculations

- B. Develop a Strategy to Meet Grain Purchasing Needs During a Year With Reduced Planted Acreage**
 - 1. Implement strategies to originate grain from more distant North Dakota sources cost effectively
 - 2. Continue to develop additional contacts across North Dakota for sourcing wheat and durum

- C. Develop a Strategy to Manage Transportation Costs**
 - 1. Monitor the new fuel surcharge program for vans/trucks for effectiveness. Evaluate a plan to standardize a fuel surcharge for bulk trucks
 - 2. Work to minimize rail fuel surcharges
 - 3. Respond to BNSF marketing program changes
 - 4. Evaluate transload sites for cost and efficiency

- D. Monitor the Effects of Mergers of Major Competitors, Suppliers and Customers**
 - 1. Respond to current and potential customers who anticipate being affected by mergers
 - 2. Analyze possible effects of mergers on grain merchandising
 - 3. Evaluate the impact of competitor consolidation

- E. Address Customer Issues**
 - 1. Stay abreast of changing consumption patterns and react accordingly
 - 2. Stay abreast of emerging food safety issues

- F. Focus and Rapidly React to Current Critical Issues**
 - 1. Continue to monitor GMO wheat issues
 - 2. Address potential rail service issues that could impact customers
 - 3. Work with NDSU on wheat research issues
 - 4. Work with NCI to develop milling techniques to handle vomitoxin wheat

Strategic Issue 3

Increase Profitability

- A. Increase Gross Margins**
 - 1. Leverage our superior quality and brand recognition
 - 2. Evaluate causes and costs of problem shipments

- B. Minimize Plant Costs**
 - 1. Minimize energy costs
 - 2. Effectively manage overtime
 - 3. Decrease unscheduled downtime

- C. Minimize Freight Costs**
 - 1. Right size the rail car fleet for increased production capacity
 - 2. Maximize rail car loading weights
 - 3. Minimize demurrage costs

D. Upgrade Technology

1. Implement the paperless system
2. Evaluate designs for a new flour distribution system
3. Evaluate increasing packaging capacity
4. Identify, evaluate and acquire transportation management software

E. Improve Infrastructure

1. Explore increasing the grain storage capacity of the elevator
2. Evaluate ways to speed up grain unloading in the terminal elevator
3. Continue implementation of the electrical power distribution upgrade project
4. Evaluate the potential purchase of additional property
5. Flour tanks, track capacity

F. Explore Expansion Opportunities

1. Investigate possible acquisitions
2. Evaluate continued expansion of existing milling units
3. Evaluate feasibility of a new mill building

Strategic Issue 4

Grow our Customer Base

A. Maintain a Consistent High Quality Product

1. Emphasize high quality when purchasing wheat and durum
2. Optimize milling and blending procedures
3. Evaluate in house lab testing procedures and requirements

B. Continue to Improve our High Level of Customer Service

1. Continue to increase the exchange of information through electronic means
2. Continue to visit customers to improve relationships
3. Stress continued training for customer service and sales employees
4. Prepare for increased customer demand.

C. Identify and Target New Customers & Markets

1. Identify and target new potential dedicated spring wheat customers
2. Target new markets and consumer warehouse outlets to grow the retail business
3. Grow the bag and tote business

D. Maintain and Leverage our ISO 22000 Certification

1. Continue to focus on continuous improvement
2. Stay informed on ISO 22000 certification program changes
3. Pass our ISO 22000 certification surveillance audit

E. Review and Revise Marketing Strategies as Necessary

1. Review advertising media to optimize promotional opportunities for all industrial and retail products
2. Promote the functional differences between our products and those of the competition
3. Promote our industry leading level of customer service

Strategic Issue 5

Invest in our Employees

A. Promote Workplace Safety

1. Create awareness and instill safe work practices for all employees through orientation training and supervision
2. Conduct weekly department safety meetings
3. Correct all safety issues as soon as possible

B. Improve the Retention of our Workforce

1. Review and recommend market based compensation
2. Promote job satisfaction through recognition
3. Provide opportunities for upward mobility and job enrichment
4. Utilize the employee recruitment and retention plan

C. Recruit Quality People

1. Insure that compensation, working conditions and future opportunities compete with other similar companies
2. Actively seek out quality employees
3. Maintain professional hiring practices
4. Evaluate staffing needs due to business growth and attrition
5. Annually review the leadership succession plan

D. Enhance Workplace Communications

1. Promote communications between management and staff
2. Conduct annual performance reviews with employees
3. Improve communications with legislators and agricultural organizations/groups

E. Improve Job Performance Through Training

1. Emphasize the importance of growth and training during employee orientation
2. Review career objectives and identify training needs to achieve employee objectives
3. Record training activity and obtain employee feedback on training sessions
4. Train employees on all new software as appropriate

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

Mr. Taylor presented a report on 2015 Capital Projects as follows:

**NORTH DAKOTA MILL
Capital Expenditures for FY 2015
August 26, 2015**

<u>Capital Expense Item</u>	<u>Approved / Remaining Budget</u>	<u>Net Capital Cost</u>	<u>Under / (Over)</u>	<u>Completed Project Cost</u>
Plant				
* Electrical Power Distribution Upgrade	2,667,160	2,515,497	151,663	
Whole Wheat Mill Upgrade	103,533	90,147	13,386	176,615
* Retail Bag Packing Upgrade	510,336	438,673	71,663	
Payloader	280,000	256,551	23,449	256,551
* Old Warehouse Roof Upgrade	115,000		115,000	
Maintenance Shop Equipment	60,000	56,322	3,678	56,322

- 60k bu./hr. enclosed grain receiving pit, distribution conveyors, bulk weighing system	\$3,100,000
- 4000 ft. rail track addition	\$1,500,000
- Contingency	<u>\$600,000</u>
Total	\$6,400,000

Estimated Payback

- Reduced demurrage expense	\$1,100,000
- Increased truck unloading	507,600
Total	\$1,607,600

Payback Period 3.98 Years

2. Pellet Mill System \$440,000

The installation of an additional 150 horse power pellet mill system is required to allow for producing pelleted mill-feed from all milling units simultaneously when required.

This project will provide the necessary pelleting capacity for the G Mill and future expansions and provide needed redundancy to insure reliable operations.

3. Rail Car Cleaning Shed Extension and Doors \$360,000

Extending the rail car cleaning shed is necessary to provide an indoor area to clean additional bulk flour rail cars. This project replaces the doors at both ends of the train shed which are worn out to the point where replacement is required.

4. Payloader \$280,000

Our remaining 1983 Caterpillar model 950B payloader has been in continuous service for over 30 yrs. and has in excess of 30,000 hours on them. The two payloaders are used for clearing snow, moving railcars, construction projects and various other tasks. The other unit was replaced last year.

5. Rail Track Refurbishment \$275,000

Several areas of our rail track require refurbishment to prevent derailments and provide reliable operations.

6. Falling Number Analyzers (2) \$35,000

2 of our Perten falling number analyzers, used to test grain and flour quality, are worn out to the point where replacement is required

It was moved by Attorney General Stenejem and seconded by Commissioner Goehring that the Industrial Commission adopts the North Dakota State Mill 2016 Capital Plan as follows:

**NORTH DAKOTA MILL
 Capital Plan for FY 2016
 August 26, 2015**

Capital Expense Item		Remaining
Carryover from FY 2015		

	Budget
Plant	
Electrical Power Distribution Upgrade	\$ 151,663
Retail Bag Packing Upgrade	71,663
Old Warehouse Roof Upgrade	115,000
Propane Mixer System	271,425
E-Mill High Pressure Filter	75,000
G Mill Expansion Project	27,206,885
Flour Tank Expansion	4,390,000
Paperless ECM System	150,000
Total Carryover Capital Expenditures	\$ 32,431,636
FY 2016 Capital Expense Item	Plan
Plant	
High Speed Rail/Truck Wheat Unloading System	6,400,000
Pellet Mill	440,000
Rail Cleaning Shed Extension and Doors	360,000
Payloader	280,000
Rail Track Refurbishment	275,000
Falling Number Analyzer (2)	35,000
Computers/Technology	
Systems Improvements, replacements, and upgrades	150,000
Other	400,000
Total New Capital Expenditures	\$ 8,340,000
Total Capital Expenditures	\$ 40,771,636

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

Mr. Taylor gave an update on the G-Mill project. He said they hit a major milestone today with the pouring of the pile cap with about 1,000 yards of concrete that sits on the pilings. That concrete will dry over the next two or three weeks and then will begin slip forming after the forms are put together. They will then see real progress with the walls going up--it will go fast after that. In response to a question Mr. Taylor said there are nine floors on the highest part of the cleaning house and each floor is ten plus feet. He said they are very excited about the project and hope it will be up and running by early summer in 2016.

He provided the following two photos for the Commission's information.



Being no further State Mill business, Governor Dalrymple adjourned this portion of the meeting at 1:49 p.m. and the Commission took up Public Finance Authority business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA

A handwritten signature in blue ink, appearing to read "Karlene Fine". The signature is fluid and cursive, with the first name "Karlene" written in a larger, more prominent script than the last name "Fine".

Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on August 26, 2015 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also

Present: DeAnn Ament, Public Finance Authority
Jason Nisbet, Governor's Office
Michelle Mielke, Department of Agriculture
Brent Brannan, OGRP
Lynn Helms, DMR
Ed Murphy, DMR-Geological Survey
Dave Johnson, Nuverra
Ron Ness, ND Petroleum Council
Pat Fahn, Public Service Commission
Danette Nelson, OneOk
Jan Swenson, Badlands Conservation Alliance
Pamela Link, Laborers 563
Eric Dille, EOG Resources
Joel Noyes, Hess Corporation
Members of the Press

Governor Dalrymple called the Public Finance Authority portion of the Industrial Commission meeting to order at 1:50 p.m. following completion of State Mill business.

Ms. DeAnn Ament, Public Finance Authority Executive Director, presented a Clean Water State Revolving Fund Program loan request for Watford City in the amount of \$14,000,000 for Phase II of their waste water recovery facility. It will increase the capacity from 800,000 gallons per day to 1.6 million gallons per day. This is the second phase; the Commission approved a loan last year for \$19 million for the first phase. They are using revenue bonds as security for this loan, and are pledging the gross production tax should there be any shortfall in the 120 percent required coverage. The Advisory Committee recommended approval.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approves the following resolution:

RESOLUTION APPROVING
LOAN FROM CLEAN WATER STATE REVOLVING FUND

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Clean Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4 and 61-28.2; and

WHEREAS, the Clean Water State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the "Indenture"), between the North Dakota Public Finance Authority (NDPFA) and the Bank of North Dakota (the Trustee); and

WHEREAS, the City of Watford City (the "Political Subdivision") has requested a loan in the amount of \$14,000,000 from the Program to finance Phase 2 of a Wastewater Resource Recover Facility; and

WHEREAS, the NDPFA's Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of North Dakota as follows:

1. The Loan is hereby approved, as recommended by the Advisory Committee.
2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.
3. The Executive Director is authorized to fund the Loan from funds on hand in the Clean Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.
4. The Commission declares its intent pursuant to Treasury Regulations §1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

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

Ms. Ament presented a memorandum regarding two Clean Water State Revolving Fund Program loans approved by the Public Finance Authority Advisory Committee for the City of Jamestown in the amount of \$450,000 and the City of Oberon in the amount of \$175,000 as follows:

Re: Jamestown, Clean Water State Revolving Fund
Oberon, Clean Water State Revolving Fund

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

The committee reviewed an application from the City of Jamestown requesting a \$450,000 loan under the Clean Water State Revolving Fund (CW SRF) Program to finance the development of sanitary landfill cell 3BW. Total construction costs are estimated at \$450,000. The requested term for the CW SRF loan is 20 years. The City of Jamestown will issue revenue bonds payable with landfill user fees.

The committee reviewed an application from the City of Oberon requesting a \$175,000 loan under the Clean Water State Revolving Fund (CW SRF) Program to finance the removal and replacement of the City's only sanitary sewer lift station. Total construction costs are estimated at \$275,000 with CDBG providing a \$100,000 grant. The requested term for the CW SRF loan is 30 years. The City of Oberon will issue revenue bonds payable from sewer user fees.

The Public Finance Authority's Advisory Committee approved these loans at their August 19, 2015 meeting.

Ms. Ament presented the Capital Finance Program 2015C bond sale results as follows:

In our role as independent financial advisor to the North Dakota Public Finance Authority (the "Authority"), Public Financial Management, Inc. ("PFM") has carefully reviewed the structure and pricing of the Authority's \$38,280,000 Capital Financing Program Bonds, Series 2015C (the "Bonds"). The following is intended to serve as a summary of the bond sale.

Transaction Summary

The Authority competitively sold the Bonds on July 30, 2015 to provide moneys to lend to the City of Watford City through the purchase of approximately \$42 million of sales tax revenue bonds to finance the Watford City Event Center, to lend to the City of Zap through the purchase of approximately \$2,500,000 improvement bonds to finance street improvements and water tower rehabilitation, and to lend to the City of Rugby through the purchase of approximately \$500,000 water revenue bonds to finance water treatment plant improvements and upgrades (the "Borrowers"). The Authority received two bids, as summarized below.

<u>Bidder</u>	<u>Net Interest Cost</u>	<u>True Interest Rate</u>
Bank of America Merrill Lynch*	\$30,173,166.65	3.9959%
Hutchinson, Shockey, Erley & Co.	\$31,972,310.82	4.3820%

*Low bidder.

Spread to MMD

The following table shows the yields for the Bonds and their spread to the AAA Municipal Market Data (MMD) curve. The AAA MMD curve represents the valuation of AAA rated general obligation credits, assuming a 5.00% coupon, based on market activity in both the primary and secondary municipal bond market.

<u>Maturity</u>	<u>Yield</u>	<u>Spread to AAA MMD</u>	<u>Maturity</u>	<u>Yield</u>	<u>Spread to AAA MMD</u>
2016	0.55%	0.30%	2028	3.08%	0.55%
2017	0.85%	0.25%	2029	3.17%	0.56%
2018	1.15%	0.29%	2030	3.23%	0.55%
2019	1.25%	0.18%	2031	3.29%	0.55%
2020	1.53%	0.24%	2032	3.34%	0.55%
2021	1.83%	0.28%	2033	3.38%	0.55%
2022	2.18%	0.34%	2034	3.42%	0.55%
2023	2.35%	0.38%	2035	3.46%	0.55%
2024	2.53%	0.43%	2036	3.50%	0.55%
2025	2.70%	0.48%	2040	3.63%	0.56%
2026	2.89%	0.53%	2045	3.71%	0.57%
2027	3.00%	0.56%			

PFM reviewed the results of the Authority's Bonds with regard to prevailing market conditions, and it is our opinion that the interest rate scales, couponing, reoffering yields and underwriting

compensation received for the Bonds are fair and favorable to the Authority. The final pricing for the Bonds resulted in a gross underwriting spread of \$262,295.40 or \$6.85 per face amount of bonds.

We also opine that the Authority's Bonds were appropriately priced relative to other issues sold or trading in the secondary market during the same period. PFM believes that the final all-in true interest cost of 4.0844% for the Bonds is favorable to the Authority in light of prevailing market conditions. Additionally, PFM believes that these statistics are comparable to the interest rate levels of similar transactions sold either competitively or through negotiated placement in the market during the week of sale.

Standard & Poor's Ratings Group affirmed the Authority's outstanding "AA" credit rating prior to the receipt of bids.

We greatly appreciate the opportunity to have served as financial advisor to the Authority on the Bonds and we look forward to being of continued service on future financing transactions. As always, we will be available to respond to any questions you may have concerning the contents of this memorandum or on any part of the financing process.

Sincerely,
Public Financial Management

Ms. Ament reported on the conversations she has had with the Rice Lake Recreation Service District (District). She reviewed the Authority's current involvement with the District (CWSRF sewer system loan and disaster loans), the District's indebtedness to a local bank and to the REC's. The District has approached the Public Finance Authority asking for help in some type of financing in the amount of \$1.6 million. She has indicated that the District needs to find some backup for any type of financing they would do using assessments -- perhaps something from the Ward County Water Resource District or Ward County. She wanted the Commission to be aware that the Authority is looking for solutions for them but it appears that the District will need to have some backup security.

Governor Dalrymple said the Legislature did appropriate money to clean up what has already happened to the Lake and approximately \$2 million will be spent just cleaning up properties that are now in the water and can present a potential health hazard. In terms of a permanent solution -- there is still work to do to get a system that is going to be out of the water.

Ms. Ament asked for input on an Advisory Committee member. She discussed the present make-up of the Committee.

Being no further Public Finance Authority business, Governor Dalrymple adjourned this portion of the meeting at 1:59 p.m. and the Commission took up Oil and Gas Research Program business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on August 26, 2015 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also

Present: Brent Brannan, OGRP
Tom Erickson, EERC
Jay Almlie, EERC
Lynn Helms, DMR
Ed Murphy, DMR-Geological Survey
Dave Johnson, Nuverra
Ron Ness, ND Petroleum Council
Pat Fahn, Public Service Commission
Danette Nelson, OneOk
Jan Swenson, Badlands Conservation Alliance
Pamela Link, Laborers 563
Eric Dille, EOG Resources
Joel Noyes, Hess Corporation
Andrea Travnicek, Governor's Office
Jason Nisbet, Governor's Office
Michelle Mielke, Department of Agriculture
Members of the Press

Governor Dalrymple called the Oil and Gas Research Program portion of the Industrial Commission meeting to order at 2:00 p.m. following completion of Public Finance Authority business.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the Oil and Gas Research Fund Financial Report. She noted that there are two parts to it. The first page is the information for the 2015-2017 biennium and then the last page is the final report for the 2013-2015 biennium. The reports are as follows:

Oil and Gas Research Fund
Financial Statement
2015-2017 Biennium
August 26, 2015 Oil & Gas Research Council Meeting

	<u>Cash Balance</u>
July 1, 2015 Balance	\$ 4,419,836.98
Revenues through July 31, 2015 (2% of State's share of oil taxes)	\$ 00.00
Revenues from Abandoned Well Fund	\$ 00.00
Transfer to the Pipeline Authority Fund	\$ (00.00)
Expenditures through July 31, 2015	<u>\$(1,130,450.00)</u>
	\$ 3,289,386.98
Outstanding Administration Commitment*	\$ (522,909.72)
Outstanding Project Commitments as of July 31, 2015	<u>\$(9,254,956.67)</u>
Balance	<u>\$(6,488,479.41)</u>

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

Uncommitted Balance July 1, 2015	\$ 759,360.59
Carried Over Unused Administration Allocation	\$ 72,009.72
Projected Income from Project Applications & Interest	\$ 20,000.00
Revenues (2% of State's Share of Oil Tax Revenues)	\$10,000,000.00

Transfer from the Abandoned Well Fund for two studies	<u>\$ 2,000,000.00</u>
	\$12,851,370.31
Transfer to Pipeline Authority	\$ (200,400.00)
Administration Commitment*	\$ (522,909.72)
Approved Project Commitments 2015-2017	\$ (00.00)
Legislative Mandated Studies	\$ (2,000,000.00)
Carried over Project Commitments for 2015-2017**	<u>\$ (4,796,940.00)</u>
Available Funding	\$ 5,331,120.59

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

There is established a special fund in the state treasury to be known as the oil and gas research fund. Before depositing oil and gas gross production tax and oil extraction tax revenues in the general fund, property tax relief sustainability, strategic investment and improvements fund or the state disaster relief fund, two percent of the revenues must be deposited monthly into the oil and gas research fund, up to ten million dollars per biennium. All moneys deposited in the oil and gas research fund and interest on all such moneys are appropriated as a continuing appropriation to the council to be used for purposes stated in chapter 54-17.6.

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

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

Oil and Gas Research Fund
Financial Statement
2013-2015 Biennium
August 26, 2015 Industrial Commission Meeting

	<u>Cash Balance</u>
July 1, 2013 Balance	\$ 3,875,671.18
Revenues through June 30, 2015	\$10,009,945.38
Transfer to the Pipeline Authority Fund	\$(200,400.00)
Expenditures through June 30, 2015	<u>\$(9,265,379.58)</u>
	\$ 4,419,836.98
Outstanding Administration Commitment*	\$ (72,009.72)
Outstanding Project Commitments as of June 30, 2015**	<u>\$(3,588,466.67)**</u>
Balance	\$ 759,360.59**

Oil and Gas Research Fund
Continuing Appropriation Authority
2013-2015 Biennium

Uncommitted Balance July 1, 2013	\$ 000.00
Carried Over Administration Allocation	\$ 32,106.18
Projected Income from Project Applications & Interest	\$ 20,000.00
Revenues (2% of State's Share of Oil Tax Revenues)	\$10,000,000.00
Returned Commitments	\$ 20,056.03
Unused commitment from 2011-2013 biennium	<u>\$ 1,000,000.00</u>
	\$11,072,162.21
Transfer to Pipeline Authority	\$ (200,400.00)

Administration Commitment	\$ (332,706.00)
Approved Project Commitments 2013-2015	\$ (3,227,202.00)
Carried over Project Commitments for 2013-2015	\$ (6,542,439.00)
Available Funding	\$ 769,415.21**

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

There is established a special fund in the state treasury to be known as the oil and gas research fund. Before depositing oil and gas gross production tax and oil extraction tax revenues in the general fund, property tax relief sustainability, strategic investment and improvements fund or the state disaster relief fund, two percent of the revenues must be deposited monthly into the oil and gas research fund, up to ten million dollars per biennium. All moneys deposited in the oil and gas research fund and interest on all such moneys are appropriated as a continuing appropriation to the council to be used for purposes stated in chapter 54-17.6.

*This includes the remaining amount of \$39,356.50 owed on the NDSU Workforce Study

**This amount does not include research/education funding for:

Contract G-028-058 with \$1,100,000 to be expended in the 2015-2017 biennium;

Contract G-030-060 with \$3,027,250 to be expended in the 2015-2017 biennium;

Contract G-034-065 with \$669,690 to be expended in the 2015-2017 biennium.

She concluded her report by stating that the Commission does have funding available should they wish to fund the two research projects that are being presented today.

Mr. Brent Brannan, Oil and Gas Research Program Director, discussed the Oil and Gas Research Council recommendations for Grant Round 36 as follows:

G-036-01: TENORM Characterization and Disposal (Phase II); Submitted by Battelle Energy Alliance & Ceramic Cement Corporation; Project Duration 9 months; Total Project Costs \$900,000 - Phases IIA and IIB; Request for \$450,000 - Phases IIA and IIB: Council Recommendation is \$350,000 for Phase IIA with contingency. (A copy of the application, technical reviews and Director's recommendation is available in the Commission files.)

Mr. Brannan summarized the project as follows:

Phase 2A intends to demonstrate the Integrated Waste Screening System (IWSS) Bulk Characterization and Segregation technology being developed by Battelle Energy Alliance (BEA) and Volume Waste Screener (VWS) technology. The VWS technologies are designed to quantitatively characterize the Technologically Enhanced Naturally Occurring Radioactive Material (TENORM) content in picocuries per gram (pCi/g) of wastes and to segregate bulk containers of waste or loose debris at the drill site, collection site or the disposal site.

The IWSS-VWS processes will allow the TENORM wastes to be segregated and be disposed of at either licensed commercial or higher-level waste sites whereas <5 pCi/g wastes can be disposed of in commercial landfills or reused in other applications.

Mr. Brannon noted that the Council vote was 5 to 0 to fund with the contingency that the applicant adequately addressing and providing a written response to the questions and concerns made by the Technical Reviewers.

Mr. Helms noted that the applicant has proved in Phase 1 that the technology and the software works at a very small scale. Phase 2 will be to scale that up to container size so that a container going into a landfill

or sitting at a salt water disposal well could be checked with this technology. The plan would be to set up these systems at the landfill and screen and sort them. Rather than collecting a small sample from a large container full of potentially TENORM waste and send it off and wait 21 days for the results, the customer could drive it through this machine and in a few minutes know whether it met North Dakota's disposal rules or Montana's or how far it had to travel to be properly disposed of. Phase 2 would be to scale up what has been proven to work to container size.

In response to a question, Mr. Brannon said Phase 2 is a 6-month project.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Oil and Gas Research Council recommendation to fund the grant application "TENORM Characterization and Disposal (Phase II)" and authorizes the Industrial Commission Executive Director to execute an agreement with Ceramic Cement Corporation to provide Industrial Commission Oil and Gas Research Program funding in an amount not to exceed \$350,000 contingent upon the applicant adequately addressing and providing a written response to the questions and concerns made by the Technical Reviewers. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

G-036-02: Improved Characterization and Modeling of Tight Oil Formations for CO₂ Enhanced Oil Recovery Potential and Storage Capacity; Submitted by Energy and Environmental Research Center (EERC); Project Duration: 3 years; Total Project Costs: \$2,650,000; Request for \$400,000. Council Recommendation is \$400,000. (A copy of the handout, technical reviews and Director's recommendation are available in the Commission files.)

Mr. Brannan described the project as follows:

The EERC intends to use new reservoir characterization and laboratory analytical data and state-of-the-art modeling to determine the viability of using carbon dioxide for enhanced oil recovery (EOR) in the Bakken. The EERC aims to better understand CO₂ EOR potential in the Bakken by identifying various physical and chemical factors that affect CO₂ permeation into, and oil extraction out of, the matrix. It is also necessary to better understand CO₂ sweep efficiency, oil mobility, and transport through both the fracture networks and the rock matrix. The EERC proposes to address these needs by using samples collected from the tight, fractured reservoir and oil-wet, organic-rich shales within the Bakken system.

He indicated that the vote was 5 - 0 to fund.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Oil and Gas Research Council recommendation to fund the grant application "Improved Characterization and Modeling of Tight Oil Formations for CO₂ Enhanced Oil Recovery Potential and Storage Capacity" and authorizes the Industrial Commission Executive Director to execute an agreement with Energy and Environmental Research Center to provide Industrial Commission Oil and Gas Research Program funding in an amount not to exceed \$400,000. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Brannan discussed the Oil and Gas Research Council recommendation to hire the Energy and Environmental Research Center to conduct the \$500,000 study mandated by the Legislature in House Bill 1358 - Best Techniques for Remediating Contaminates from Soil Surrounding Legacy (1951-1984) Waste Pits in North Central North Dakota as follows: (A handout is available in the Commission files.)

Mr. Brannan provided the following review summarizing the process that he had followed--sending out the request for proposals, reviewing the two proposals that were received and the Council's recommendation.

REQUEST FOR PROPOSAL
DIRECTOR'S REVIEW

Pilot Program to Determine Best Techniques for Remediating Contaminates from Soil Surrounding Legacy (1951-1984) Waste Pits in North Central North Dakota (Section 9 of House Bill No. 1358 – 2015 Legislative Session)

Purpose

The Industrial Commission requested proposals from North Dakota research facilities to conduct a pilot program to determine the best techniques for remediating salt and any other contamination from the soil surrounding legacy (1951-1984) waste pits in North Central North Dakota reclaimed by trenching.

Excerpt from House Bill 1358: Section 9

The Industrial Commission shall use \$500,000 for the purpose of conducting a pilot program in conjunction with research facilities in this State to determine the best techniques for remediating salt and any other contamination from the soil surrounding waste pits reclaimed by trenching between 1951 and 1984 in the North Central portion of this State.

Submitted Applications and Review Process

We received two proposals: submitted by the Energy and Environmental Research Center (EERC) and North Dakota State University (NDSU). One additional recipient of the RFP declined to submit a proposal noting that one growing season was not sufficient time to conduct the work outlined in the RFP.

To assist in the review of the two proposals four independent confidential technical reviewers were tasked with reviewing each proposal and choosing the best proposal in meeting the requirements outlined in the law and in the RFP.

- Identified techniques should be utilized for at least one growing season.
- Research facility should consult with the Department of Mineral Resources and Northwest Landowners on site selection.
- Final report should include a list of best practices.
- Final report should include a long term management/monitoring plan for the Department of Mineral Resources – Abandoned Oil and Gas Well Plugging and Site Reclamation Fund oversight.

The confidential reviewers represented a diverse group of professionals in the areas of reclamation management, farming and ranching in North Dakota, soil science.

Results and Director's Recommendation

The review committee voted **3-1** in favor of the EERC proposal. In addition to funding the EERC proposal, I recommend additional State funding be considered toward best techniques for remediating contaminants from soil.

Conflicts of Interest

None

Oil & Gas Research Council Vote

The OGRC voted **3-2** in favor of the EERC proposal with 2 absent and not voting. In addition, the Council re-affirmed the need for complementary research and funding towards determining the best techniques for remediating contaminants from soil.

Mr. Helms reviewed the handout that showed the location of where the work was going to be done. He indicated that the brine pit was closed in 1981 and hasn't gotten any better over the years. The proposal

includes establishing a baseline in one portion of the area (immediately across the road) where there is non-impacted soil but they may do some testing. They plan to install drain tile in one portion of the area and in one area they would use surface amendments and perhaps irrigation and some new calcium enhancing technologies to try to move the sodium out of the soil there. In another part of the location they are planning to test something very new--some subsurface injection of water with amendments forcing the water into the impermeable soil--fracturing the clay to some extent to see if it could be made to work much faster than just native moisture and natural soil permeability. The concept would be to move the sodium down and out of the soil and subsoil to a drain tile system.

It was noted that to comply with the law they have to have this work done within one year so they can report to the Commission and the Legislature.

Mr. Helms indicated that it may be necessary for this project or other projects to be funded for multiple years and fortunately the Legislature set up funding for demonstration projects out of the Abandoned Oil and Gas Well Plugging and Site Reclamation Fund. If follow-up years are needed the first place we would go to is the Legislature and see if they would directly appropriate funds to do that but there is a mechanism by which the Commission could fund additional seasons if need be. He indicated that we hope to learn a lot in one growing season but he doubted if we will get it figured out in a single growing season. There may need to be follow-up on this along with many other reclamation projects -- particularly on legacy sites.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Oil and Gas Research Council recommendation to fund the proposal “Pilot Project to Remediate Soil Surrounding Legacy Brine Pits” and authorizes the Industrial Commission Executive Director to execute an agreement with the Energy and Environmental Research Center to provide Industrial Commission Oil and Gas Research Program funding in an amount not to exceed \$500,000. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Fine presented a memorandum for authorization to transfer funding from the Abandoned Oil and Gas Well Fund to the Oil and Gas Research Fund as authorized in House Bill 1358 as follows:

RE: Transfer of funds

House Bill 1358 and House Bill 1014 direct that two studies be done through the Oil and Gas Research Council/Fund utilizing dollars from the Abandoned Oil and Gas Well Plugging and Site Reclamation Fund. These two bills have slightly different language regarding the transfer of the monies. (see yellow highlighted sections of the law)

SECTION 8. TRANSFER - ABANDONED OIL AND GAS WELL PLUGGING AND SITE RECLAMATION FUND TO OIL AND GAS RESEARCH FUND - PRODUCED WATER PIPELINE STUDY - REPORT TO LEGISLATIVE MANAGEMENT. The director of the office of management and budget shall transfer the sum of \$1,500,000 from the abandoned oil and gas well plugging and site reclamation fund to the oil and gas research fund for the purpose of funding a special project through the energy and environmental research center at the university of North Dakota during the biennium beginning July 1, 2015, and ending June 30, 2017. The special project must focus on conducting an analysis of crude oil and produced water pipelines including the construction standards, depths, pressures, monitoring systems, maintenance, types of materials used in the pipeline including backfill, and an analysis of the ratio of spills and leaks occurring in this state in comparison to other large oil and gas-producing states with substantial volumes of produced water. The industrial commission shall contract with the energy and environmental research center to

compile the information and the center shall work with the department of mineral resources to analyze the existing regulations on construction and monitoring of crude oil and produced water pipelines, determine the feasibility and cost effectiveness of requiring leak detection and monitoring technology on new and existing pipeline systems, and provide a report with recommendations to the industrial commission and the energy development and transmission committee by December 1, 2015. The industrial commission shall adopt the necessary administrative rules necessary to improve produced water and crude oil pipeline safety and integrity. In addition, the industrial commission shall contract for a pilot project to evaluate a pipeline leak detection and monitoring system.

SECTION 9. TRANSFER - ABANDONED OIL AND GAS WELL PLUGGING AND SITE RECLAMATION FUND TO THE OIL AND GAS RESEARCH FUND - INDUSTRIAL COMMISSION. The office of management and budget shall transfer the sum of \$500,000, or so much of the sum as may be necessary, from the abandoned oil and gas well plugging and site reclamation fund to the oil and gas research fund, for the biennium beginning July 1, 2015, and ending June 30, 2017. The office of management and budget shall transfer the funds provided under this section at the request of the industrial commission. The industrial commission shall use the funding provided under this section for the purpose of conducting a pilot program in conjunction with research facilities in this state to determine the best techniques for remediating salt and any other contamination from the soil surrounding waste pits reclaimed by trenching between 1951 and 1984 in the north central portion of this state. The industrial commission may not require a research facility to provide matching funds to participate in the program authorized under this section.

With the selections having been made to conduct the two studies, I am requesting authority to ask the OMB Director to transfer the \$2,000,000 from the Abandoned Oil and Gas Well Plugging and Reclamation Fund to the Oil and Gas Research Fund at this time. As of the end of July there was \$11.5+ million in the Abandoned Well Fund.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission authorizes the Industrial Commission Executive Director to request that the Office of Management and Budget Director transfer \$2,000,000 from the Abandoned Oil and Gas Well Plugging and Site Reclamation Fund to the Oil and Gas Research Fund. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Tom Erickson and Mr. Jay Almlie, Energy and Environmental Research Center, updated the Commission on the Produced Fluids Gathering Pipeline Study. Mr. Almlie provided a powerpoint presentation that is available in the Commission file. Mr. Almlie indicated the following:

- The study was commissioned by HB 1358 and is really aimed at produced fluids, meaning crude oil and produced water brine.
- Work began as soon as the Governor signed the bill in April and EERC is more than midway through the study.
- The project itself is focused on conducting analysis of crude oil and produced water gathering pipelines and is broken into two phases as dictated by HB 1358.
- Phase I is a study is to 1) analyze the existing regulations on construction and monitoring of crude oil and produced water pipelines, 2) determine the feasibility and cost effectiveness of requiring leak detection and monitoring technology on new and existing pipeline systems and 3) provide a report to the Industrial Commission and the Energy Development and Transmission Committee of the Legislature by December 1 -- very compact timeline.

- Phase II is the demonstration also prescribed by HB 1358 which will be a pilot project to evaluate pipeline leak detection and monitoring systems in the field and show whether they indeed work or not and start to assess some true costs of additional pipeline leak detection mechanisms.
- Work began in May, the Industrial Commission contracting was completed July 1.
- Discovery work in this phase of this work is complete. Discovery work to the EERC means they have gone out learned what they could from industry, from different state entities, from landowners and other places. As the EERC has assimilated that knowledge, that's forming the foundation for the EERC report. Data collection, conference calls, site visits – EERC has been out there mainly with those who know – industry surveys have also helped.
- Nearly complete with the feasibility and cost effectiveness portion of this study -- the EERC is labeling that a techno-economic feasibility study (assessment) and that's going to be wrapped into the final report and report compilation has already begun.
- Stakeholders and DMR will review and comment on the draft report before it is submitted to the Commission.
- Recruiting for the demonstration phase has begun. They have formulated preliminary demonstration plans. Mr. Almlie noted that although the funding allocated was generous it was not enough to cover everything that needs to be done in the demonstration phase. EERC is going to need industrial partners, they already have a few onboard who have signed up and are willing to commit resources to help execute that pilot demonstration.

Mr. Almlie noted that trying to capture the complexity of gathering pipelines -- there are 6,500 miles of gathering pipelines in western North Dakota -- is no small task. The pipeline study itself is combing a lot of different areas that have overlap -- spills/leaks history; maintenance; regulations; construction /installation/abandonment; pipeline materials; processes and monitoring systems. EERC is trying to cover all those areas in this study to provide a robust report for the State.

Mr. Almlie indicated that they could not do this work without some industry insights (he provided a slide listing the entities that are providing input from the industry perspective). He stated that they include midstream players who operate the pipelines and several oil producers who are producing these fluids to be transported on the pipelines. We think this is a good foundation that is providing us with that broad data we need to ground this study in hard science. They have also solicited input from the Department of Mineral Resources, North Dakota Public Service Commission, North Dakota Pipeline Authority and the Northwest Landowners Association. They will also be contacting the Department of Agriculture--their pipeline ombudsman program.

Governor Dalrymple indicated that part of the idea of this study was to try to discover some leading edge technologies that are not commonly used or possibly not used at all right now and solicit input from manufacturers or people familiar with new technologies. He indicated that some of the things that he heard about last session were sonar, audio detection of changes in the fluid flow, the remote reporting of flow meter information directly back to a personal computer and other things had to do with automatic shutoffs in critical locations – that type of thing. He was hoping that EERC would be doing some discovery on technology.

Mr. Almlie said a good portion of this study will be focused on that kind of work. He did not highlight that part of the study today because it comes out of that techno economic feasibility study which is still in progress so he couldn't summarize that yet. The EERC is looking at what's being done presently, what could be done near horizon or near future and what could be done five or ten years down the road. One of the technologies of interest on many levels is the idea of using UAS for example, North Dakota is a leader in UAS technology – how can we apply that and that will be factored into this report.

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In response to a question regarding if they have made an attempt to identify and contact any small firms that are working on some of these ideas, Mr. Almlie said they have. There are some advanced systems just “on-the-cusp” right now. They have not talked to everyone that has an on-the-cusp technology but they have talked to some who are providing EERC with quotes so that the EERC can factor that into the demonstration phase. The EERC would like to demonstrate some of those on-the-cusp technologies.

Governor Dalrymple indicated that he was pleased to hear that because he considers it to be a very important part of the study.

In response to a question Mr. Almlie said they are aware of the acoustic wave technology but the EERC has not been directly involved with the companies that are doing that research.

Mr. Almlie concluded that they are on schedule. The EERC is going to have a robust report with Phase 1 completed on December 1.

Being no further Oil and Gas Research Program business, Governor Dalrymple adjourned this portion of the meeting at 2:29 p.m. and the Commission took up Department of Mineral Resources 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 August 26, 2015 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also

Present: Lynn Helms, DMR
Ed Murphy, DMR-Geological Survey
Dave Johnson, Nuverra
Ron Ness, ND Petroleum Council
Danette Nelson, OneOk
Jan Swenson, Badlands Conservation Alliance
Pamela Link, Laborers 563
Eric Dille, EOG Resources
Joel Noyes, Hess Corporation
Andrea Travnicek, Governor's Office
Jason Nisbet, Governor's Office
Michelle Mielke, Department of Agriculture
Brent Brannan, OGRP
Members of the Press

Governor Dalrymple called the Department of Mineral Resources portion of the Industrial Commission meeting to order at 2:29 p.m. following completion of Oil and Gas Research Program business.

Mr. Lynn Helms, Department of Mineral Resources Director, presented the first draft of comments which are due by September 11, 2015 on Bureau of Land Management's proposed rule to replace Onshore Oil and Gas Order No. 3, Site Security (Order 3) with new regulations. He noted that they had given a very short time frame for comments. He gave the following overview of the changes the Bureau of Land Management (BLM) is proposing to Onshore Order No. 3 and why the State of North Dakota is concerned:

- North Dakota is the No. 2 oil and gas producer in the nation;
- Having a tremendous amount of split estate situations with the federal government and federal minerals the State of North Dakota can often end up in a situation where the Commission is unable to administer its jurisdiction over oil and gas permitting and production.
- There is a proposed change in the language in part 31-61.1 which is BLM jurisdiction and that change potentially opens the door for the BLM to require federal drilling permits on any well within one of the Commission's communitized areas which in North Dakota they have adopted the Commission's spacing units as their communitized area. What that would mean is not just wells that penetrate federal minerals, like the rule is now, but potentially wells that drill only in private or only in state minerals would still have to get a federal drilling permit if there is any federal minerals in that unit. Attorney General Stenehjem noted that it is similar to the Hydraulic Fracking Rule. It purports to do the same thing – to extend those externalities to state and private minerals and surface. It would be a simple fix – if they just simply inserted “Site security measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements on” back into the proposed rule it would go back to the way it is now. The potential for the way they have rewritten it is that anything under BLM jurisdiction could be applied to any well that contains any amount of federal minerals in its spacing unit. That would be an enormous blow to North Dakota.

Attorney General Stenehjem asked if these proposed rule changes have the same kind of potential challenges, if they proceed, that the State has with the fracturing rules. Mr. Helms responded yes. Mr. Helms indicated that it was important to note that these comments are critical if it comes to the point where

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litigation is necessary to preserve the Commission's jurisdiction in these matters. You have to have commented and have those comments as part of the administrative record. The letter is long because the Commission needs to make sure that everything the Commission is concerned about gets into the administrative record. The Commission will then have a good case if BLM does not make the change. This little opening of the door was cleverly hidden in there.

Mr. Helms noted that this is not included in the comment letter because it is not Industrial Commission business but there is an additional concern if this turned out the way it potentially could is that if you were a private surface owner and there happened to be federal minerals in the spacing unit that a well on your land was going to be drilled into, you would now become subject to a full NEPA analysis being done. The externalities really stretch out here. It is important that the Commission's objections to this rule change be made known.

Mr. Helms stated that they are also saying that they are going to move away from state office or regional office approval of commingling and all of those will be approved in Washington D.C. and there will be a one size fits all standard. That has the potential to extend into how the Commission oversees oil and gas measurement and transportation because it will affect private and state wells within those communitized areas. That needs to be objected to as well.

Finally, the new record keeping requirements are going to slow things down substantially and that tends to cost production and jobs.

Mr. Helms indicated that his concern is that the Bureau of Land Management just doesn't listen to any of these concerns.

In response to a question, Mr. Helms indicated that the Onshore Order No. 3 proposed rule changes are about fifty pages.

Governor Dalrymple suggested a change to the letter that would be more forceful about the proposed changes that would prevent the Commission from regulating orderly development and protecting correlative rights. He suggested something like -- we intend to protect those rights in any way necessary -- not threatening them but letting them know that the Industrial Commission is very serious about this.

Mr. Helms said he agreed and suggested that the same type of statement also be included on the first page as well to let them know how concerned the Commission is about this state issue and protecting that right.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission submit the following comments due by September 11, 2015 on the Bureau of Land Management's proposed rule to replace Onshore Oil and Gas Order No. 3, Site Security (Order 3) with new regulations subject to final approval granted by signature:

U.S. Department of the Interior, Director (630)
Bureau of Land Management
Mail Stop 2134 LM, 1849 C St., NW
Washington, DC 20240,
Attention: 1004-AE15
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. 3, Site Security and amending portions of 43 CFR Part 3160 and adding a new Part 3170.

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 UIC Program; 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. However, many of the private lands in North Dakota upon which oil and gas development has occurred are split estate lands with more than 30% of the potential development drilling on private surface involving federal minerals and therefore subject to 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. However, 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 to private parties, but some or all of the mineral estates were retained by the federal government. This resulted in a very large number of small federally-owned mineral estate tracts scattered throughout western North Dakota. Because of this, it is typical for oil and gas spacing units in North Dakota to consist of a combination of federal, state, and private mineral ownership. A diagram of a hypothetical spacing unit with private, state and federal mineral ownership is attached as Exhibit 1.

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. These are on the Dakota Prairie Grasslands in southern McKenzie and northern Billings County as well as on the Fort Berthold Indian Reservation. See map, Exhibit 2. However, even within those areas federal mineral ownership is interspersed with a "checkerboard" of 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. 3 could have far-reaching adverse impacts on North Dakota's ability to administer its oil and gas regulatory program.

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

Expansion of Federal APDs to Non-Federal Wells in Federal Units and CAs: Current language in 43 CFR 3161.1 clearly states that only a subset of the regulations found in 43 CFR Part 3160 regarding site security, measurement and reporting of production apply to non-federal wells in units and CAs. However, under the proposed rule, *all* of Part 3160 regulations would apply to non-federal wells within units and CAs. Since the rule requiring APDs before drilling is located within Part 3160, operators would have to obtain federal APDs for non-federal wells

within a unit or CA. Requiring operators to obtain federal APDs would result in a substantial increase in federal regulation of state and fee oil and natural gas operations, and would also result in a significant increase in the amount of time required to obtain authorization to drill a state or fee well, leading to loss and delay in revenue and payments due to states. Even in circumstances where the federal mineral ownership is small relative to other mineral ownership interests within the spacing unit, all the oil and gas operators within the unit must conduct operations in accordance with the rules and guidelines pertaining to the development of federal minerals under the proposed rule. In order to comply with the additional obligations imposed by the proposed rule, operations on spacing units that contain any federal minerals will be substantially delayed. These delays will substantially frustrate North Dakota's efforts to produce nonfederal minerals. North Dakota Century Code § 38-08-01 requires the North Dakota Industrial Commission to support the development, production, and utilization of oil and gas while preventing waste of these resources and protecting the correlative rights of all owners. As illustrated by the attached hypothetical spacing unit (Exhibit 1) the proposed rule will impose federal requirements and permitting timelines on all wells drilled into the minerals of all owners in the spacing unit including state and fee minerals.

The NDIC strongly recommends that the proposed language in § 3161.1 Jurisdiction be revised as follows:

§ 3161.1 Jurisdiction.

The regulations in this part apply to:

- (a) All Federal and Indian onshore oil and gas leases (other than those of the Osage Tribe);
- (b) All onshore facility measurement points where Federal or Indian oil or gas is measured;
- (c) Indian Mineral Development Act agreements for oil and gas, unless specifically excluded in the agreement;
- (d) Leases and other business agreements for the development of tribal energy resources under a Tribal Energy Resource Agreement entered into with the Secretary, unless specifically excluded in the lease, other business agreement, or Tribal Energy Resource Agreement; and
- (e) Site security measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements on state or private tracts committed to a federally approved unit or communitization agreement as defined by or established under 43 CFR subpart 3105 or 43 CFR part 3180.

National Standards for Commingling Approvals: The proposed rule would also restrict the instances in which BLM could approve commingling and establish a national, fixed procedure outlining the instances in which commingling would be permitted. With specific and limited exceptions, the rule would generally prohibit the commingling of production from federal or Indian leases, unit participating areas, or CAs, unless all the properties proposed for commingling are 100% federal or leased 100% by the same Indian tribe, and at the same fixed royalty rate. This would require non-federal oil or natural gas to be separated out and measured separately, which would reduce the efficiencies that would otherwise accrue to CAs. The situations in which a well could be drilled on a drilling and spacing unit that encompasses different ownership would be prohibited unless authorized by BLM under specific exceptions.

New Recordkeeping Requirements: The proposed rule mandates a significant increase in recordkeeping, record retention and record submission requirements, and would expand them to transporters and purchasers, in addition to operators. The additional reporting will discourage development on federal lands as well as adjacent state and private lands, further reducing revenue to the state. A number of oil and gas operators in North Dakota will refocus their planned drilling activities to non-federal lands rather than confront the substantial delay and additional costs of complying with the proposed rule. The State of North Dakota could permanently lose billions of dollars in royalties and taxes. The relocation of oil and gas operators due to implementation of the proposed rule would also result in the loss of thousands of jobs.

Ultimately, these proposed rule amendments would prevent the NDIC from regulating the orderly development of the spacing unit for prevention of waste and from pooling to protect the correlative rights of the various owners in the spacing unit. The State of North Dakota intends to defend its sovereign jurisdiction over prevention of waste and pooling to protect the correlative rights in any manner necessary.

Sincerely,

North Dakota Industrial Commission

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

During the discussion on the proposed letter Mr. Helms and Attorney General Stenehjem indicated that in the BLM's Hydraulic Fracturing Rule case the Record of Decision is to be delivered to the judge on Friday. It is 30,000 pages long. The State has to do a document search to see if its comments got in there and then the State has 7 days to respond.

Mr. Helms presented a draft request for extension to submit comments on the Environmental Protection Agency's 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 last week a set of rules came out from EPA under four different dockets that intend to deal with methane emissions from the oil and gas industry. Staff has started looking at them--they are just one page shy of 1,000 pages. It appears EPA took a long time writing these but only gave us sixty days to comment. He said the letter he is asking them to approve today is a request for a 180 day extension of that comment period so we can provide constructive comments on the four rules that make up this package which is control technologies for methane emissions from the oil and gas industry.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission submit the following request for an extension to the EPA's August 2015 Proposed Rules and Draft Control Technique Guidelines for the Oil and Natural Gas Industry:

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

Attention:

Docket ID No. EPA-HQ-OAR-2010-0505

Docket ID No. EPA-HQ-OAR-2015-0216

Docket ID No. EPA-HQ-OAR-2013-0685

Docket ID No. EPA-HQ-OAR-2014-0606

Dear Sirs:

On August 18, 2015 the Environmental Protection Agency (EPA) released the August 2015 Proposed Rules and Draft Control Technique Guidelines for the Oil and Natural Gas Industry:

- Proposed New Source Performance Standards – Docket ID number EPA-HQ-OAR-2010-0505
- Draft Control Techniques Guidelines – Docket ID number: EPA-HQ-OAR-2015-0216
- Proposed Source Determination Rule – Docket ID number: EPA-HQ-OAR-2013-0685
- Proposed Federal Implementation Plan for Implementing Minor New Source Review Permitting in Indian Country – Docket ID number: EPA-HQ-OAR-2014-0606

The EPA indicated they would take written comments for 60 days after the proposals were published in the Federal Register.

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.

Approximately one-third of the State's production is from Fort Berthold Indian Reservation and an additional approximately 5% of the State's production is from federal minerals on the Dakota Prairie Grasslands.

The North Dakota Industrial Commission (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 UIC Program; and all other operations for the production of oil or gas.

The documents listed under the four dockets above constitute approximately 1,000 pages that must be reviewed in order to submit constructive comments from the NDIC.

Because of the State of North Dakota's significant oil and gas production and experience in the regulation of oil and gas and the importance of the oil and gas industry to our citizens, the NDIC respectfully requests a 180 day extension of the comment period in order to facilitate the submission of constructive comments.

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

Ms. Fine provided as background information the current policy regarding Gas Capture as follows:

North Dakota Industrial Commission Order 24665 Policy/Guidance

Policy Goals:

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

Action items:

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

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

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

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

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

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

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

The Commission has established the following gas capture goals:

74% October 1, 2014 through December 31, 2014

77% January 1, 2015 through December 31, 2015

85% January 1, 2016 through September 30, 2020

90% beginning October 1, 2020

95% future potential

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

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

- 1) All infill horizontal wells, including overlapping spacing units, completed in a Bakken, Bakken/Three Forks, and/or Three Forks Pool are allowed to produce at a maximum efficient rate for 90 days.
- 2) The operator is allowed to remove the initial 14 days of flowback gas from the total monthly volume calculation.
- 3) The operator is allowed to remove from the total monthly volume calculation gas volumes flared from wells already drilled and completed on the date a force majeure event occurs if the event is properly documented in writing by the gas gathering company.
- 4) The Commission recognizes the following as surplus gas being utilized in a beneficial manner that may be considered as captured gas:
 - a. Equipping the well(s) with an electrical generator that consumes surplus gas from the well
 - b. Equipping the well(s) with a system that intakes the surplus gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting the propane and heavier hydrocarbons
 - c. Equipping the well(s) with other value-added processes as approved by the Director which reduce the volume or intensity of the flare by more than 60%.

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

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

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

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

Penalty provisions:

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

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

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

Mr. Helms said following the Commission's adoption of the Flaring Policy and Guidelines on March 24 of this year, the Flaring Task Force met numerous times to talk about the status of gas capture. Mr. Helms distributed a handout (a copy is available in the Commission files) which on the front side shows what the Flaring Task Force has requested and the back page is his recommendation. He said the oil and gas operators will begin to formulate or will be finalizing their 2016 budgets the fourth quarter of this year so they very much need an answer from the Commission by October 1 if they are going to make any adjustments to the current policy.

Mr. Helms outlined what the Gas Flaring Task Force has asked:

- The 85% capture target set to take effect January 1 be extended out for two additional construction seasons which would mean October 1, 2017 through September 30, 2020. It would remain at 77% until then and state the reasons why.
- The Commission move from a monthly reporting to a quarterly reporting requirement so that the goals would be imposed rather than on a month by month it would be quarter by quarter
- If there is any way that a system could be set up to give them credit for months they exceed the gas capture goals and they could carry those credits forward to help them out for a problem month.
- The Commission allow administrative approval for flaring exemptions on small pads (i.e Federal locations)
- The Commission look at drilled but not completed wells

In response to a question regarding what a problem month would be, Mr. Helms said a problem month would be a situation where a compression facility ran out of capacity and it was not a force majeure but due to maybe no fault of their own, a right of way stalemate and they were unable to meet the goal. In that instance they could use that banked capture credit to reach the goal for that one month.

Mr. Helms indicated that he is recommending something significantly different. His recommendation is as follows:

- Extend the 85% capture target one construction season to October 1, 2016
- Continue monthly reporting and production adjustments.
- Evaluate an administrative process that would allow individual operators to accumulate up to 3 months gas capture credit that could be applied to a problem month
- Allow applications for exemptions on Federal locations with pad size limitations to be heard on the administrative docket.

He indicated that when staff looked at quarterly reporting they asked industry if they were below the gas capture goals for a quarter, if they were willing to have production restrictions for a quarter and they were not. The request was actually to average your gas capture for 90 days but only be restricted for 30 days and the staff did not see that working. He recommends continuing with the monthly reporting.

He indicated it is worthwhile to evaluate a process that would allow operators to accumulate up to three months of gas capture credit that they could apply to a single month. When the staff looked at this they were concerned that a company could accumulate enough capture credits that there might be a month where they would just flare everything so there has to be some kind of a cap on it, if we do it at all. However, they thought they should look at it.

He indicated that exemptions on these federal locations where there are pad size limitations, just physical limitations due to federal permitting, makes sense. The staff would hear those on the administrative docket, they would still have to file evidence and reasons why but they would be approved on the administrative docket the same way that the staff does exemptions from 6.4 or salt water disposal wells but only those.

Mr. Helms stated that is his recommendation based on the situation that industry presented: Unpredicted, continuing low commodity price environment; slowdown in midstream build out, a shift in rig concentration and changing gas volumes.

In response to a question, Mr. Helms indicated that for gas gathering the construction season is from harvest to late October -- about six weeks for laying gas gathering pipelines because the last thing you want

to do is scrape off a 50 or 100 foot wide right of way through someone's grain field if you are going through a field. In pasture land the construction season is longer - June to the end of October but it is very short. It was noted that weather is a consideration in North Dakota and that easements continue to be a problem.

In response to a question regarding why the original plan doesn't work or what happened, Mr. Helms said it comes down to three factors:

- Gas production is almost twenty percent above what was projected when the Task Force brought this plan to the Commission. Gas production is much higher. It was noted that this is partly due to the companies concentrating their drilling to their best prospects. Along with additional oil they are getting more gas than they would typically get.
- Two enormous infrastructure projects fell by the wayside and a third one is struggling to come in on time. The Hawkeye crossing that would move about 50 million cubic feet per day across the river to the gas plant, due to federal permit delays, will not be completed this construction season. Federal permit delays by the BLM and the US Corps of Engineers. A three year delay which is unbelievable and they still do not have US Corps of Engineer approval. The second one was the Long X Pipeline which would have moved 40 million cubic feet a day out of Dunn County to Demmicks Lake. They were unable to get right of way from the Corps of Engineers, the Forest Service or the Three Affiliated Tribe. So they had to substitute a new gas plant for that and what would have been a pipeline in place this fall is now a gas plant coming on-stream the fourth quarter of next year. Lonesome Creek's 200 million a day gas plant is scheduled to come on sometime in January but it is a winter weather gas plant startup and almost certain to have problems.
- A rolling compression shut down that's going to begin September 1 and it is going to affect compressors all the way from Crosby to Killdeer. Mr. Helms handed out a letter from OneOk, the major gas gatherer, which was sent out just a few days ago saying beginning September 1 their facilities are full. Beginning September 1 all of their compressor stations from Crosby to Killdeer are going to have two week reductions and force everybody to flare. There is almost no company that won't be impacted. In response to a question Mr. Helms indicated that this will not be temporary--it will extend all the way through to when the Bear Creek plant becomes operational--through October 1, 2016. Mr. Helms said he had the gas measurement staff quantify this to give the Commission an idea what dealing with this on an individual company by company process would look like. It would impact at least 22 operators which means that for the next 13 months the Commission would have at least five applications for flaring relief involving 1,000 to 1,500 wells every month until they work through this. It is really going to reach out and touch virtually the whole industry. Those who planned carefully and eliminated their rigs early and are meeting the 85% goal are going to get hit by these compressor shut downs just as hard as the people who didn't. It really does call for an across the board modification of some kind.

It was discussed that the right of way issues with the federal government and the tribe were almost like a force majeure--they could not have anticipated having that much trouble getting a right of way. These are things that are out of their control, unavoidable and unanticipated delays. Mr. Helms responded that is why they need one more construction season to get to that 85% goal. Getting there on January 1 has become almost impossible and they need one more construction season to meet that.

Governor Dalrymple raised the question if there was another way to look at this. Under the current order the Commission has a jump from 77% to 85% in a fairly short period of time. He noted that there is a long period of time--nearly four years before we get to 90%. So if the Commission's goal was ultimately to get to 90% within four years would it be valid to look at the progression to that goal? We would not be

changing the overall goal but we can talk about the timetable and, in fact, maybe we can get more in return in terms of where we wind up. Maybe we can get to 90% a little sooner?

Attorney General Stenehjem said from the beginning the Commission has said we wanted flaring reduced. The Commission did not come up with the plan, industry did. They came up with the time schedule. To their credit it was a good and robust plan. It is certainly reasonable to understand that problems occur that might make it more difficult as we move towards our goal and that we might have to adjust it. He wondered what does the public get, what do the gas owners get in exchange for recognizing that some relief may be sensible? He suggested that perhaps there should be some discussion of a greater reduction at the end than what is in the current policy or an earlier date or both and that be considered at the September Industrial Commission meeting.

Mr. Helms indicated that he liked the idea of asking industry if they are given an additional construction season would they be willing to give one or two percent more capture. Rather than sitting at 85% for five years could they make more progress earlier? Mr. Helms stated it was a very aggressive plan and they were working to get to the goals but they hit the right of way and the plant startup problems and they are letting us know early enough so that we can do something about it. Industry sees it as essentially impossible to get to the current January 1, 2016 goal.

It was noted that the market plays a role in this. Who could have anticipated \$39 oil? Two years ago there was not enough propane in the State and people were paying \$5.00 plus per gallon for propane and today gas plants are letting it go for five cents there is so much. Those numbers impact the building of needed infrastructure.

There was discussion regarding the 3 months gas capture credit. Mr. Helms indicated that it has been suggested that you might want to look at it like roll over minutes. If you don't use of all your minutes in a month you can roll them over to the next month. You could have three months of roll over minutes and then they expire. The staff will need to further develop this concept and determine how it would be handled administratively.

There was some discussion about whether this should be looking at this company by company. Mr. Helms indicated that the Task Force did not have total consensus on their proposal but there are very few companies that are in a position to meet the 85% goal. Now because the rolling compression shutdown is impacting every company, he is recommending an across the board modification is needed.

The discussion concluded with Mr. Helms being asked to go back to the Gas Flaring Task Force and ask them to:

- document the series of events that have caused this situation - what are the reasons or events that have taken place that they reasonably could not have anticipated and
- what can they do to step up their game if they get an extension;

and then bring that information back to the Commission at their next meeting.

After discussion it was indicated that Mr. Helms should also bring back more information about the concept of the 3 months gas capture credit. Mr. Helms said it would reward those operators who work hard to get above the goal to have some roll over credits they could use in case of an emergency.

Mr. Helms reviewed the presentation of the Department of Mineral Resources' Senate Bill 2343 findings as follows: (A complete copy of the attachment is available in the Commission files.)

**Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015
SENATE BILL NO. 2343**

(Senators Triplett, Mathern, Warner) (Representative Onstad)

AN ACT to create and enact a new section to chapter 54-17 of the North Dakota Century Code, relating to a report on the fiscal impact of certain actions by the industrial commission to the legislative assembly or budget section; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

Report to legislative assembly or budget section on the fiscal impact of certain actions of the industrial commission.

If any order, regulation, or policy of the industrial commission to implement the provisions of chapter 38-08, excluding spacing unit orders, has a fiscal effect or estimated fiscal effect on the state in excess of twenty million dollars in a biennium, the industrial commission shall report to the legislative assembly when in session and otherwise to the budget section of the legislative management on the fiscal impact of the effect of the action on state revenues and expenditures, including any effect on the funds of the industrial commission.

SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively to actions of the industrial commission made after July 31, 2013, and applies specifically to the orders of the industrial commission on flaring. The industrial commission shall report on the fiscal impacts of past orders within ninety days of the effective date of this Act.

Findings 8/26/15

Based on oil prices utilized in the final 2015-2017 biennium revenue forecast an action of the industrial commission implementing the provisions of chapter 38-08 would have to effect oil production more than 5,915 barrels of oil per day over the entire biennium to have a fiscal effect or estimated fiscal effect on the state in excess of twenty million dollars in the biennium.

The industrial commission has taken 223 actions to implement the provisions of chapter 38-08, excluding spacing unit orders, after July 31, 2013. Those actions include two policy decisions and the 221 orders shown in the attachment.

None of those industrial commission actions has effected oil production more than 5,915 barrels of oil per day over the entire biennium or otherwise had a fiscal effect or estimated fiscal effect on the state in excess of twenty million dollars in the biennium.

- Sincerely,

Director, Department of Mineral Resources

Mr. Helms said the legislative assembly passed SB 2343 which requires reporting on any individual action that the Commission has taken since July 31, 2013 that will have a revenue impact to state revenues of greater than \$20 million. The conclusion was the Commission action would have to affect production by

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more than 5,915 barrels of oil per day over the entire biennium to reach that \$20 million fiscal effect and none of the 223 actions did. That is the report he will submit to the Legislative Council.

Mr. Helms discussed the analysis they had done on the Oil Conditioning Order. When they evaluated the change in liquid content of the gas coming into the gas plants as reported to the Division there was a substantial change after April 1 when that Order took effect. It went up by 4,700 barrels a day of liquids. When we broke those down from the analysis that they do it is 50% propane and 30% butane and about 20% pentane+. So there is some proof in these numbers of what oil conditioning has done. It moved a substantial amount of propane and butane out of the crude oil into the gas gathering system where the Commission wanted it to go to create a stable crude oil product or what API calls a stable crude oil product. Someday when somebody asks about the conditioning program there is some hard information that can be shared.

Mr. Ed Murphy, State Geologist, presented and reviewed the DMR - Geological Survey Quarterly Report. (A copy of the report is available in the Commission files.)

Being no further Department of Mineral Resources business, Governor Dalrymple adjourned this portion of the meeting at 3:30 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 August 26, 2015 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also

Present: Eric Hardmeyer, Bank of North Dakota
Tim Porter, Bank of North Dakota
Kaylen Hausauer, Bank of North Dakota
Tom Redmann, Bank of North Dakota
Jason Nisbet, Governor's Office
Michelle Mielke, Department of Agriculture
Members of the Press

Governor Dalrymple called the Bank of North Dakota portion of the Industrial Commission meeting to order at 3:38 p.m. following completion of Department of Mineral Resources business and a short break.

Mr. Eric Hardmeyer, Bank of North Dakota President, introduced Tim Porter to go through the amendments on the Funds Management Policy.

Mr. Tim Porter, Bank of North Dakota Senior Vice President, stated that this is the Commission's annual review of the policy. The proposed changes bring the Bank's policy in line with what the Bank's current practices are as well as to meet the requirements of Dodd-Frank. He went through the following Funds Management Policy noting the reasons for the amendments:

BANK OF NORTH DAKOTA
FUNDS MANAGEMENT POLICY

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STATEMENT OF PURPOSE

The purpose of this Policy is the implementation and on-going management of an effective and prudent **Funds Management Process** for the **Bank of North Dakota**. Funds management, as defined by this Policy, is the coordination of the primary Asset Liability Management, to achieve the objectives established by the **Funds Management Committee (FMC)**. To achieve this objective, this Policy consists of four sections:

- Net Interest Income**
- Balance Sheet Liquidity and Funding**
- Investment Portfolio Management**
- Off Balance Sheet Hedging**

Management believes a sound **Funds Management Policy** must be developed as an effective management tool. An effective policy will identify senior management objectives, set minimum performance targets, establish prudent guidelines for balance sheet management and advance strategies which ensure short and long term goals are achieved.

MISSION STATEMENT

The mission of the Bank of North Dakota is:

To deliver quality, sound financial services that promote agriculture, commerce and industry in North Dakota and provide consistent financial return to the State of North Dakota.

FUNDS MANAGEMENT COMMITTEE RESPONSIBILITIES

- RESPONSIBILITIES:** The **Funds Management Committee** is charged with the following responsibilities:
 - Identify and implement an effective and appropriate Interest Rate Risk Management Information System
 - Prepare agenda for the Funds Management Committee
 - Prepare reports and information for the Funds Management Committee
 - Net Interest Income Management – static and dynamic gap, rate sensitivity, and net interest income simulation reports
 - Balance Sheet Liquidity Management – short and long term liquidity ratios and alternative funding sources
 - Investment Portfolio Management – portfolio asset allocation, repricing, and credit rating reports
 - Off Balance Sheet Hedging – modify or adjust interest rate risk
 - Develop current Funds Management strategies, including interest rate risk, liquidity and investment portfolio management
 - Communicate Funds Management strategies to appropriate institution personnel for implementation
 - Monitor current positions to ensure compliance with established Policy objectives, strategies and guidelines
 - Evaluate current strategies and guidelines to ensure objectives are achieved
 - Review BND's Three Year Financial Plan at least annually
 - Present Financial Plan to BND's Advisory Board at least annually

FUNDS MANAGEMENT COMMITTEE MEMBERS

- MEETING SCHEDULE:**
 - Monthly

- FMC MEMBERSHIP:**

The Funds Management Committee will be chaired by the CFO/SVP of Accounting & Treasury who will also designate the committee members. At a minimum, the Funds Management Committee will include the President, CFO/SVP of Accounting & Treasury, CLO/SVP of Lending, and Treasury Manager.

SECTION # 1

NET INTEREST INCOME MANAGEMENT

BND's long term objective is to establish effective Interest Rate Risk Management which will achieve the following objectives: 1) protect net interest margin and 2) maximize net interest margin, within prudent guidelines, over the long term. This Interest Rate Risk Management will monitor and measure risk within the parameters of the Funds Management Policy. Net Interest Income risk parameters are purposely more conservative than required. The risk parameters are measured using both parallel and nonparallel shifts of interest rates, and a dynamic balance sheet, on a monthly basis. The process is also performed using a constant balance sheet, or 'no growth scenario', with results presented no less frequently than quarterly. Although parallel shifts provide the most conservative view of interest rate risk, the most likely results of interest rate movements will be reflected using nonparallel shifts in interest rates. To demonstrate the impact of both parallel and nonparallel shifts, the Bank will report NII impacts under the following scenarios: 1) the full balance sheet will be shocked using both a parallel and nonparallel shift using current liability betas; 2) the full balance sheet will be shocked using a parallel and nonparallel shift and the current liability betas are raised to illustrate a more stressed scenario; and 3)

the full balance sheet will be shocked using a parallel and nonparallel shift, and will also include a rate ramp to illustrate a more realistic or anticipated move in interest rates – current liability betas unchanged. Exception to policy will occur when the impact on net interest income from both parallel and nonparallel shifts exceeds the acceptable levels outlined in the guide lines below. Management will implement strategies to achieve the above listed short and long term objectives.

INTEREST RATE RISK MANAGEMENT GUIDELINES / PARAMETERS:

TIME PERIODS	ACCEPTABLE CUMULATIVE GAP RANGE AS A % OF TOTAL ASSETS	ACCEPTABLE MAX NET INTEREST INCOME VARIANCE AS A % ANNUAL NET INTEREST INCOME +/- 200 B.P.	ACCEPTABLE MAX NET INTEREST INCOME VARIANCE AS A % ANNUAL NET INTEREST INCOME +/- 400 B.P.
0 - 90 DAYS	N/A GUIDELINES	N/A	N/A
91 - 365 DAYS	+/- 30% OF TOTAL ASSETS	12.50%	25.00%
2 YEAR	+/- 20% OF TOTAL ASSETS	12.50%	25.00%
3 YEAR	+/- 20% OF TOTAL ASSETS	N/A	N/A
4 YEAR	+/- 20% OF TOTAL ASSETS	N/A	N/A
5 YEAR	+/- 20% OF TOTAL ASSETS	N/A	N/A
5+ YEAR	+/- 20% OF TOTAL ASSETS	N/A	N/A

It should be noted that the above table incorporates 2 metrics: GAP and Net Interest Income. The Bank currently models GAP for time periods 0 days through 20+ years, thus the parameters as defined. The GAP report is presented to the Funds Management Committee monthly. As it relates to net interest income and simulation reports, the Bank currently models earnings impacts for a time horizon up to 2 years, thus the “N/A” designation for years 3 through 5+. As noted above and in the paragraph preceding the above table, multiple scenarios will be run to monitor net interest income. These scenarios and simulations will be run in rotation, with each being presented to the Funds Management Committee no less frequently than quarterly.

In addition to, and related to interest rate risk management as discussed above, the Bank monitors the valuation of equity with respect to changes in interest rates. Managing equity at risk involves the measurement of what is commonly referred to as Economic Value of Equity, or EVE. This is the economic concept that gauges the impact of interest rate changes on the fair market value of assets, liabilities, and equity. The economic value approach provides a supplement to the earnings approach (net interest income as noted above) because of its focus on anticipated cash flows and the incorporation of balance sheet optionality as a result of changing interest rate environments. Monitoring changes in EVE is valuable in that it provides a comprehensive measurement of interest rate risk. The following table sets forth Policy guidelines/parameters. Results of EVE modeling will be compared in relation to these parameters, and presented to the Funds Management Committee no less frequently than quarterly.

ECONOMIC VALUE OF EQUITY GUIDELINES / PARAMETERS:

ACCEPTABLE RANGE OF ECONOMIC VALUE OF EQUITY +/- 100 B.P. ≤15%	ACCEPTABLE RANGE OF ECONOMIC VALUE OF EQUITY +/- 200 B.P. ≤25%	ACCEPTABLE RANGE OF ECONOMIC VALUE OF EQUITY +/- 300 B.P. ≤35%	ACCEPTABLE RANGE OF ECONOMIC VALUE OF EQUITY +/- 400 B.P. ≤45%
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NET INTEREST RATE RISK MANAGEMENT: MODEL ASSUMPTION REVIEW, BACK-TESTING, MODEL VALIDATION, AND INDEPENDENT REVIEW

A sound Funds Management Policy also incorporates a review of current modeling assumptions, performing back-testing of the model, model validation, and an independent review. These processes ensure that outputs generated from the model are reasonable, assumptions within the model are consistent with current practices and the environment, and that the Committee can rely on the model reporting to make accurate business decisions. Model assumption review, back-testing and model validation will take place at least annually; while an independent review of the model will be conducted in conjunction with the Internal Audit schedule.

SECTION # 2
BALANCE SHEET LIQUIDITY & FUNDING MANAGEMENT

BND's objective is to establish effective liquidity and funds management that will balance the objectives of 1) maintain adequate and prudent liquidity levels for operations and fund earning assets 2) maximize utilization of the balance sheet and 3) minimize funding costs.

- LIQUIDITY PARAMETERS**

> 1	LONG TERM LIQUIDITY	Cash, FF Sold Marketable Securities & Unused AFS (FHLB, FF Lines, Large Funding CD's {(Brokered)}, Fed Discount Window, Designated Loan Sales) <hr style="width: 20%; margin: 0 auto;"/> Total Deposits + Borrowings	25% MINIMUM
> 2	SHORT TERM LIQUIDITY	FF Sold & marketable securities (<360) & Unused AFS (FHLB, FF Lines, Large Funding CD's (Brokered), Fed Discount Window, Designated Loan Sales & Repos for securities > 360 days,) <hr style="width: 20%; margin: 0 auto;"/> Volatile Liabilities (deposits deemed volatile, FHLB borrowings, FF Purchases, Repos – all <360 days)	100% MINIMUM
> 3	BALANCE SHEET UTILIZATION	Net Loans <hr style="width: 20%; margin: 0 auto;"/> Earning Assets	90% MAXIMUM

These parameters are presented and monitored quarterly at Funds Management meetings.

FUNDING MANAGEMENT: RISK GUIDELINES

- Alternative funding sources (AFS)**

APPROVED ALTERNATIVE FUNDING SOURCES	DIVERSIFICATION PARAMETERS
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FHLB Borrowings/Advances	35% of Total Assets - Maximum
Fed Funds Borrowings (national market)	10% of Total Assets - Maximum
Brokered CD's	20% of Total Assets - Maximum
Designated Loan Sales (Type / Term)	10% of Total Assets - Maximum
Repos	8% of Total Assets - Maximum
Fed Discount Window	20% of Total Assets - Maximum
MAXIMUM ALTERNATIVE FUNDING SOURCES AT ONE TIME:	70% OF TOTAL ASSETS - MAXIMUM

The proper mix of AFS depends upon many factors, including asset-liability match, anticipated funding needs (permanent versus seasonal), and economic and market forecasts. Within these parameters, BND evaluates all available funding sources and the respective costs associated with each source. BND monitors its funding concentrations within the diversification parameters set for each funding source and annually tests the market for the availability of each funding source.

FUNDING MANAGEMENT: CONTINGENCY PLANS

LIQUIDITY CONTINGENCY FUNDING PLAN:

The CFO/Senior Vice President of Accounting & Treasury Services monitors BND's liquidity position on a daily basis and presents reports summarizing BND's liquidity strategy to the FMC on a quarterly basis. These reports provide a forward-looking analysis of BND's liquidity ratios, off-balance sheet contingencies, and Contingency Funding Plan using projections obtained from the Asset Liability model and Lending Service's Off-Balance Sheet Risk Report. This analysis will provide a corrective action plan should the ratios fall outside of the policy parameters in any of the given time periods (1 month, 6 months, and 1 year).

BND's Contingency Funding Plan and a sample of the Liquidity Report and Off-Balance Sheet Contingency Report is attached as Exhibit A.

The above liquidity ratios expand and diversify liquidity sources and provide greater flexibility to management in maintaining adequate liquidity sources. These tools and resources are designed to increase liquidity sources and thus increase the capacity of this institution to fund current earning asset levels. Should any parameters be exceeded, management must take necessary but prudent steps to ensure eventual compliance. When an exception occurs, management will evaluate to determine whether the exception is temporary or permanent. If deemed permanent, management must review and implement, as needed depending upon the most prudent option, the following steps to correct exceptions.

1. Notify Funds Management Committee
2. Options to correct exceptions to parameters:
 - Shifting from use of one type of AFS which is being used excessively to other types of AFS fundings with additional capacity
 - Convert securities to cash for use in reduction of AFS
 - Limit loan generation until ratios achieve Policy parameters

3. Monitor until parameters are achieved.

SECTION # 3

INVESTMENT PORTFOLIO MANAGEMENT

BND's goal is to establish an investment portfolio which will assist the institution to achieve the above listed overall institution objectives. Management considers the investment portfolio roles as follows: **1) a primary liquidity source 2) a primary asset/liability management tool and 3) a secondary source of income.** Management's priority will be to achieve that asset allocation and yield curve positioning commensurate with the long term objectives of the institution. This policy will identify acceptable duration and asset allocation guidelines.

SECURITY CUSTODY:

SAFEKEEPING SOURCES	SCOPE CUSTODIAL SERVICE
Federal Reserve	All Inclusive
J. P. Morgan	All Inclusive

All BND's deposits in excess of FDIC deposit insurance limits must be with financial institutions(excluding Federal Reserve) having a minimum short-term rating of "A-1" or "P-1".

DEPOSITORY INSTITUTIONS:

DEPOSITORY	PURPOSE
Federal Reserve	Check processing, wires, ACH, coin/currency, other respondent services
J. P. Morgan	Safekeeping and Fed Funds Line
Federal Home Loan Bank	Borrowing Advances
US Bank	Check Processing and Fed Funds Line
Wells Fargo Bank, N.A.	Foreign Exchange and Fed Funds Line

APPROVED SECURITY DEALERS:

- All securities broker/dealers with which the Bank does business must be registered with the Securities and Exchange Commission. A list of securities broker/dealers must be approved by the Investment Committee.

INVESTMENT AUTHORITY:

- The President, with the advice of the CFO/Senior Vice President of Accounting & Treasury Services, shall establish investment authority for individual investment officers consistent with their experience, expertise and demonstrated investing judgment.

VARIANCE FROM THE APPROVED INVESTMENT SELECTION AND PURCHASE PROCESS:

- An exception to this policy may be approved before or after the exception has occurred only upon submission to the Investment Committee of a written request supporting the exception. The approval or rejection of a request for an exception must be recorded in the minutes of the Investment Committee meeting.

REQUIRED INVESTMENT DATA TO BE OBTAINED & MAINTAINED ON APPROVED INVESTMENTS :

REQUIRED	TIMING	RESPONSIBILITY

DATA		
Safekeeping Data of all securities	Upon purchase	Treasury Services Manager
Credit data on all Corporate securities	Annually	Treasury Services Manager
Credit data on all Municipal securities	Annually	Treasury Services Manager
Market Value of all securities	Monthly	Treasury Services Manager

To comply with regulatory standards for credit quality, Investment Management will assess the creditworthiness of the investment to determine that the security has (1) low risk of default by the obligor, and (2) the full and timely repayment of principal and interest is expected over the expected life of the investment.

To determine whether non-government or non-ND State Agency securities are investment grade and suitable for purchase, Investment Management will consider the following criteria and document this criteria on Credit Review Summary worksheets before purchase and annually thereafter:

1. The security's spread to U.S. Treasuries is consistent with bonds of similar credit quality
2. The issuer's risk of default in comparison with bonds of similar credit quality
3. The issuer's capacity to pay interest and principle based on the assessment of operating and financial performance levels.
4. For municipal securities, the soundness of a municipal's budgetary position and stability of its revenues shall be evaluated and includes the municipality's debt profile, level of unfunded liabilities, diversity of revenue sources, taxing authority, and management experience
5. For municipal securities, local demographics/economics shall be considered and shall include unemployment data, income indices, housing values, and local employer statistics.

The comparable parameters of these criteria must be within 20% of industry averages as provided by any of our broker/dealers.

Any credit criteria that is outside of acceptable parameters will be approved as an exception at the Investment Committee.

Quarterly, securities will be reviewed for Other Than Temporary Impairment (OTTI) testing and any adjustments will be reported to the Funds Management Committee.

APPROVED INVESTMENT GUIDELINES:

SECURITY TYPE	MAXIMUM AMOUNT PER ISSUE	MAXIMUM TERM / DURATION	RESTRICTIONS / OTHER LIMITATIONS
US TREASURY SECURITIES	\$50,000,000	30 YEAR FINAL	NONE
FEDERAL AGENCY SECURITIES (non-structured)	\$50,000,000	25 YEAR FINAL (including Zeros)	NONE
FEDERAL AGENCY SECURITIES STRUCTURED (callable, step-ups, etc.)	\$25,000,000	10 YEAR FINAL	NONE.
MORTGAGE BACKS	\$25,000,000	40 YEAR FINAL 12 YEAR A/L	Restricted to those issued rated AAA
CMO	\$15,000,000	40 YEAR FINAL 12 YEAR A/L	Restricted to those which are rated AAA .
CORPORATES SECURITIES	\$5,000,000	10 YEAR FINAL	Restricted to those rated A or better by S&P <i>and</i> A2 or better by Moody's.
ASSET BACK SECURITIES	\$10,000,000	7 YEAR A/L	Restricted to those rated AAA by S&P <i>and</i> Aaa by Moody's.

GENERAL OBLIGATIONS	N/A	30 YEAR FINAL	Restricted to debt of the State of North Dakota, its agencies and political subdivisions.
REVENUE OBLIGATIONS	N/A	30 YEAR FINAL	Restricted to debt of the State of North Dakota, its agencies and political subdivisions.
MONEY MARKET SECURITIES	\$25,000,000	1 YEAR FINAL	Includes BA, CP, Eurodollars and negotiable CD's. Restricted to those rated A1 or better by S&P or P1 or better by Moody's.
FRB / FHLB CAPITAL STOCK or OTHER GOVERNMENT SPONSORED AGENCIES	N/A	N/A	Amounts as required for members
VENTURE CAPITAL			Limited by NDCC 6-09-15 subsection 4

INVESTMENT MANAGEMENT PARAMETERS:

- Approved Asset / Allocation Range:

INVESTMENT GROUP	APPROVED MINIMUM & MAXIMUM AS A % OF TOTAL PORTFOLIO (including National FF Sold and deposits held at Federal Reserve Bank in Minneapolis)	Approved Maximum % of Tier 1 Capital
US TREASURY SECURITIES	0% 100%	N/A
FEDERAL AGENCY SECURITIES	0% 100%	N/A
STEP-UP AGENCY SECURITIES	0% 20%	50%
AGENCY MORTGAGE BACKED SECURITIES - FIXED / FLOATING	0% 75%	200%
AGENCY CMO	0% 50%	200%
NON-AGENCY CMO	0% 20%	25%
CORPORATE SECURITIES	0% 20%	25%
MONEY MARKET SECURITIES	0% 20%	25%
MUNICIPAL OBLIGATIONS	0% 20%	50%
OTHER (FHLB, FRB STOCK)	no guidelines - as required	N/A

These concentrations will be monitored quarterly by the Funds Management Committee and any exceptions to these parameters will be discussed.

- **Approved and Target Total Portfolio Duration Range:**

APPROVED MINIMUM / MAXIMUM DURATION RANGE	1.0 – 4.0
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INTENT OF INVESTMENT (Accounting Standards Codification 320):

All investment securities purchased by Bank of North Dakota will be classified as Available For Sale or Held to Maturity on a case by case basis.

FED FUNDS MANAGEMENT GUIDELINES :

• **FF Sold: Approved Institutions and designated maximum amounts:**

Federal funds may be sold in the national market by the Bank only to banks acting as principal, with a minimum short-term rating of “A-1” or “P-1”, and will be limited to banks approved, and in dollar amounts established, by the Investment Committee. All unsecured federal funds borrowing lines must be approved by the Investment Committee.

• **FF Purchased: Approved Institutions and designated maximum amounts:**

Bank of North Dakota may purchase an unlimited amount of federal funds from financial institutions.

LETTER OF CREDIT FOR PUBLIC DEPOSIT GUIDELINES :

- [Letters of Credit For Public Deposit guidelines](#) are established, reviewed, and approved by the Investment Committee.

SECTION # 4

OFF BALANCE SHEET HEDGING

A. Purpose

The Bank of North Dakota’s management recognizes their responsibilities to ensure the prudent management of the Bank’s balance sheet performance and risk. This includes monitoring all implications of the Bank’s off-balance sheet hedging positions on performance and risk levels.

The primary function of off-balance sheet hedging activities is to provide an additional asset-liability management (ALM) tool to meet the strategic objectives of management and to improve overall performance of the Bank. Off-balance sheet hedging is an important tool for modifying or adjusting interest rate risk. Without the ability to use off-balance sheet hedging instruments, the Bank could be exposed to greater volatility of earnings.

The Bank of North Dakota (Bank) may use off-balance instruments (interest rate swaps, caps or floors) as asset/liability management tools to hedge changes in the fair value or cash flows of loans or liabilities due to changes in interest rates. Off-balance sheet instruments will allow the Bank to offer long-term fixed-rate loans to customers without assuming the interest rate risk of a long-term asset by swapping the Bank’s fixed-rate interest stream for a floating-rate interest stream.

B. Management Authority and Responsibilities

Off-balance sheet hedging falls under the authority of the Bank’s Funds Management Committee. The Funds Management Committee is responsible for approving the Bank’s off-balance sheet hedging activity. Off-balance sheet transactions will only be done with Bank counterparties that are well-capitalized and are monitored via Regulation F guidelines. If the counterparty is a Broker/Dealer, the Broker/Dealer must possess an investment grade rating by Standard and Poor’s or Moody’s Rating Services and must be on the Bank’s approved Security Dealer’s List. The Funds Management Committee shall review at least annually a list of authorized counterparties and officers authorized to execute off-balance sheet transactions.

The off-balance sheet hedging section is an integral component of the Bank’s overall Funds Management Policy, which sets guidelines for the management of interest rate risk. The Funds Management Committee assigns the responsibility for all financial off-balance sheet activities to Accounting & Treasury Services. Such activities include formulating off-balance sheet hedging changes to this policy, developing and implementing off-balance sheet hedge strategies, and managing the off-balance sheet hedging position within the current and changing regulatory and economic environment. Off-balance sheet hedging

strategies and activities must have prior approval from the Funds Management Committee prior to execution. Any exception to the policy must be approved by the Funds Management Committee.

The following individuals may enter into an off-balance sheet agreement and may transfer collateral in the form of securities to the counterparty:

- President
- Chief Financial Officer
- Treasury Manager

The Chief Financial Officer ("CFO") shall:

- administer and implement this policy on a day-to-day basis
- approve procedures and controls to monitor off-balance sheet transactions and positions
- report at least quarterly to the Funds Management Committee and Advisory Board on off-balance sheet activities and compliance with this policy
- develop, recommend, and execute off-balance strategies
- evaluate the relative costs of and likely results of the most practical alternatives available to achieve the results within the guidelines established under this policy
- ensure the Bank is complying with the standards required under generally accepted accounting principles as set forth in Accounting Standards Codification 815 and coordinate the execution, monitor, and adjust off-balance sheet transactions to maintain conformity to the objectives of the authorized hedge strategies

The Funds Management Committee shall:

- ensure that the Advisory Board is knowledgeable about general theory, usage, and accounting for off-balance instruments
- approve all off-balance transactions

C. Permitted Activities

1. Asset-Liability Management Hedges

- a) Interest Rate Risk (IRR): The Bank may use off-balance sheet hedging instruments to assist in efficiently managing earnings volatility due to interest rate movements.
- b) Basis and Yield Curve Risk: The Bank may use off-balance sheet hedging instruments to address risk among indices such as London Interbank Offered Rate (LIBOR), Prime, Federal Funds Effective Rate or Treasuries, and to reduce the risk of maturity mismatches caused by an adverse change in the shape of the yield curve.

2. Asset/Funding Hedging Activities

Alter Repricing Sensitivity of Assets/Liabilities: Customer preferences may cause the maturity and repricing characteristics of core assets and core liabilities generated by the Bank to vary significantly. Interest rate swaps, caps, collars, and floors can be used effectively to alter the income streams of specific categories of loans and deposits or to provide protection against undesired shifts in the level of interest rates.

D. Non-Permitted Activities

The use of off-balance sheet transactions for interest rate arbitrage or trading purposes is specifically prohibited by this policy.

E. Allowable Off-Balance Sheet Hedge Instruments

Allowable instruments for the purpose of hedging interest rate risk include the following:

1. Interest Rate Swaps

Interest Rate Swaps are financial contracts between two counterparties in which each counterparty pays to the other periodic interest payments based on a specified notional principal. In the most basic sense, one party might pay to the other a fixed rate of interest in return for a payment based on a floating rate of interest such as LIBOR, Prime or Constant Maturity Treasury (CMT). The contractual terms may vary in many ways, and interest payment structures may be customized by the counterparty's interest rate outlook. Therefore, interest rate swaps enable counterparties to effectively manage interest rate risk by "creating" the desired repricing characteristic for a given asset or liability or by enhancing yields on assets, or reducing the cost of liabilities.

2. Interest Rate Caps

Interest Rate Caps are essentially interest rate options in which one counterparty pays to the seller of the Cap a premium for which they will receive the positive difference between the prevailing contractual interest rate and the "strike" rate specified in the Cap Agreement. The Cap Agreement specifies the notional principal, the particular

interest rate index, the strike rate, the frequency of rate resetting, the term of the cap, and any pertinent structural specifics. Interest Rate Caps are one of the tools used to protect an institution in a period of rising interest rates.

3. Interest Rate Floors

Interest Rate Floors are similar to caps in structure, but the buyer of the floor receives the positive difference between the strike rate and the prevailing contractual interest rate, in exchange for a premium. Interest Rate Floors are one of the tools used to protect an institution in a period of falling interest rates.

4. Interest Rate Collars

Interest Rate Collars are a combination of an interest rate cap and an interest rate floor, which places a range around a floating rate, beyond which, the rate will not move for the customer.

5. Mortgage and Other Amortizing Swaps

A Mortgage or Amortizing Swap is an interest rate swap with a declining notional principal amount reflecting the principal amortization of a designated pool of assets or an underlying fixed or floating rate index. These swaps can be used when hedging loans with a known amortization schedule, or in the case of mortgage loans, where the amount of scheduled and unscheduled principal repayment can be predicted within a reasonable degree of certainty.

F. Strategy Development

Accounting & Treasury Services shall recommend hedging strategies after evaluating the relative risks of and results to be obtained from the most practical alternatives available to achieve the desired results. The evaluation shall include but not necessarily be limited to the following:

- a) An analysis of the relevant financial products and markets;
- b) An analysis of the hedging strategy and an explanation of the desired results in relation to the Bank's earnings, financial condition, and capital level; and
- c) An analysis of the risk that may arise from the off-balance sheet activities. At a minimum, Accounting & Treasury Services shall evaluate the possible impact on the Bank's earnings, financial condition, and capital, which may result from adverse changes in interest rates and other market conditions that are relevant to the proposed hedging strategies.

At inception of the hedge, there must be formal documentation of the hedging relationship and the Bank's risk management objective and strategy for undertaking the hedge. This shall include identification of the hedging instrument, the hedged transaction, the nature of the risk being hedged, and how the hedging instrument's effectiveness in hedging the identified exposure will be assessed.

G. Policy Guidelines

1. Accounting & Treasury Services is responsible for developing and maintaining detailed operating procedures for off-balance sheet transactions that are consistent with this policy. Accounting & Treasury Services will be responsible for ensuring compliance with these procedures.
2. Off-balance sheet hedging instruments must be complimentary to the Bank's overall Interest Rate Risk position. All hedge positions will be modeled and incorporated into Net Interest Income projections. This methodology will assure that all off-balance sheet hedging positions are subjected to the same interest rate forecasts as the Bank's balance sheet and their performance evaluated in conjunction with the hedged instrument.
3. All off-balance sheet hedging transactions will meet hedge criteria. Hedge activity treatment will be reviewed by the Bank's external audit firm upon executing the hedge transaction.
4. On a quarterly basis, both the Funds Management Committee and Advisory Board will be provided with a detailed listing of the existing hedging transactions for their review. Any ineffectiveness of the hedges will be accounted for in accordance with acceptable accounting regulations.
5. Compliance with established risk limits will be provided to the Funds Management Committee and the Advisory Board.
6. The Bank may enter into an interest rate hedging transaction where the index/rate is one of the following:
 - a) The National Prime Rate,
 - b) The London Interbank Offered Rate (LIBOR),
 - c) The Federal Funds Effective Rate, or
 - d) A United States Treasury Bill/Note Yield
7. The Bank will limit the notional value of outstanding gross positions in off-balance sheet instruments (i.e., interest rate swaps, caps and floors) executed for purposes of managing net interest income and asset/liability values to no more than 10 percent of assets.
8. The use of off-balance sheet instruments is to be limited to terms of fifteen years or less.
9. Speculative trading activities with respect to interest rate swaps are prohibited.
10. The potential impact on the Bank's liquidity must be identified prior to executing an off-balance sheet instrument.

11. Before purchasing an off-balance sheet instrument, the Bank will obtain prices from at least two different sources to ensure the reasonableness of the prices being quoted.

H. Legal Issues

All interest rate swaps, caps, floors and collars will be governed by the standard International Swaps and Derivatives Association, Inc. (ISDA) Master Agreement, appropriately modified by agreement between the Bank and the counterparty. A signed agreement will be executed at the time of the off-balance sheet transaction or soon after as practical. All agreements will be reviewed for appropriateness prior to execution.

I. Credit Risk Administration

1. Definition

Credit risk is the risk of default by a counterparty unwilling or unable to meet the terms of the off-balance sheet contract, exposing the holder of the in-the-money position to the cost of replacing the favorable contract under present market conditions. The amount of the credit risk is the cost of replacement by an identical contract, also known as the current exposure of the contract, and is established by assessing the current market value of the contract as opposed to the value at inception.

2. Limiting Off-Balance Sheet Counterparty Credit Exposure

Netting/collateral agreements are required when the Bank enters into an off-balance contract. The practice of netting allows the Bank to offset a default loss on an off-balance sheet contract with a profitable position in another contract or cash account with the same counterparty thereby reducing counterparty credit risk. Therefore, when entering into more than one transaction with a particular counterparty, the total exposure will be the net positions of the transactions. These arrangements are described in the ISDA Master Agreement in place with the counterparty. In addition, when credit risk exists for Bank, the Bank will hold collateral from the counterparty in accordance with the Credit Support Annex to the ISDA Master Agreement, which has been signed by both parties.

J. Liquidity Risk

1. Liquidity risk arises when a particular position cannot be offset or unwound without significantly affecting the market price due to inadequate market depth or market disruption.
2. To manage liquidity risk arising from off-balance sheet transactions, the Bank has established the following control: The relative size of the market should be considered in the hedge approval process, in case the position must be offset or unwound. At times, this consideration may result in limiting the Bank's position in a particular contract or instrument.

K. Operating Risk

1. Operating risk is the possibility that inadequate internal controls or procedures, human error, system failure, or fraud can result in unexpected losses. The primary defense against this risk is experienced personnel with knowledge of risk in the off-balance sheet markets and prudent management practices to control these risks.
2. To further manage operational risk, the Bank has established the following controls:
 - a. Accounting & Treasury Services will establish and monitor procedures to ensure proper processing of all transactions, including the preparation of trade tickets, obtaining confirmations, and developing and maintaining supporting documentation for account entries. These procedures will also ensure proper segregation of duties relating to the execution of transactions, settlements and safekeeping activities, and posting and reconciliation of transactions.
 - b. Accounting & Treasury Services will maintain a register of all off-balance transactions; and
 - c. Funds Management Committee will ensure that adequate modeling systems are in place for evaluating the financial impact and risk of off-balance sheet transactions prior to approval of hedging strategies.

L. Accounting for Off-Balance Sheet Transactions

The Funds Management Committee will ensure that accounting for off-balance sheet transactions is reasonable, consistently applied, consistent with call report instructions, and fully complies with FASB guidelines. Two steps are important to ensure hedge accounting status: 1) structure the transaction correctly upfront, and 2) document the hedging relationship appropriately at inception.

All users of off-balance sheet instruments within the Bank will maintain records in a manner consistent with the guidelines suggested by regulatory authorities and the Bank's auditors. Accounting & Treasury Services of the Bank will approve the accounting treatment of the hedge instruments. Hedge accounting treatment will be reviewed by the Bank's external audit firm upon executing the hedge. Off-balance sheet instruments that are established as hedges will be monitored by Accounting & Treasury Services for continued correlations and other criteria to assure that hedge accounting treatment is and remains appropriate.

At inception of the off-balance sheet transaction, there must be formal documentation relating to the hedging relationship if the Bank intends to apply hedge accounting (refer to Accounting Recordkeeping and Reporting for details of the formal documentation).

The specific asset/liability relationship being protected and the immediate and potential future effect on earnings and market value of assets or liabilities must be evaluated and documented before execution. Testing of each off-balance transaction must fall within the interest rate risk management guidelines/parameters for net interest income as noted on page 4 of this Policy. The cost of the off-balance sheet instrument must be analyzed as they pertain to the spread, asset yield, or liability cost being protected. These costs must be viewed in light of the Bank's overall profitability and interest rate sensitivity position prior to the execution of a hedged transaction. The Funds Management Committee will monitor the impact of contract terminations (through sale or maturity) on the Bank's ongoing sustainable earnings stream. The Bank must document appropriate credit analysis. Additionally, an annual credit evaluation of the counterparty will be performed and documented, so long as the off-balance instrument remains outstanding.

M. Accounting, Recordkeeping and Reporting

1. Accounting

To qualify for hedge accounting treatment under Accounting Standards Codification 815, the Bank must provide the following documentation (depending upon the type of hedge designated) at the inception of each hedging relationship:

- a. At inception of the off-balance transaction, estimate the maximum credit exposure to the customer and counterparty.
- b. A description of the hedging relationship and the risk management objective and strategy for undertaking the hedge.
- c. Identification and a description of the hedging instrument.
- d. A description of the hedged transaction (for cash flow hedges) or hedged item (for fair value hedges).
- e. A description of the nature of the risk being hedged.
- f. For fair value hedges, a description of how the hedging instrument's effectiveness in offsetting the exposure to changes in the hedged item's fair value attributable to the hedged risk will be assessed. There must be a reasonable basis for how the entity plans to assess the hedging instrument's effectiveness.
- g. For a fair value hedge of a firm commitment, a description of a reasonable method for recognizing in earnings the asset or liability representing the gain or loss on the hedged firm commitment.
- h. For cash flow hedges, a description of how the hedging instrument's effectiveness in hedging the exposure to the hedged transaction's variability in cash flows attributable to the hedged risk will be assessed. There must be a reasonable basis for how the entity plans to assess the hedging instrument's effectiveness.
- i. For cash flow hedges, the hedged forecasted transaction should be described with sufficient specificity so that when a transaction occurs, it is clear whether that transaction is or is not the hedged transaction.

2. Recordkeeping:

The Bank will maintain a contract register for each hedge, which will include the following information:

- a. Counterparty
- b. Trade date
- c. Trade ID
- d. Notional amount
- e. Nature of position (e.g., fixed rate received/paid and variable rate paid/received for swaps; premium paid for caps/floors and related index)
- f. Maturity date
- g. Premium paid for cap and floor transactions
- h. Market value
- i. Settlement terms
- j. Documentation of how the off-balance instrument will reduce the Bank's interest rate risk.

A sample of this contract register is included as Exhibit B.

3. Reporting:

On at least a quarterly basis, management will report to the Funds Management Committee and Advisory Board; the following reports:

- a. A summary of the net outstanding position of all contracts
- b. An analysis of variations from expected results
- c. A description of any corrective actions taken

- d. If appropriate, the cost to unwind or partially offset the hedge (i.e., current market value).

N. Audit and Review

Auditing Compliance: Independent testing will be conducted by the Bank's internal auditor. The depth and frequency of testing will be determined by the Bank's annual risk assessment. The internal auditor or an independent audit firm will review or audit the Bank's compliance with this policy. The results and findings of the audit will be reported to the Advisory Board at its next meeting following the completion of the audit.

O. Policy Exceptions

This policy is meant to set guidelines for off-balance sheet hedging activities for the Bank. However, opportunities may arise which would result in situations that are not included in this policy or are beyond the scope of this policy. The Funds Management Committee is empowered to exercise prudent judgment in the implementation of this policy in those situations. Therefore, any deviations from this policy will require prior Funds Management Committee approval and will be reported to the Advisory Board at the next scheduled meeting.

Exhibit A

BANK OF NORTH DAKOTA CONTINGENCY FUNDING PLAN

INTRODUCTION

Ever changing financial markets have changed the dynamics of funding. Bank of North Dakota (BND) monitors its liquidity position and funding strategies on an ongoing basis, but recognizes that unexpected events, economic or market conditions, legislative action, earnings problems or situations beyond its control could cause either a short or long term liquidity crisis. To monitor liquidity and funding, Accounting & Treasury Services prepares a quarterly Liquidity Report that calculates BND's anticipated short and long-term liquidity ratios in 1 month, 6 months, and 1 year. In addition, Accounting & Treasury Services prepares an Off-balance Sheet Contingency Report that identifies the off-balance sheet contingencies that could impact BND's liquidity position over the same time periods. The worksheet is an integral component of the contingency funding plan. Although it is unlikely that a funding crisis of any significant degree could materialize, it is important to evaluate this risk and formulate contingency plans should one occur. Both short term and long term funding crises will be addressed in this plan.

SHORT TERM FUNDING CRISIS

A short term funding crisis would most likely result from a shock to the financial system, either internal or external, which disrupts the orderly short term funding operations. For BND, the most likely cause of a short term funding crisis would be an unexpected and significant loss of liquidity for ND banks, forcing them to access their borrowing lines at BND. BND is well prepared to handle a short term funding crisis should it occur. The likely duration of such a disruption is overnight to three months. It is the responsibility of the Funds Management Committee (FMC) to make an early assessment of the situation. If such an event should occur the following steps would be placed in motion.

- a) Accounting & Treasury Services will prepare an updated Liquidity Report and review it with FMC.
- b) The CFO/Senior Vice-President of Accounting & Treasury Services will review with FMC short term sources of liquidity available to BND. Should available short term liquidity in the national market deteriorate, BND has collateral in place to borrow from the Federal Home Loan Bank (FHLB) and the Federal Reserve Discount Window. In addition, BND can enter into a repurchase agreement using the securities in its investment portfolio as collateral. It is the responsibility of Treasury Services to monitor the availability of collateral and securities for pledging purposes.

LONG TERM FUNDING CRISIS

A long term funding crisis is the result of significant economic events that drastically change BND's potential to access its alternative funding sources in an amount that meets BND's needs. A long term funding crisis is expected to have implications that last more than 6 months, and for BND, could occur under various circumstances. For example, a significant reduction in State deposits or legislative actions that reduce BND's capital below thresholds for borrowing from FHLB and/or Federal Reserve Discount Window are two events that are out of BND's direct control, but could result in a long term funding crisis. There's also the risks associated with a weak North Dakota economy and its direct impact on the overall strength of BND's loan portfolio or a state-wide liquidity crisis that forces ND banks to maximize their fed funds lines with BND. A long term funding crisis can also be fueled by a strong economy when it results in long term growth in BND's loan portfolio that significantly exceeds projections.

BND has identified two sub-categories under Long Term Funding Crisis: Moderate Risk Long Term Funding Crisis and High Risk Long Term Funding Crisis. Each category has its own set of events that trigger the funding crisis level (moderate or high risk) and a corresponding set of action steps to put into place when a funding crisis has begun.

Moderate Risk Long Term Funding Crisis

Events

There is a moderate risk of a long term funding crisis if any of the following events occur:

- a) Acknowledgment by FMC of potential issues which could result in a diminished ability to fund in the national markets.
- b) BND being placed on credit watch with negative implications by S&P.
- c) Indications from Accounting & Treasury Services that our ability to renew or attract new funding at market rates is impeded and the market is demanding a premium to lend to BND.
- d) Indications from Lending Services that trends in BND's Delinquent Loans to Total Loans and Non-accrual Loans to Total Loans ratios show signs of a deterioration in the quality of BND's loan portfolio.
- e) Loans to Earning Assets ratio exceeds 90%.
- f) Net Non-Core Funding Dependence exceeds 50% (Non-Core Liabilities less Short Term Investments divided by Long Term Assets).
- g) Legislation is drafted that would adversely impact BND's capital structure or State deposits.
- h) An alternative funding source notifies BND that its borrowing line is no longer available.
- i) Short or Long Term Liquidity Ratio falls below levels described in Funds Management Policy.
- j) Net Short Term Non-Core Funding Dependence (Short Term Non-Core Funding less Short Term Investments divided by Long Term Assets) exceeds 40%.
- k) In reviewing the asset liability projections for a forward-looking 12 month period, BND's Capital Ratio falls below the level defined as well-capitalized (Leverage 5%, Risk-Based 6%, and Total Risk-Based 10%).

Depending upon the event that triggers a moderate risk situation, BND could potentially lose access to one or more of its alternative funding sources. For example, being placed on credit-watch by S&P would reduce BND's access to national market CDs and fed fund lines of credit, or make those options significantly more expensive. During a Moderate Risk Situation, it is important that early steps be taken to prepare for a potential problem. It is the responsibility of FMC to make an early assessment of the situation and declare we are in a moderate risk situation.

Action Steps

If in FMC's judgment we have a moderate risk of a long term liquidity crisis, the following steps will be taken:

- a) FMC meetings will be scheduled on a weekly basis by the Senior Vice-President of Accounting & Treasury Services to ensure the proper flow of information.
- b) Accounting & Treasury Services will present an updated Liquidity Report and review it with FMC.
- c) The CFO/Senior Vice-President of Accounting & Treasury Services would be given the directive to implement the following:
 1. Prepare a report of funding availability from all Alternative Funding Sources after the triggering event.
 2. Coordinate the identification of all assets that can provide liquidity.
 3. Review and look for opportunities to lengthen the maturities of Alternative Funding Sources.
 4. Stay in contact with all national market funding sources and assess availability and cost of each source.
- d) Lending Services will begin the following:

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1. Track daily the internal credit deterioration and keep the members of FMC updated of meaningful changes.
 2. Begin to slow the extension of additional credit.
 3. Review opportunities to sell loan participations with ND banks.
 4. Coordinate with Accounting & Treasury Services those assets within the loan portfolio which can be sold.
- e) The President/CEO of BND will coordinate the flow of information within BND and with external sources.

High Risk Long Term Funding Crisis

If the conditions causing a moderate risk situation intensify rather than abate, it is important that BND identify additional steps that must be taken in order to maintain adequate liquidity.

Events

The indications of a high risk funding crisis may include one or more of the following events:

- a) BND's S&P ratings are downgraded by two or more classes from their current levels.
- b) Net charge-offs cause an earnings loss in the respective calendar quarter.
- c) Legislation passes that severely reduces BND's capital or allows a significant loss of state deposits.
- d) The Delinquent Loans to Total Loans ratio exceeds 5 percent.
- e) The Non-Accrual Loans to Total Loans ratio exceeds 1 percent.
- f) Several alternative funding sources are no longer available.
- g) BND's Capital Ratio falls below the level defined as well-capitalized (Leverage 5%, Risk-Based 6%, and Total Risk-Based 10%).
- h) Net Non-Core Funding Dependence exceeds 70%.

It is the responsibility of the President/CEO of BND to declare that a funding crisis has begun.

Action Steps

Once a crisis has begun, the following actions will be taken:

- a) The FMC, through the actions described in the previous section, will assess the extent of the funding crisis, its causes and its likely duration.
- b) The President/CEO of BND will notify all appropriate authorities of our current situation.
- c) Accounting & Treasury Services will monitor BND's liquidity position daily and provide updates to FMC as required.
- d) The FMC will:
 1. meet daily to evaluate the situation and decide what actions need to be taken;
 2. give daily direction to the Senior Vice-President of Treasury Services.
- e) The FMC will be responsible for the following:
 1. A daily review of BND's liquidity position, including loan funding and runoff projections and actual and projected deposit runoff.
 2. Review of BND's alternative funding sources, including funding concentrations.
- f) The CFO and Senior Vice-President of Lending Services will be responsible for coordinating any necessary liquidation of the loan portfolio and report the liquidity flow to FMC.

g) The President/CEO will coordinate flow of information both internal and external.

It was moved by Attorney General Stenejem and seconded by Commissioner Goehring that the Industrial Commission accepts the Bank of North Dakota Advisory Board recommendation and adopts the amendments to the Funds Management Policy as presented and as on file in the Industrial Commission files. On a roll call vote, Governor Dalrymple, Attorney General Stenejem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Eric Hardmeyer presented the non-confidential Bank of North Dakota Advisory Board June 25, 2015 meeting minutes.

Governor Dalrymple closed the meeting at 3:41 p.m. pursuant to North Dakota Century Code 6-09-35 to discuss the items on the agenda under Bank of North Dakota confidential business.

Following the confidential portion of the meeting, the Commission reconvened in non-confidential session at 4:08 p.m. and it was noted that during the confidential portion of the meeting, it had been moved and seconded that the Bank of North Dakota be authorized to participate in loans identified as Attachments 22 and 23. In non-confidential session, on a roll call vote, Governor Dalrymple, Attorney General Stenejem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Bank of North Dakota business, Governor Dalrymple adjourned this portion of the meeting at 4:09 p.m. and the Commission took up Administrative 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 August 26, 2015 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also

Present: Jason Nisbet, Governor's Office
Michelle Mielke, Department of Agriculture
Members of the Press

Governor Dalrymple called the Administrative portion of the Industrial Commission meeting to order at 4:09 p.m. following completion of Bank of North Dakota business.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented her recommendation for compensation of the North Dakota Mill President and General Manager as follows:

RE: Vance Taylor Compensation

Fiscal Year 2015 was another good year for the State Mill. Profits were \$16,675,348, the highest year in the Mill's history.

When Vance Taylor was hired by the Industrial Commission his compensation package included an annual bonus opportunity based on performance—up to 30% of base salary. Thirty percent of his base salary would be \$66,230 (Vance's base salary for FY 2015 was \$220,768.)

The Commission has previously determined that the 30% bonus payment be determined with 20% based on what had been distributed to Mill employees under the gain sharing plan and 10% based on other criteria—achieving goals outlined in the strategic plan, etc.

The gain sharing payout for FY 2015 for Mill employees was 21.84%. The FY 2015 gain sharing payment was 3% for certain criteria (one of the goals was not reached) and 18.84% based on profits. If all the goals had been met based on the gain sharing payout portion, Vance could have received \$44,153. However, because not all the goals of the gain sharing plan were achieved I am recommending his payout, based on the Commission's directive, be reduced to \$42,210.

As to the remaining 10% of his 30% bonus potential (\$22,077), Vance and the Mill achieved a number of goals that were established by the Commission last year in the Mill's strategic plan—ongoing negotiations with BNSF, added new customers, continued work with Dakota Pride, development of long term projects/goals, and ISO 22000 certification audit passed. In addition Vance had a successful legislative session with the Mill becoming a permanent member of the Northern Crops Institute, and authorization/appropriation for additional staffing for the expanded Mill facilities (G-Mill) and the Mill's budget. There were some challenges in regards to the G-Mill Project but overall Vance is doing a good job at the Mill. In total **I am recommending he receive a bonus of \$63,287 for FY2015.**

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approves a bonus for Mr. Vance Taylor of \$63,287 for FY2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Administrative business, Governor Dalrymple adjourned the meeting at 4:13 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary