

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on November 7, 2016 beginning at 9:00 a.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
Bruce Hicks, DMR – Oil and Gas Division
Alison Ritter, DMR – Oil and Gas Division
Ed Murphy, DMR – Geological Survey
Hope Hogan, Attorney General's Office
Mathew Sagsveen, Attorney General's Office
Pamela Link, LIUNA
Evan Whiteturd, LIUNA
David Garner, Attorney General's Office
Lawrence Bender, Fredrickson & Byron
Jan Swenson, Badlands Conservation Alliance
Alexis Baxley, ND Petroleum Council
Ron Ness, ND Petroleum Council
Danette Welsh, OneOk
Jason Nisbet, Governor's Office
Bonnie Storbakken, Governor's Office
Jessica Pfaff, Agriculture Department
Members of the Press

Governor Dalrymple called the Industrial Commission meeting to order at 9:00 a.m. and the Commission took up Department of Mineral Resources business.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2 the Industrial Commission close the meeting to the public and enter executive session for the purpose of attorney consultation. The purpose of the executive session will be to consult with the Commission's attorney regarding the following pending adversarial administrative proceeding:

Case 24178/Case 24592

Case 23088

Case 23916

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

Governor Dalrymple reminded the Commission members and those present in the executive session that the discussion during executive session must be limited to the announced purpose for entering into executive session which is anticipated to last approximately 15 minutes. He said the Commission is meeting in executive session to consult with the Commission's attorney(s) regarding the previously identified adversarial administrative proceedings. Any formal action by the Commission will occur after it reconvenes in open session. Commission members, their staff, employees of the Department of Mineral Resources and counsel with the Attorney General staff will remain but the public is asked to leave the room. The executive session will begin at 9:02 a.m. When the executive session ends the Commission will reconvene in open session.

EXECUTIVE SESSION

Members Present:

Governor Jack Dalrymple
Attorney General Stenehjem
Agriculture Commissioner Doug Goehring

Department of Mineral Resources Personnel Present:

Lynn Helms Department of Mineral Resources Director
Bruce Hicks Department of Mineral Resources Oil and Gas Division Assistant Director
Alison Ritter Department of Mineral Resources Public Information Officer
Ed Murphy Department of Mineral Resources, Geological Survey

Others in Attendance:

Hope Hogan Assistant Attorney General, Office of the Attorney General
Mathew Sagsveen Assistant Attorney General, Office of the Attorney General
Bonnie Storbakken Governor's Office
Jessie Pfaff Agriculture Department
Jason Nisbet Governor's Office

No action was taken during the Executive Session which was adjourned at 9:15 a.m. and the Commission returned to open session and the public was invited to return to the meeting.

Governor Dalrymple said the Industrial Commission meeting is reconvened at 9:15 a.m. and the public has been invited to return to the meeting room. During its executive session the Commission consulted with its attorney regarding the following pending adversarial administrative proceedings -- Case 24178/Case 24592, Case 23088 and Case 23916. No final action will be taken by the Commission at this time as a result of the executive session discussion. The Commission has provided to its attorney guidance regarding the development of orders for these cases.

Mr. Helms presented proposed Order 27865 for Case 24957 - proposed modifications to the Administrative Rules Committee (ARC) held over sections of the 2016 rules approved in Case 24957, Order 27349. (A copy of Order 27865 is available in the Commission files.) He said Order 27865 amends the Commission's previous order and makes modifications to the proposed rule changes. This relates to the six rules that were held over by the ARC. The ARC will be meeting on December 5 to consider the proposed rule changes. The Commission is being asked to present revisions to be considered by the ARC.

Mr. Helms stated that in the findings of the Order 27865 the staff has identified the rules that were held over by the ARC, that the ARC asked the Commission to work in consultation with Senator Kelly Armstrong and to come up with rule revisions and bring the revisions back to the ARC on December 5. The Commission was provided a copy of the letter from the ARC and a document that stated the suggested modifications--the changes have been highlighted in yellow; if it is overstruck that means it was in the previous order and is being removed and the underlined language is new. (Copies of the letter and the revised rules are available in the Commission files.)

Mr. Helms, Mr. Hicks and the Commission reviewed and discussed in detail each of the modifications. The modifications included:

- Establishment of a specific date for the bonding of pipelines transferring crude oil or produced water
- Clarification that leak detection plans are not required but if the operator has a plan that they have prepared or has installed a leak detection system they provide that information to the Commission
- Clarification of the Commission's regulatory authority regarding natural gas gathering pipelines which have been in place since April 1, 2014 and the Commission's new regulatory authority regarding crude oil and produced water gathering pipelines that will be effective upon action of the ARC
- Specific language allowing 180 days for an operator to install a perimeter berm after notification from the Commission that a six-inch perimeter berm is required and language regarding which sites must have these perimeter berms such as all storage facilities and production sites that include storage tanks, have a daily throughput of more than 100 barrels of fluid per day, etc. It was pointed out that this provides more clarity and is more enforceable and puts into the rules what the staff had indicated was the Division's plan.

- Language clarifying the requirements for perimeter berms on treating plants--the new language makes the rules more workable.
- Language clarifying the requirements for perimeter berms at salt water handling facilities

Mr. Hicks noted one area of concern with these revisions which is the requirement for filing of a notice of intent to construct a natural gas pipeline. He was hopeful that the industry would provide that information without there being a requirement in the rules as that information is beneficial to everyone.

In response to a question Mr. Hicks indicated that if the Commission approves these modifications and the ARC approves the rules as modified they will be effective January 1, 2017. Mr. Helms indicated that if the revised rules are not approved on December 5 the next earliest date would probably be April 1, 2017. He stated that the consultation with Senator Armstrong went well and Senator Armstrong believes the revised rules will be approved if the Commission approves them today.

In response to a question Mr. Helms summarized what will change on January 1, 2017 if these rules are approve:

- the State will have a pipeline regulatory program for oil and produced water pipelines that is rigorous--it requires notice prior to construction, state inspectors checking to make sure there are third party independent inspectors who will know all the pipeline manufacturers' requirements and make sure that the operators are following those requirements, that operators are properly trenching and backfilling, if an operator has a leak detection plan it is provided to the Commission, require setbacks for surface facilities from an occupied dwelling, bonding requirements for pipelines, etc.
- Creates a requirement that if an operator is notified that any existing facility whether it is a salt water handling, a treatment plant or a tank battery needs a perimeter berm they have 180 days to get it constructed and in place.

Mr. Helms indicated that this type of pipeline regulatory program is the first in the nation. He believes the adoption of these rules will substantially reduce the off-site spills and releases and will make a significant difference in the way crude oil and produced water gathering pipelines are constructed in North Dakota. He stated that these rules really raise the bar on liquid gathering lines and site construction.

Governor Dalrymple said pipe properly laid prevents a host of problems but there is still room for improvement on leak detection and he hopes the Commission will continue to study this.

Case 24957: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 27349 issued in Case 24957, approving amendments to the Commission's administrative rules be approved this 7th day of November, 2016. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Helms presented the 2017 hearing schedule. He said it may not be absolutely final because they don't have IOGCC's schedule yet so there might be a couple months where they have to move this but we need to get it out so people can make their plans.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approves the 2017 Oil and Gas Hearing Schedule as follows:

**INDUSTRIAL COMMISSION
OF NORTH DAKOTA**

Schedule for Oil & Gas Hearings 2017
Bismarck, North Dakota
DMR Conference Room
1000 East Calgary Ave

<u>Hearing Date</u>	<u>Docket Closing Date</u>
January 18, 2017 January 19, 2017	December 16, 2016
February 22, 2017 February 23, 2017	January 20, 2017
March 22, 2017 March 23, 2017	February 17, 2017
April 26, 2017 April 27, 2017	March 24, 2017
May 24, 2017 May 25, 2017	April 21, 2017
June 28, 2017 June 29, 2017	May 26, 2017
July 26, 2017 July 27, 2017	June 23, 2017
August 23, 2017 August 24, 2017	July 21, 2017
September 20, 2017 September 21, 2017	August 18, 2017
October 18, 2017 October 19, 2017	September 15, 2017
November 15, 2017 November 16, 2017	October 13, 2017
December 13, 2017 December 14, 2017	November 10, 2017
January 17, 2018 January 18, 2018	December 15, 2017

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

Mr. Helms reported on the following entities' responses to North Dakota Industrial Commission comments. He often asks the Commission to make comments on local or federal rule changes so he wanted let the Commission know how things turned out. (He had some handouts which are available in the Commission files.)

- McKenzie County Zoning Ordinance – He reported that McKenzie County was very responsive to the Commission's requested changes and did almost everything requested. He commended and complimented McKenzie County on a great job of rewriting that zoning ordinance which was readopted September 20. They heard what the Commission said, they listened and they made the changes. He doesn't anticipate significant conflicts between the zoning ordinance and the Commission's jurisdiction.
- BLM CFR 3161.1, 3173.14-3173.21, 3170.7 to replace Onshore Oil and Gas Order 3 – BLM's code of federal regulations to replace oil and gas Onshore Order 3 which deals with measurement points for oil and gas. There were two really significant issues in that proposed regulation. One was the way they had rewritten 3161.1-- it made everything in 3160 applicable to every well in the spacing unit which meant every well, private, state and federal had to get a federal APD. In response to the Commission's comments they came back and said that was inadvertent and they took it out which is a great thing. The second issue was on national standards for commingling approvals--they did make substantial changes to make it easier for operators to get commingling approval so they listened to some of the conflicts that the rule was going to create with Industrial Commission rules on commingling. The new record keeping requirements the Commission had suggested be changed were left in place – industry is going to have an unbelievable burden in terms of record keeping. BLM did listen and modified the final rule in response to the two big areas of concern that impacted the Industrial Commission's jurisdiction.
- BLM CFR 3174.6, 3174.8, 3174.10, 3174.11 to replace Onshore Oil and Gas Order 4 – This is the same thing. It turned out very well. The Commission asked them to not repeal the API oil measurement rules but just reference the API Standards and that is what they did. They responded very well to that and removed all the legal language about how to measure oil and just referenced the API Standards which is what the Commission's rule does so we are happy about this one.
- BLM CFR 3175.7, 3175.8, 3175.9-3175.94, 3175.100-3175.104, 3175.110-3175.121, 3175.125-3175.126, 3175.130-3175.135, 3175.141-3175-144 Appendix 1.A, 1.B, and 2 to Subpart 3175 to replace Onshore Oil and Gas Order 5 – The modifications to the code of federal regulations that will replace Onshore Oil and Gas Order 5, not so much. They did not listen to anything the Commission asked. Somebody at the BLM has a real concern about measuring natural gas so the final rule cites the API Standards and cites the American Gas Association Standards and then goes ahead and totally repeals them and codifies them into law. If there is some new innovative technique for measuring natural gas it won't be legal. He indicated that he doesn't understand why they didn't make the change but he doesn't think it rises to the level that the State should litigate the issue; it is just bad federal policy.
- EPA Oil and Gas Information Collection Request, Docket Id. No. EPA-HQ-OAR-2016-0204, EPA ICR No. 2548.01, OMB Control No. 2060- NEW – The Commission commented on the first draft. Because of the timing EPA rushed it to publication in the Federal Register and so the opportunity for the Commission to comment on the second draft was October 31 and there was not time to get comments approved by the Commission. He then worked in consultation with the Health Department and outside legal counsel and the Health Department reiterated the Commission's concerns about EPA going well outside the boundaries of the Clean Air Act and that it is improper to use this to draft new regulations on existing sources. Mr. Seby, outside counsel, was very helpful in

getting those comments prepared and submitted in a timely way. We are waiting to see what the final ICR looks like coming out of OMB. If changes are not made this one could require litigation. It is so broad and they did not remove some of the things that the Commission commented on like how you manage produced water, what your landownership position is in the well, how long is the well, what's the diameter of the casing and tubing, all those kind of things that are way outside the boundaries of the Clean Air Act are still in the ICR in the second draft of the rules.

Mr. Ed Murphy presented the Quarterly Geological Survey Report. (A copy of the report is available in the Commission files.)

In response to a question regarding carnallite, Mr. Murphy said interest in the usage of it comes down to costs and the Chinese proppant is so cheap that it makes it very difficult for anyone to develop the market for carnallite at this time. Eventually someone will generate a better proppant using North Dakota's carnallites than probably what is currently coming from China.

In regards to rare earth elements, Mr. Murphy said the situation is similar--the costs for mining the rare earth elements in the United States are high. China has kept the price relatively low to make it very difficult in the U.S to develop its rare earth minerals. However, he said the staff is excited about the initial results coming from the Rare Earth Project.

Being no further Department of Mineral Resources business, Governor Dalrymple adjourned this portion of the meeting at 10:06 a.m. and the Commission took up Western Area Water Supply Authority business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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Held on November 7, 2016 beginning at 9:00 a.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 (By speakerphone)
Andrea Travnicek, Governor's Office
Bonnie Storbakken, Governor's Office
Jessica Pfaff, Agriculture Department
Members of the Press

Governor Dalrymple called the Western Area Water Supply Authority portion of the Industrial Commission meeting to order at 10:06 a.m. following completion of Department of Mineral Resources business.

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

RE: Western Area Water Supply Authority - Industrial Sales - October, 2016 & Debt Repayment Report

Attached is the Western Area Water Supply Authority (WAWSA) financial information for the month of October, 2016.

Page 1 prepared by the Bank of North Dakota, reflects debt service payments through the month of October, 2016. In October interest was paid on the two BND loans and two Water Commission loans and principal was paid on the \$40 million BND loan. In addition a principal payment of \$274,923 was made on BND Loan #1 as a result of the higher sales revenue in the month of August.

The next 3 pages (pages 2, 3 & 4) I prepared based on the information provided by WAWSA staff reflecting October revenues and expenses and net income. On page 2 you will see there were no capital improvement disbursements (highlighted in orange). There were two principal payments made in October and they are highlighted in yellow. Net income for the month of October was **\$274,923** before making their principal payments. No baseline sales payments were paid and those deferred costs are reflected on the line item titled Deferred Expense Asset. (As you will recall from the overall Debt Service spread sheet the breakeven sales monthly number is \$871,750 without the baseline sales payments. With WAWSA sales for the month of October being \$1,004,610.70 they exceeded that number.)

Page 5 is the balance sheet prepared by WAWSA staff as of October 31, 2016. As noted on the Balance Sheet the Accounts Receivables are \$2,893,172.12 which is included in the assets of \$7,034,706.73
Note: The assets include a deferred expense line item which reflects the deferred expenses for the Baseline Sales.

Mr. Jaret Wirtz, Western Area Water Supply Authority Executive Director, said they did have a small increase to just over \$1,000,000 in sales. During the month of October they had some sales for frack jobs and some will continue on into November. He anticipates the Commission seeing similar numbers, hopefully even above that, in the month of November – not great but things are better than what they were experiencing three or four months ago.

In response to a question regarding what will happen in the next two years, Mr. Wirtz said if the price of oil stays around the \$40 to \$60 range he didn't think their sales numbers would change. The Board is projecting sales of

around \$1,000,000 a month for the next two years which is pretty close to what their average was for the last ten months. Based on that projection they have begun discussions with the Bank on a plan dealing with the outstanding debt.

In response to a question regarding if he has had any feedback on the recently approved pricing concept, Mr. Wirtz said it had been circulated to at least three companies. He hasn't heard much back yet. There are still a couple of issues on the contract that they are working through with Ms. Fine. As soon as he gets some feedback from companies he'll possibly bring it back to the December meeting to see if there are any changes that need to be made to make the concept work for the companies.

In response to a question Mr. Wirtz summarized what the WAWS request is to the State Water Commission for the 2017-2019 biennium. Mr. Wirtz said their original request was for \$60 million but with the projected reduced revenues in the Water Resources Trust Fund they worked with the Water Coalition and reduced their request to \$29 million. The \$29 million will be for rural water work and includes \$5 million that needs to be done on a transmission line between Stanley and Tioga. The rural water service projects are being prioritized by the Board of Directors--they are trying to target the areas that have been waiting the longest and where there is the highest density of residences. He noted that if there is an issue of easements they may shift to another service area where they can get the pipe in to the rural residences.

Being no further Western Area Water Supply Authority business, Governor Dalrymple adjourned this portion of the meeting at 10:14 a.m. and the Commission took up Bank of North Dakota business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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

Also

Present: Vance Taylor, North Dakota Mill
Edward Barchenger, North Dakota Mill
Ed Nagel, Auditor's Office
Andrea Travnicek, Governor's Office
Bonnie Storbakken, Governor's Office
Jessica Pfaff, Agriculture Department
Members of the Press

Governor Dalrymple called the Administrative portion of the Industrial Commission meeting to order at 11:29 a.m. following completion of North Dakota Mill business.

Ms. Karlene Fine, Industrial Commission Executive Director/Secretary, presented the October 19 confidential and non-confidential meeting minutes for the Commission's consideration.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the October 19 confidential and non-confidential minutes be approved as presented. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Fine discussed her recommendation for the compensation of the North Dakota Mill President and General Manager as follows:

RE: Vance Taylor Compensation

Fiscal Year 2016 was a good year for the State Mill. Profits were \$9,336,618 although they were down from the prior year's profits of \$16,675,348 which was 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 \$72,311 (Vance's base salary for FY 2016 was \$241,035.)

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 2016 for Mill employees was 14.86% as compared to 18.84% the prior year. The FY 2016 gain sharing payment was 4% for certain criteria and 10.86% based on profits. The maximum amount under this portion of the compensation plan would be \$48,209. All the goals were met but profits were down from the prior year. Based on the gain sharing payout portion, it is my recommendation that Vance receive \$43,967.

As to the remaining 10% of his 30% bonus potential (\$24,102), Vance and the Mill achieved a number of goals that were established by the Commission last year in the Mill's strategic plan—added new customers, shipments were up over the prior year, G-Mill expansion was near completion and work was started on Phase 1 of the High Speed Receiving System, successful negotiation of a demurrage abatement contract with BNSF, continued work with Dakota Pride and FSSC 22000 certification audit was passed. It is my

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November 7, 2016

recommendation that he receive the maximum amount under this portion of the bonus potential. Fiscal Year 2016 was a very busy year for the Mill with the construction projects in addition to maintaining milling operations. Vance is doing a very good job at the Mill. In total I am recommending he receive a bonus of \$68,069 for FY2016.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Mr. Vance Taylor, North Dakota Mill President and General Manager, receive a bonus of \$68,069 for FY2016. 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 this portion of the meeting at 11:33 a.m. and took up North Dakota Mill non-confidential business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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

Also

Present: Vance Taylor, North Dakota Mill
Edward Barchenger, North Dakota Mill
Ed Nagel, Auditor's Office
Bonnie Storbakken, Governor's Office
Jessica Pfaff, Agriculture Department
Members of the Press

Governor Dalrymple called the North Dakota Mill non-confidential portion of the Industrial Commission meeting to order at 11:27 a.m. following completion of **confidential** North Dakota Mill business.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve an increase in the FY 2017 Capital Plan "Other" line item by \$300,000 and further authorize Mill management to negotiate terms and, if reasonable terms can be reached, sign an option for property which will allow for improved Mill operations. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Dalrymple recessed this portion of the meeting at 11:28 a.m. and the Commission took up Administrative business.

Governor Dalrymple reconvened the North Dakota Mill non-confidential portion of the Industrial Commission meeting to order at 11:33 a.m. following completion of Administrative business.

Mr. Ed Nagel, Auditor's Office, presented the North Dakota State Mill Fiscal Year 2016 Audit. (A copy of the audit is available in the Commission files.) He said their office had issued a clean unmodified opinion which means the financial statements for the fiscal year 2016 are fairly stated in accordance with generally accepted accounting principles. He reviewed the financial statements - the Statement of Net Position; the Statement of Revenues, Expenses and Changes in Net Position, and the Statement of Cash Flows. He indicated that the notes to the financial statements are quite comprehensive and are very similar to prior years' notes to the financial statements. He also reviewed the Schedule of Appropriations. He stated that in regards to the report on internal control over financial reporting and compliance they did not have any internal control weaknesses noted and also no compliance issues noted so it was a clean report. They had a favorable response to all six of the items with no exceptions for the Legislative Audit and Fiscal Review Audit questions. The eight items for the LAFRC Audit Communications also had no exceptions and no unusual items.

Mr. Taylor presented the FY2017 First Quarter Report as follows: (A copy of the full report is available in the Commission files.)

**North Dakota Mill
Review of Operations
1st Qtr. Ended
September 30, 2016**

Summary

The Mill experienced a profit of \$2,502,426 in the first quarter compared to a profit of \$3,390,960 last year.

	<u>9/16</u>	<u>9/15</u>
Profits	\$ 2,502,426	\$ 3,390,960
Sales	64,552,712	69,425,088
Cwt Shipped:		
Spring	2,962,979	2,926,673

% to Total	91.3%	93.0%
Durum	<u>282,102</u>	<u>219,801</u>
Total	<u>3,245,081</u>	<u>3,146,474</u>
Bag Shipments	703,576	655,798
% to Total	21.7%	20.8%
Tote Shipments	38,446	32,533
% to Total	1.2%	1.0%
Family Flour	76,271	76,887
% to Total	2.4%	2.4%
Organic Flour	40,292	44,546
% to Total	1.2%	1.4%
Wheat/Durum Bought:		
Spring/Winter	5,537,524	5,670,900
Durum	<u>597,415</u>	<u>403,859</u>
Total	<u>6,134,939</u>	<u>6,074,759</u>

Sales

Sales for the first quarter were \$64,552,712 compared to \$69,425,088 last year, a decline of 7.0%. The price of grain settled with suppliers at the mill for the first quarter of the year is \$0.81 per bushel lower than last year. Shipments of 3,245,081 cwts. in the first quarter are 98,607 cwts. above last year. Bag shipments of 703,576 cwts. are 7.3% above last year. Family flour shipments reached 76,271 cwts., a decrease from last year's first quarter shipments of 76,887 cwts. Organic flour shipments were 40,292 cwts., a decrease of 4,254 cwts.

Operating Costs

Operating costs for the first quarter were \$7,083,294 compared to \$6,392,084 last year, an increase of 10.8%. Total flour production for the first quarter was 4.0% above last year's first quarter. Operating cost per cwt. of production was \$2.30 per cwt., compared to \$2.16 last year, an increase of 6.5%. The increase is mainly due to the two fumigations that hit us and costs associated with the G-Mill.

Profits

The mill had profits of \$2,502,426 in the first quarter compared to \$3,390,960 last year. This is a decrease of 26.2%. Gross margins as a percent of gross sales for the quarter was 15.0% compared to 14.2% last year.

Risk Management Position

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

**Position Report
30-Sep-16**

Period	Hedge Ratio
Dec-16	0.9
Mar-17	0.9
May-17	0.9
Jul-17	0.9
Sep-17	0.8
Dec-17	1.0
Net Position	0.9

Mr. Taylor said going forward into the second quarter he is anticipating that the Mill will continue to see increased shipments as demand is strong and the new G-Mill continues to run very well. October shipments did set a new all-time record for a single month mainly due to the G-Mill. This year's Spring Wheat crop has good protein quality and is working well for our customers.

Mr. Taylor and the Commission members discussed the protein levels in the wheat and what is needed at the Mill to meet their customers' demands. The Mill is able to source high protein but is having more difficulty in finding low protein. Mr. Taylor also discussed the relationship between what the Mill is paying in North Dakota compared to the quoted price for Spring Wheat on the Minneapolis Board. That price is always quite a bit higher than what is being paid in North Dakota--the further west you go in North Dakota the lower that number is going to be from the Minneapolis number because of freight costs.

Mr. Taylor presented Governor Dalrymple with a parting gift thanking him for everything he has done for the Mill.

Being no further North Dakota Mill business, Governor Dalrymple adjourned this portion of the meeting at 11:44 a.m. and took up Bank of North Dakota business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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Agriculture Commissioner Doug Goehring

Also

Present: Eric Hardmeyer, Bank of North Dakota
Kelvin Hullet, Bank of North Dakota
Todd Steinwand, Bank of North Dakota
Kim Kautzman, Bank of North Dakota
Craig Hanson, Bank of North Dakota
Andrea Travnicek, Governor's Office
Bonnie Storbakken, Governor's Office
Jessica Pfaff, Agriculture Department
Members of the Press

Governor Dalrymple called the Bank of North Dakota portion of the Industrial Commission meeting to order at 10:14 a.m. following completion of Western Area Water Supply Authority business.

Mr. Eric Hardmeyer, Bank of North Dakota President, presented and discussed the following memorandum regarding proposed legislation for the 2017 Legislative Session:

1. NDCC 6-09-38.1 enables BND to administer and manage the North Dakota Achieving a Better Life Experience Plan. (ABLE) This program is for individuals with disabilities and their families. A recommendation is to amend North Dakota Century Code to ensure that state means tested aid is protected for these individuals when opening ABLE plan accounts.

There is a possibility that this change can also be made through an administrative rule change by the Department of Human Services. We are currently working with officials at DHS to see if this can be accomplished without going to the Legislature.

2. The 'Guarantee Loan Program' establishing BND as a guarantee agency is located in NDCC 15-62.1. One recommendation is to amend the Program to allow BND to obtain a judgment through administrative process versus the current judicial process. This change would take the Attorney General's office out of the process. BND would follow the federal process where a notice is sent to the borrower upon default and provides them with 30 days to substantiate a claim and request an administrative hearing through the ND Office of Administrative Hearings. If this process was in place the Bank would benefit in timeliness and cost.

A second recommendation is related to collection costs – It appears that NDCC does not allow for the charging of collections costs on defaulted student loans. In the past federal law provided BND this authority for the state program while BND had federal student loan guarantees on the books and language is included in each DEAL program promissory note.

3. The 2015 Legislature authorized BND in HB1014 (Section 13) to develop a Medical Partnership in Assisting Community Expansion Program. This program assists in the financing of critical access hospital infrastructure with BND providing the buy down of the interest rate. There is no community match

required for this program. Under the statute, this legislation sunsets on June 30, 2017. To date, BND has committed to providing \$7.5m in buy down for two projects, \$10.2 million of buydown is available.

In discussions with officials from the Hospital Association it appears that additional funding is not necessary. Additionally the Medical Infrastructure Revolving Loan Program (\$50 million) will start receiving some return funds, thus building a base to make future loans. Consequently, BND will not seek reauthorization of this program.

4. Since the 2009 legislative session, BND has funded buy down from its capital as opposed to a legislative appropriation. BND has submitted to OMB the following projections for buy down funding in the 2017-2019 biennium:

<u>Program</u>	<u>2015</u>	<u>2017</u>
Affordable Housing	\$12,000,000	*
Ag Pace	\$ 3,000,000	\$ 3,000,000
Bio-Fuels Pace	\$ 2,000,000	\$ 2,000,000
Beginning Farmer	\$ 7,000,000	\$ 9,000,000
Flex Pace	\$10,000,000	\$10,000,000
Medical Pace	\$10,249,000	\$ 0
PACE	\$ 6,000,000	\$ 6,000,000
School Construction	<u>\$ 7,785,000</u>	<u>\$10,000,000</u>
	\$58,034,000	\$40,000,000

Note: BND anticipates buy down funding for Affordable Housing will come from residual money left over from the 2015-2017 biennium. While not a firm estimate, BND does anticipate this funding will be approximately \$10,000,000.

During the discussion of the memorandum the Industrial Commission indicated that Mr. Hardmeyer should work with the Attorney General’s Office in regards to Item #2 and draft the legislation and then bring the proposed legislation back to the Commission on December 8 for their consideration. There were also questions about what all was included in collection costs and how many fees should be added to a student loan borrower who has defaulted on their loans.

In regards to the School Construction Loan buydowns, Mr. Hardmeyer indicated that with the buydown the interest rate on the school construction loan is at 2% until 2025 and at that point it resets. It was indicated that should Measure 2 be approved there may be a change in the funding level of need as outlined in Item 4. There was discussion about those school districts who may not want to move their outstanding school construction loan to the new school construction loan fund if Measure 2 is passed. This will be a topic that the Legislature will be looking at in 2017.

In response to a question Mr. Hardmeyer stated he has had conversations with the Office of Management Budget about the buydown funding as outlined in Item #4.

In response to a question regarding the “residual money” in the various programs, Mr. Hardmeyer stated that current law gives the Bank the authority to direct the money to the program where there is the greatest need. They believe there will be monies available for affordable housing without establishing a designated number.

In response to a question regarding the Beginning Farmer Program amount being increased, Mr. Hardmeyer stated that the Bank is seeing increased demand in both the chattel and real estate parts of that program. This would be contrary to what is being stated about the agriculture economy. Commissioner Goehring indicated that there is an

aging population in farming. Mr. Hardmeyer stated that is correct and they are seeing a generation transition taking place and that is resulting in a demand for this program.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Bank of North Dakota be authorized to prepare and submit draft agency legislation which, after completion of legal review, would allow the Bank to amend North Dakota Century Code 6-09-38.1 to ensure that state means tested aid is protected for those individuals when opening North Dakota Achieving a Better Life Experience (ABLE) Plan accounts. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Hardmeyer indicated that last month the Bank management had given the Commission an overview of the work the Bank had been doing over the last six to nine months as they met with community leaders, bankers, economic developers and what they have found in terms of needs and gaps. He noted that there were four Key Challenges that they had identified:

1. Provide access to affordable capital for beginning entrepreneurs
2. Develop funding options for business owners to access capital for rapid expansion
3. Increase current cap limits on BND's community partnership programs
4. Ensure North Dakota has the ending tools for large-scale projects

Today they will be presenting specific recommendations about what the Bank is considering for changing their programs. They are not asking the Commission to take any action at this time as they think it is prudent to wait on making changes until after the legislative session.

Mr. Kelvin Hullet, Bank of North Dakota Economic Development and Government Program Market Manager, presented the Financing Economic Development White Paper (a copy of the document is available in the Commission files) as follows:



Our focus on growing and diversifying the economy will be more aggressive than ever. The very best way to ensure our state remains strong is to work toward having the best business climate in the nation, to encourage investment and new business startups, and to attract and retain great people for great jobs."

*- Senate Majority Leader Rich Wardner and House Majority Leader Al Carlson
www.sayanythingblog.com/entry/republicans-clear-choice-november/*

KEY CHALLENGES

- 1. Provide access to affordable capital for beginning entrepreneurs**
- 2. Develop funding options for business owners to access capital for rapid expansion**
- 3. Increase current capital limits on BND's community partnership programs**
- 4. Ensure North Dakota has the lending tools for large-scale projects**

ECONOMIC DEVELOPMENT ROAD MAP

ENTRY POINT

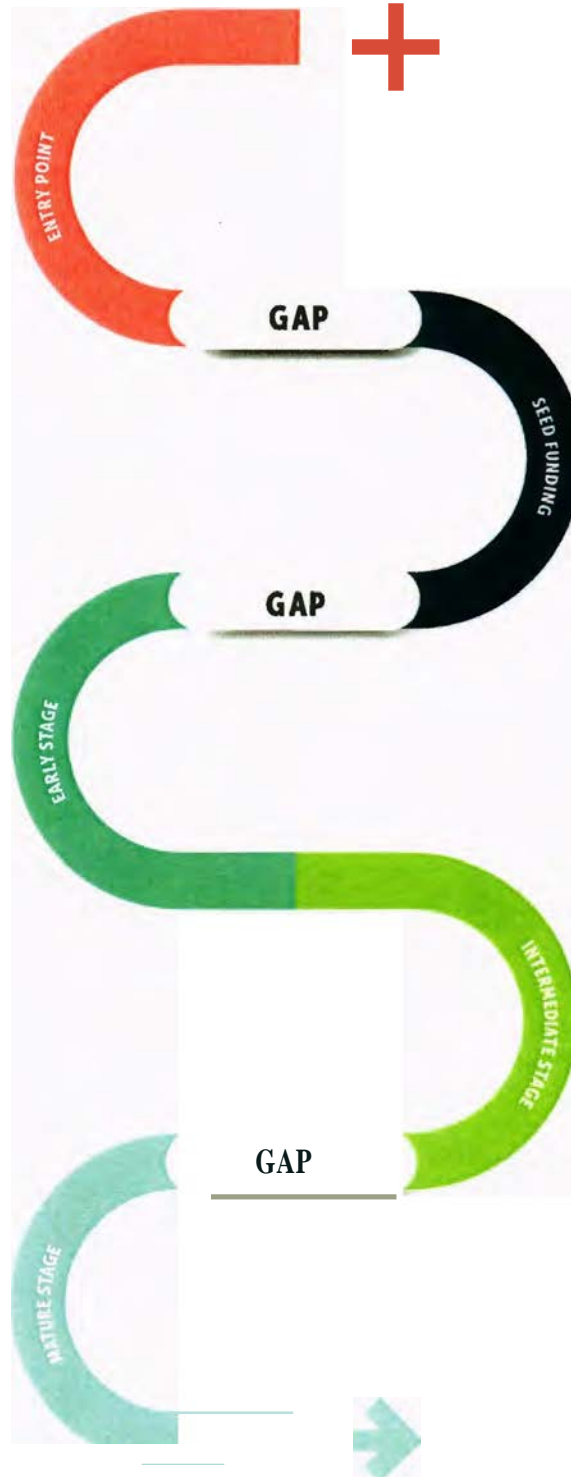
Department of Commerce
University Research Centers
Local Banks
Local EDC Organization
SBA & SCORE
Regional Councils
Million Cups
Entrepreneur Centers

EARLY STAGE

BND Beginning Entrepreneur
BND Venture Capital Fund
Private Venture Capital Fund
Private Sector Angel Funding
North Dakota Development Fund
Emerging Business Loan Fund

MARKET STAGE

Bank Financing
Pace/Flex Pace
Private Sector Equity
SBA Loans



SEED FUNDING

Innovate North Dakota
BND Beginning Entrepreneur
BND Public/Private-Seed Capital Funding
Research ND

INTERMEDIATE STAGE

North Dakota Development Fund
BND Venture Capital Fund
Private Sector VC Funds
BND Accelerated Growth Loan Fund

BND FINANCING CONTINUUM



BND BEGINNING ENTREPRENEUR LOAN GUARANTEE PROGRAM PERCENTAGE COMPARISON

CURRENT LOAN SCALE	CURRENT GUARANTEE	PROPOSED LOAN SCALE	PROPOSED GUARANTEE
Up to \$100,000	85%	\$0 to \$150,000	85%
\$100,001 to \$150,000	80%	\$150,001 to \$300,000	75%
\$151,001 to \$200,000	75%	\$300,001 to \$500,000	50%



DESIR EDSTR ATEGICOUTCOMEFOR ECONOMICDEVELOPMENT PROGR AMMI NG

To deliver meaningful, a gile financial solution that serve to enhance public a nd private economic development efforts leading to the creation of new wealth a nd economic diver sifica tion .

These solutions will position North Dakota a s a lea der in America in support of businesses at all phases of growth.

Mr. Hullet reviewed a chart in the white paper identified as the Economic Development Road Map. This chart shows the involvement and roles of all the entities and programs related to economic development and where there are identified gaps in the funding model. The first gap is in financing the “pre-revenue” companies -- those companies that are just getting started and they don’t have any revenue. Then there is some seed funding available -- Innovate North Dakota, BND Beginning Entrepreneur, Research ND, etc. but then the next gap shows up between the seed funding and the early stage. This is where the Bank believes it can help fill this gap with some changes to the BND Beginning Entrepreneur program. There is funding for early stage and intermediate stage companies but then another gap is encountered which relates to companies that are in what we call the accelerated growth stage. These are companies (many of them technology companies) that have strong cash flows

but when they go to a bank for financing they don't have a large asset base for collateral and banks are reluctant to lend based just on a revenue stream.

Mr. Hullet pointed out that throughout this process the Bank has been working closely with the private sector. Bank staff met with venture capitalists, university staff and has tried to make sure that there is a strong public/private partnership in developing this economic plan.

Mr. Todd Steinwand, Bank of North Dakota Senior Vice President for Business Development, stated that a number of these projects involve a lead bank. The local bank would lead the financing and the Bank would provide a stopgap to them but the local lender will have some "skin in the game." The Bank's goal is to assist the project in moving through these programs so that eventually they get to the point where they are in great shape and the lead bank can take over the entire financing. Mr. Hullet indicated that success for the Bank is to move a company through the system and ultimately they just become another productive company within the state.

Mr. Hullet provided a chart showing a BND Financing Continuum that includes a couple of programs that do not currently exist. At this point the Emerging Business Loan Program and the Accelerated Growth Loan Program are both ideas conceptually that the Bank will be proposing at a later date. Bank management believes these will help address the gaps identified in the Economic Development Road Map.

Mr. Hullet presented background information on the legislatively-authorized Venture Capital Fund and how the \$15 million Fund could be administered by the North Dakota Development Fund to address the first "gap" identified on the Economic Development Road Map. He reviewed the Venture Capital Investment Stack Model that the Bank had prepared. This Model identifies the percentages of investment that the Bank wants to make into certain sized companies through the Venture Capital Fund. The Bank has had some investments in the Seed Capital Pre-Revenue projects but it has been limited. What the Bank found out is that most of the venture capital funds/angel funds prefer to invest in later stage companies so there is a gap that the Bank can help fill. He indicated that there are four areas that can be coordinated with the Bank's investment

- Innovate North Dakota is a Commerce Department program as they come through Stage 4 into Stage 5 we think there are some opportunities to help there.
- Community Match program -- if communities are looking at using some of their existing economic development funds to start a local seed capital fund the Bank could match with them.
- Side by Side investment with existing venture capital funds.
- Statewide Demo Day is something that has been done and is being looked at and the Bank's hope is that the Bank could help to expand that and really make the connection between investors and the entrepreneurs.

In response to a question Mr. Hardmeyer explained how the decision making process works in regards to the Venture Capital Fund, the Development Fund and the relationship with the Development Foundation. Mr. Hardmeyer said the Development Fund has an advisory board that is separate from the Development Foundation. The Development Fund staff takes any investment equity projects to their advisory board for approval. He noted that the Bank's Venture Capital Fund (the Bank's asset) is managed by the Development Fund. He explained that the Bank transferred that management role to the Development Fund a number of years ago when they saw on a specific transaction that the Bank was a venture capital participant plus had a loan to the same entity which resulted in a conflict--the Bank shouldn't be lending money to itself and making the decisions on both sides -- the venture capital side and the lending side. The Development Fund considers the Bank's Venture Capital Fund as a companion with their Development Fund. So when the Development Fund staff and their advisory board look at

a project that needs, for example, \$600,000 they will take \$300,000 from the BND Venture Capital Fund and \$300,000 from the Development Fund. He stated that the process has worked out okay but the Development Fund has not been focused on seed capital projects--they are more second stage or later stage investors. What the Bank has now determined is that there is a greater need for more of the Bank's Venture Capital Fund to be invested in the front end as seed capital. The Bank is recommending that \$1.5 million of the \$15 million in the Venture Capital Fund be directed toward start-ups--10% or \$1.5 million for seed capital; 40% or \$6,000,000 be used for Early Stage; 30% or \$4.5 million for Growth Stage and 20% or \$3,000,000 be used for Late Stage. The Bank has not previously given the Development Fund this level of direction. These changes can be made by policy and do not require legislative action.

Mr. Hullet reviewed the Beginning Entrepreneur Program which was created by the Legislature a number of years ago. What Bank staff heard in their meetings around the state is that there needed to be some changes to this program and in particular the maximum loan amount and the net worth amount. The Bank's recommendation is to increase the maximum loan amount from \$200,000 to \$500,000 and to increase the maximum net worth amount from \$300,000 to \$500,000. Both of these changes can be done by policy and no legislation is required. The actual startup cost amount of \$5,000 and no collateral loan amount of \$25,000 are set by statute. From what they heard those numbers are pretty relevant so the Bank isn't proposing any legislation to change those numbers.

The other discussion the Bank staff had with the banking community on this program was the guarantee levels. Currently the Bank provides a five-year guarantee on the loan based on the following scale -- Up to \$100,000 the guarantee would be 85%; over \$100,000 up to \$150,000 is at 80%; and \$151,000 to \$200,000 is at 75%. The discussion with the banking community has been that if the loan amount is increased then the local bank's participation will have to be increased. The Bank is proposing a change in the guarantee as follows -- Up to \$150,000 BND guarantee will be at 85%; \$150,001 to \$300,000 Bank guarantee will be at 75% and for \$300,001 to \$500,000 the Bank's guarantee would be at 50%. Another recommendation being discussed is to have an interest only option for one year. Mr. Steinwand stated that the Bank believes a five year guarantee is the proper time limit--after five years the company should know whether they are going to make it or not and the guarantee should go away. The borrower could then come back to the Bank as a regular participating borrower.

Mr. Hardmeyer indicated that as the Bank looked at the \$40 million they would be providing during the 2017-2019 biennium for economic development programs they hired Praxis Strategy Group out of Grand Forks to take a look at the various PACE programs and do an analysis as to whether those dollars are doing what the Bank thought they should be doing -- are we getting our "bang for the buck". The Bank's initial review of the analysis shows that the programs have been successful and utilized the way they should have been utilized and the outcomes have been promising. The Bank is still reviewing the complete analysis but will share that information with the Commission as soon as the Bank has completed its review. He indicated that Praxis was not asked to look at the Beginning Farmer Program--they looked at PACE, Flex PACE and the Affordable Housing Program.

In response to a question Mr. Hardmeyer clarified that the \$40 million comes out of the Bank's capital and comes back to the Bank in the form of a buydown on the interest rates for the various economic development program loans and the Beginning Farmer Program loans. At one time the total amount of the buydowns was \$10 to \$12 million a biennium and the funding came from the General Fund. Those dollars now come out of the Bank's capital and it is a big number at \$40 million. That is why they wanted some analysis done on whether these dollars are doing what they are supposed to do. The Commission members commented on what they see as the value of those programs--it allows the local lender and the borrower to do more with their dollars. It provides an incentive to invest in North Dakota communities, businesses and ventures. Governor Dalrymple indicated that it

was up to the Bank to keep judging whether this is money wisely spent. If the Bank can use less in those line items then they should do so and use the monies in other ways.

Mr. Hardmeyer presented the non-confidential Bank of North Dakota Advisory Board September 15, 2016 meeting minutes.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission close the meeting pursuant to N.D.C.C. §44-04-18.4 to discuss commercial and financial information including marketing and sales plans regarding the State Mill. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Dalrymple closed the meeting at 10:53 a.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 State Mill business, the Commission reconvened in non-confidential session at 11:45 a.m. and it was noted that during the confidential portion of the meeting, it had been moved and seconded that the Bank of North Dakota be authorized to participate in two loans identified as Attachments 8 and 9. In non-confidential session, on a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Bank of North Dakota business, Governor Dalrymple adjourned the meeting at 11:46 a.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary