

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on December 8, 2016 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
Doug Burgum, Governor-Elect
JoDee Hanson, Governor Burgum Elect's Staff
Jason Nisbet, Governor's Office
Bonnie Storbakken, Governor's Office
Jessica Pfaff, Agriculture Department
Pat Nagel, Housing Finance Agency
Mindy Piatz, Brady Martz
Don Larson, Odney
Craig Hanson, Bank of North Dakota
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 (WAWS) business.

Ms. Karlene Fine, Industrial Commission Executive Director/Secretary, presented the Western Area Water Supply Authority November 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 - November, 2016 & Debt Repayment Report

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

Page 1 prepared by the Bank of North Dakota, reflects debt service payments through the month of November, 2016. In November 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 \$5,123.00 was made on BND Loan #1 as a result of the higher sales revenue in the month of October.

The next 3 pages (pages 2, 3 & 4) I prepared based on the information provided by WAWS staff reflecting November revenues and expenses and net income. On page 2 you will see there was one capital improvement disbursement (highlighted in orange) which you previously approved. There were two principal payments made in November and they are highlighted in yellow. Net income for the month of November was **\$2,369.56** 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 WAWS sales for the month of November being \$684,026.06 they were under that number by \$187,724.)

Page 5 is the balance sheet prepared by WAWS staff as of November 30, 2016. As noted on the Balance Sheet the Accounts Receivables are \$1,837,436.46 which is included in the assets of \$6,206,012.91 Note: The assets include a deferred expense line item which reflects the deferred expenses for the Baseline Sales.

Governor Dalrymple welcomed Governor-Elect Doug Burgum to the Commission meeting.

Mr. Jaret Wirtz, WAWS Executive Director, said November sales of \$684,026.06 were lower than what he had previously indicated they would be. That is because they have not billed the operator for the water that they had purchased for two frack jobs that are going on right now. They will be billed when the jobs are finished so there will be a spike in the December or January numbers. The operators prefer that it is done in this manner so WAWS tries to accommodate that. He indicated that they hope to finish strong this year.

In response to a question Mr. Wirtz indicated that the industrial sales account is not charged for the related expenses of those frack jobs--expenses are charged only when the revenues are reflected on the financial statements. Whatever WAWS shows on the revenue side is what WAWS expenses out on the industrial side.

Mr. Wirtz commented on some opportunities WAWS has for potential sales with the number of uncompleted wells in the area.

Ms. Fine said for the month of November the net income was \$2,370; year-to-date is \$2.4 million and for the biennium would be \$2.1 million.

In response to a question regarding if WAWS feels the debt they have to the State will someday be repaid, Mr. Wirtz said yes. WAWS has every intention of paying it back and he believes they have the ability to do that. WAWS has already paid approximately \$35 million to the State in five years. He noted, however, that there will need to be some modifications to the interest rates and terms because of the slowdown in the oil industry. He indicated that last month WAWS began discussions with the Bank of North Dakota on loan terms and interest rates. He reviewed the interest rates on the various loans -- one loan has an interest rate of 5% which is unheard of in the water business--normally it would be less than 3%. If there are some adjustments to the interest rates and the terms of the loans he believed WAWS would be able to make the debt payments.

Mr. Wirtz and the Commission discussed the interest rates and terms that need to be adjusted and whether those changes could be made by the Bank of North Dakota, Water Commission or if the Legislature had to make the changes. He indicated that they would be talking to the Legislature about lowering the 5% interest rate loans down to 2%. He provided the Commission with a chart that showed some options that they are discussing regarding debt service payments. They are trying to find the best option, which is agreeable to everyone, based on \$12 million in revenue annually. The goal is to make the payments and pay the entire \$190 million in principal plus all the interest costs over time.

There was discussion regarding how domestic water sales fit into the picture and whether they should be paying a portion of the debt. Mr. Wirtz provided some background information on legislative actions related to the structuring of the debt for industrial sales and for domestic sales. He pointed out the loans that the domestic water sales have taken on to match grant dollars from the Water Commission following the most recent legislative sessions.

In response to a question, Mr. Wirtz indicated that they will have provided rural water hook ups to over 600 residences. There are another 600 waiting for rural water service that will take continued funding which they hope will come during the 2017 legislative session -- the \$29 million that is in the Governor's Budget. There will then still be a couple hundred rural users to reach in areas like Squaw Gap and north of Bowbells where the users are few and far between. The costs for some of those users will be in the \$200,000 to \$300,000 range compared to the \$40,000 to \$60,000 range that is more palatable. Those projects may not get done for three or four biennium just because the costs are so high. The end goal is to get everybody water that wants it and that takes a lot of money to get to some of those users.

Ms. Fine discussed the Authority's recommendation for the 2017 Industrial Reimbursement Rate as follows: (The chart is available in the Commission files.)

RE: WAWS 2017 Industrial Reimbursement Rate

North Dakota Century Code §61-40-10 states in part:

61-40-10. Industrial water depot and lateral sales.

.....

b. Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.

The Western Area Water Supply Authority (WAWS) Board has recommended that the industrial reimbursement rate for CY 2017 be established as outlined on the attached table. This is a 2% increase from CY 2016. It is my recommendation that you accept the WAWS Board recommendation.

Mr. Wirtz reviewed the chart and the map that showed the rates and explained how the rates were determined. (Copies of the map and chart are available in the Commission files.) He indicated that these numbers reflect the WAWS Board 2% increase to the wholesale rates to the member entities.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission, in accordance with §61-40-10(1)(b) directs the Western Area Water Supply Authority (Authority) to reimburse the Authority and its member entities from the Industrial Account for the cost of delivery of potable or nonpotable water sold from the industrial water depots and laterals for the year 2017 as follows:



Summary of WAWSA
2017 Industrial Water Rates by Location

December 7, 2016

Summary of Proposed Volumetric Industrial Water Charges for WAWSA Members and Submembers		
Volumetric Rate (\$/gallon)		
WAWSA Service Area and Member/Sub-Member	2017 Rate (\$/gallon)	Description
WAWSA Volumetric Rate to Williston	\$1.95	
WAWSA Volumetric Rate to South	\$4.03	
WAWSA Volumetric Rate to North	\$3.45	
City of Williston		
2nd Street Depot	\$1.95	Water Cost at Initial Meter Point
North Williston Depot	+ \$1.82	Williston Trans/Storage/Pumping/Dist/Admin/Water Loss
Future direct connections	\$3.77	Effective Volumetric Rate for water sales from Williston's system
WAWSA South - McKenzie County Water Resource District (MCWRD)		
System I and IV Pipeline Corridor ¹		
Indian Hill Depot	\$4.03	Water Cost at Initial Meter Point
Alexander Depot	+ \$0.34	MCWRD Admin
Current and future direct connections	\$4.37	Existing Volumetric Rate for water sales
Watford City Depot (WAWSA Water)	\$4.37	Water Cost at Initial Meter Point
	+ \$0.22	Water Loss
	\$4.59	Existing Volumetric Rate for water sales
Service to MCWRD System I past Watford City and System II Pipeline Corridor	\$4.59	Water Cost (WAWSA Supply)
	+ \$0.87	MCWRD Trans/Storage/Pumping/Dist/Admin/Water Loss
Current and future direct connections	\$5.46	Existing Volumetric Rate for water sales
Watford City Depot (ground water)	\$2.33	Water Supply and Treatment Cost from Watford City wellfield
	+ \$1.04	WAWSA Trans/Admin/Water Loss
	\$3.37	Calculated Volumetric Rate for water sales
Current and future direct connections from Watford City	\$4.37	Water Cost at Initial Meter Point
	+ \$2.75	Watford City Trans/Storage/Pumping/Dist/Admin/Water Loss
	\$7.12	Calculated Volumetric Rate for water sales
System I, II, and IV Rural ¹		
Keene Depot	\$4.37	Water Cost (WAWSA Supply)
Current and future direct connections within System I, II, and IV Rural service area (beyond pipeline corridor)	+ \$1.09	MCWRD Trans/Storage/Pumping/Dist/Admin/Water Loss
	\$5.46	Existing Volumetric Rate for water sales
WAWSA North		
Williams Rural Water District (WRWD) Pipeline Corridor ¹		
13-Mile Corner Depot		
Ray High Point Depot	\$3.45	Existing established WAWSA Volumetric Rate
Current and future direct connections		
29-Mile Corner Depot (Future)		
Connection to Epping	\$3.45	Water Cost at Initial Meter Point
	+ \$0.29	WRWD Admin/Water Loss
	\$3.74	Calculated Volumetric Rate for water sales
WRWD Rural	\$3.45	Water Purchase
	+ \$5.12	WRWD Trans/Storage/Pumping/Dist/Admin/Water Loss
	\$8.57	Existing Volumetric Rate for water sales
R&T Water Supply Commerce Authority (R&T)¹		
R&T Depot	\$3.45	Water Cost at Initial Meter Point
Ray Depot	+ \$1.19	R&T Trans/Storage/Pumping/Admin/Water Loss ²
Current and future direct connections between Ray and Tioga	\$4.64	Existing Volumetric Rate for water sales
Current and future direct connections from City of Tioga	\$4.64	Water Cost at Initial Meter Point
	+ \$0.91	Tioga Trans/Storage/Pumping/Dist/Admin/Water Loss ²
	\$5.55	Effective Volumetric Rate for water sales
Stanley High Point/Ross Depot (Future)	\$3.45	Water Cost at Initial Meter Point
Current and future direct connections between Tioga and Stanley	+ \$1.34	R&T Trans/Storage/Pumping/Admin/Water Loss ²
	\$4.79	Existing Volumetric Rate for water sales
Tioga Depot	TBD	Volumetric Rate to be determined if untreated water source is utilized
Current and future direct connections from the City of Stanley	\$4.79	Water Cost at Initial Meter Point
	+ \$3.80	Stanley Trans/Storage/Pumping/Dist/Admin/Water Loss ²
	\$8.59	Effective Volumetric Rate for water sales from Stanley system
Stanley Depot	\$3.03	Existing Volumetric Rate for water sales
Current and future direct connections from Ray to Crosby	\$3.45	Existing established WAWSA Volumetric Rate
Current and future depot or direct connections from the Stanley Rural Service Area	\$7.29	Existing calculated constant block rate for water sales in R&T System
Burke-Divide Williams Rural Water (BDW)^{1,2}		
Future Direct Connections in BDW System	\$3.45	Water Cost at Initial Meter Point
	+ \$5.12	BDW Trans/Storage/Pumping/Dist/Admin/Water Loss
	\$8.57	Existing Volumetric Rate for water sales (WRWD)

1. Based on 2016 rates, 2017 rates have not yet been adopted.
2. BDW water system is operated by WRWD.

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

Ms. Fine discussed the Authority's recommendation for the 2017 Industrial Water Rate as follows:

RE: WAWS 2017 Industrial Rate

North Dakota Century Code §61-40-11 states:

61-40-11. Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 61-40-10 which are paid for by industrial water depot and lateral sales.

The Western Area Water Supply Authority (WAWS) Board has recommended that the industrial rate for CY 2017 be \$20.00/kgal (\$.84 a barrel). This is the same rate as last year. It is my recommendation that you accept the WAWS Board recommendation.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission, in accordance with §61-40-11, accepts the recommendation of the Western Area Water Supply Authority and establishes \$20.00/kgal (\$.84 a barrel) as the industrial water depot and lateral retail rate for the year 2017 subject to previous allowances for special contract rates. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Wirtz presented the Calendar Year 2017 forecast for industrial sales and debt payments. (A copy is available in the Commission files.) He said WAWS is forecasting \$12 million per year in revenue; this is based on average sales during 2016 at the depots. He pointed out that there are no longer any hot water depot sales. The company that sold hot water out of the WAWS depots is no longer heating water at the WAWS depots. It is really all cold water now. There have been some other companies expressing an interest in leasing some lanes for heating water again but at this time there is nothing going on with the hot water side. Hopefully these numbers are on the low end and WAWS will exceed them but that will be dictated by the price of oil.

Mr. Wirtz gave an update on legislative plans--noting, as previously discussed, they are looking for \$29 million in funding through the Water Commission budget and looking for some modifications to that interest rate on outstanding debt.

Being no further Western Area Water Supply Authority business, Governor Dalrymple adjourned this portion of the meeting at 1:25 p.m. and the Commission took up Housing Finance Agency business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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Held on December 8, 2016 beginning at 1:00 p.m.
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Present: Governor Jack Dalrymple, Chairman
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Also

Present: Doug Burgum, Governor Elect
JoDee Hanson, Governor Burgum Elect's Staff
Jason Nisbet, Governor's Office
Bonnie Storbakken, Governor's Office
Jessica Pfaff, Agriculture Department
Pat Nagel, Housing Finance Agency
Mindy Piatz, Brady Martz
Members of the Press

Governor Dalrymple called the Housing Finance Agency portion of the Industrial Commission meeting to order at 1:26 p.m. following completion of Western Area Water Supply Authority business.

Ms. Mindy Piatz, Brady Martz, presented the North Dakota Housing Finance Agency - June 30, 2016 financial audit. (A copy of the audit is available in the Commission files.) She said their firm had issued a clean or unmodified opinion of the Agency's financial statement. She reviewed the Management's Discussion and Analysis (which had been prepared by the Agency), the financial statements (total net position as of June 30 was about \$160.7 million – of that \$153 million is restricted for debt service so there is about \$7.5 million available for operations), the various reports, letters and opinions their firm had provided in the audit and pointed out where there were changes from the prior year. There were no findings. She stated that it was a clean audit and staff knows what they are doing and does a good job.

In response to a question regarding the Agency's net position at \$160 million and if it is required, Mr. Pat Nagel, Housing Finance Agency CFO, said it is not required. He stated that the Agency's bonds are rated by Moody's and Moody's does not require a specific number but rather has the Agency to go through stress cash flow tests every time the Agency issue bonds. One of the stress cases required by rating agencies is a zero prepayment scenario and you have to prove that the bond issue can make its payments with virtually no prepayments and to do that you have to rely on excess revenues.

Ms. Piatz said the Agency has a \$160 million net position but \$153 million of that is restricted for debt service so you can't spend or use any of that restricted amount. There are some schedules in the back of the audit that are required by Ginnie Mae that show the stress test and that capital. It is a large net position but the majority of it is restricted.

Ms. Piatz presented the audit for the North Dakota Housing Incentive Fund - June 30, 2016. (A copy of the audit is available in the Commission files.) Ms. Piatz said it was a clean or unmodified opinion so the financials are properly in accordance with GAP. She noted that the cash and the fund balance is up this year--as appropriations are made by the Legislature in one year and then expended over the next couple of years as funding is disbursed for the HIF projects. At some point when there is no money appropriated for HIF there will be a final reconciliation after the grants have been disbursed and the projects are completed.

In response to a question regarding where they are in commitments for HIF money from last year, Ms. Piatz said \$80 million has been committed and \$61 million has been paid out as of June 30.

In response to a question regarding if the Agency has money for HIF in their budget, Mr. Nagel said no.

Mr. Nagel discussed the Housing Finance Agency Executive Director's recommendation regarding the naming of an entity to provide Bond Trustee Services as follows: (Copies of the attachments are available in the Commission files.)

FR: Jolene Kline, Executive Director

RE: NDHFA Trustee

The Agency is recommending a change in the NDHFA Bond Trustee. Wells Fargo, previously Norwest Bank, has been the trustee for the Agency since 1982 or the start of the Agency's First-time Homebuyer Program. The Agency has chosen to switch trustees as a result of apparent corporate changes at Wells Fargo resulting in lack of trustee responsiveness and staff turnover.

The Request for Proposal ("RFP") for NDHFA Bond Trustee Services was distributed on October 21, 2016 to five banks providing trust services. The deadline for receipt of responses was November 15, 2016.

Each of the five banks submitted proposals. The seven-member Selection Committee comprised of Jolene Kline, Pat Nagel, Dave Flohr, Karlene Fine, Jaden Grossman, and our Financial Advisors Tom Caine and Victor Chiang, reviewed the responses. The RFP provided a detailed explanation of services required and requested that responses include a discussion on the ability to provide the services requested, a description of the firm, references, staff qualifications, locations, cost proposal, implementation plan, and any pending litigation.

The Selection Committee reviewed each of the RFP proposals. Each of the banks meet minimum qualifications and have existing housing finance agency clients. Three of the banks were eliminated from further review due to the corporate structure and cost analysis. The Selection Committee considered the remaining proposals and was unanimous in the final recommendation of Wilmington Trust. The annual fee is 2.25 basis points on bonds outstanding with minimal additional fees. The term of the engagement would be ongoing until the trustee or Agency terminates the agreement with proper written notice as specified by the applicable General Resolution.

The reasons for proposing Wilmington Trust were based primarily on: (1) corporate structure of the trust department allowing the trustee to provide responsive and continuous service; (2) compensation in terms of both projected cost and fee structure; and (3) experience of the trust department and assigned team.

Attached:

- RFP
- Distribution List

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Housing Finance Agency (Agency) staff/selection committee and name Wilmington Trust to serve as the North Dakota Housing Finance Agency Bond Trustee with the term of engagement to be ongoing until the trustee or Agency terminates the agreement with proper written notice as specified by the applicable General Bond Resolution. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Housing Finance Agency business, Governor Dalrymple adjourned this portion of the meeting at 1:44 p.m. and the Commission took up Lignite Research, Development and Marketing Program business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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Jason Nisbet, Governor's Office
Bonnie Storbakken, Governor's Office
Jessica Pfaff, Agriculture Department
Jason Bohrer, Lignite Energy Council
Mike Jones, Lignite Research, Development and Marketing Program
Mike Holmes
Chuck Kerr, Great Northern Properties
Rich Voss, Great Northern Properties
Members of the Press

Governor Dalrymple called the Lignite Research, Development and Marketing Program portion of the Industrial Commission meeting to order at 1:44 p.m. following completion of Housing Finance Agency business.

Ms. Karlene Fine, Industrial Commission Executive Director/Secretary, presented the Lignite Research Fund Financial Report as follows:

Lignite Research Fund (314)
Financial Statement - Cash Balance
2015-2017 Biennium
Industrial Commission Meeting December 8, 2016

		Cash Balance
July 1, 2015 Beginning Balance	\$18,375,271.72	
\$.02/ton Revenues through September 30, 2016		\$641,446.40
Coal Trust Fund Revenues through September 30, 2016		\$2,525,695.92
Coal Conversion Tax Revenues through September 30, 2016		\$1,435,180.40
Interest Income through September 30, 2016		\$11,437.16
Repayments & other revenues through September 30, 2016		\$117,504.65
Total Revenues		\$4,731,264.53
Small Research/Educ. Projects Expenditures through Sept. 30, 2016		\$280,523.00
Demonstration Projects Expenditures through Sept. 30, 2016		\$639,393.00
Marketing Expenditures through September 30, 2016		\$922,000.00
Litigation Expenditures through September 30, 2016 (net costs)		\$88,464.62
Non-matching Project Expenditures through September 30, 2016		\$380,000.00
Administrative Expenditures through September 30, 2016		\$379,235.77
Total Expenditures		\$2,689,616.39

Cash Balance as of September 30, 2016

\$20,416,919.86

Outstanding contracted Small Research/Education/Demo Project Commitments	-\$2,698,234.00	
Outstanding contracted Marketing Project Commitment (includes expenditures in 2017-2019)	-\$1,358,000.00	
Estimated Lignite Litigation Costs for 2015-2017 biennium	-\$1,411,535.38	
Outstanding Non-matching project commitment (includes expenditures in 2017-2019)	-\$2,952,250.00	
Outstanding LV 21 Project Commitment	-\$3,572,866.00	
Estimated remaining administrative expenses for 2015-2017 biennium	<u>-\$370,764.23</u>	
		-\$12,363,649.61
Non-committed Funding		<u>\$8,053,270.25</u>
<hr/>		
Estimated Revenues for 2015-2017 Biennium		
\$.02/ton Coal Severance Tax	\$1,100,000.00	
Coal Severance Taxes/Coal Development Trust Fund	\$4,325,000.00	
5% of General Fund Share of Coal Conversion Tax*	\$2,000,000.00	
Interest & Other Income	<u>\$825,000.00</u>	
		\$8,250,000.00
Other Designated Revenues		
General Fund One-time Appropriation (Originally \$5,000,000)	\$4,672,500.00	
Expenditures through September 30, 2016	<u>\$938,000.00</u>	
Cash Balance Remaining as of September 30, 2016**		\$3,734,500.00

*This funding source expires July 31, 2018

**This entire amount is under contract along with \$307,500 in the demo \$'s

	2015-2017 Budget	Committed	Balance
Administration	\$750,000.00	\$750,000.00	\$0.00
Non-matching Studies	\$3,000,000.00	\$3,000,000.00	\$0.00
Marketing Project	\$1,200,000.00	\$1,200,000.00	\$0.00
LV 21 Demonstration Projects	\$3,572,866	\$3,572,866.00	\$0.00
Small Research/Education/Non-LV 21 Demonstration Projects	\$6,597,500	\$3,618,150.00	\$2,979,350.00
Litigation Costs (net costs)	<u>\$1,500,000</u>	<u>\$1,500,000.00</u>	<u>\$0.00</u>
	\$16,620,366.00	\$13,641,016.00	\$2,979,350.00

Ms. Fine presented the Lignite Research Council's recommendation for the following Grant Round 81 application:

“Annual Lignite Energy Council Education Program”; Submitted by: Lignite Energy Council; Request for \$100,000 (Small Research); Total Project Costs \$234,000; Project Duration: 1 year. She said the application was sent out to two reviewers that have background in communication and education areas. They recommended funding with a suggestion regarding lesson plans and a clarification on video costs. The Council unanimously recommended funding. The conflicts of interest were the members of the Lignite Research Council who are also members of the Lignite Energy Council. She recommended funding.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Lignite Research Council recommendation to fund the grant application “Annual Lignite Energy Council Education Program” and to authorize the Industrial Commission Executive Director to execute an agreement with the Lignite Energy Council to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$100,000 (small research). On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Fine presented a Resolution of Appreciation for Mike Jones.

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

**Resolution of Appreciation
Dr. Mike Jones**

Whereas, Mike Jones has served as the Director of the Lignite Research, Development and Marketing Program and Technical Representative and Advisor to the Industrial Commission since November 16, 2009; and

Whereas, Mike has diligently worked to carry out the mission of the Lignite Research Program to promote economic, efficient and environmentally clean uses of lignite and enhance development of North Dakota lignite and its products; and

Whereas, Mike has represented the lignite industry and the State of North Dakota on the national level as a member of the National Coal Council and is known around the world for his expertise on lignite issues; and

Whereas, Mike has worked with many researchers to find new ways to capture CO₂, utilize the valuable natural resource that is lignite, and to enhance the operations of North Dakota’s lignite plants; and

Whereas, Mike has the unique ability to both understand the complexity of the technical aspects of energy generation coupled with the talent to express that complexity in terms comprehensible to those not as knowledgeable as he is; and

Whereas, Mike has expressed his desire to retire and have more time to be with family, and relax at the lake;

Now, therefore, the Industrial Commission members hereby offer their heartfelt thanks to Mike Jones for his years of service as the North Dakota Industrial Commission’s Technical Representative and Advisor and extend their best wishes to Mike and his family for many years of enjoyable retirement.

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

Dr. Mike Jones thanked the Commission stating it had been a pleasure working with the Commission. He indicated that he is looking forward to staying somewhat engaged in the lignite research work. He is so interested in it that he can't totally walk away from it. The Commission thanked Dr. Jones for all his work.

Ms. Fine discussed the appointment of the Director of the Lignite Research, Development and Marketing Program and Industrial Commission Technical Advisor/Representative. She introduced Mr. Mike Holmes stating he comes with over thirty years of expertise in the research area and has worked at the EERC and Babcock. (A copy of Mr. Michael Holmes resume is available in the Commission files.)

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Michael Holmes be appointed as Director of the Lignite Research, Development and Marketing Program and as Industrial Commission Technical Advisor/Representative effective December 12, 2016.

Mr. Jason Bohrer and Dr. Jones both said they highly recommended Mr. Holmes for the position.

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

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission meeting be closed at 1:56 p.m. to hear a report on the Great Northern Properties Lignite Vision 21 Feasibility Project Phase IV report that has been determined to be confidential pursuant to 54-17.5-06. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Attorney General Stenehjem said they have the option to allow such other people as might be necessary to their deliberations so unless someone objects he suggested Governor-Elect Doug Burgum stay.

Governor Dalrymple reconvened the meeting in open session at 2:19 p.m.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission authorize the Commission's Executive Directory to amend Contract FY08-LXII-161 to establish a recapture level of repayment at a rate of 29.142% for Phase IV of the contract in exchange for the repayment obligation of \$2,205,188 being provided upon execution of the amendment and further, if a commercial plant is operating in the state utilizing lignite that GNPD (the Contractor) be given credit for the \$2,205,188 prepayment. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Lignite Research, Development and Marketing Program business, Governor Dalrymple adjourned this portion of the meeting at 2:20 p.m. and the Commission took up Department of Mineral Resources business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



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Bonnie Storbakken, Governor's Office
Jessica Pfaff, Agriculture Department
Lynn Helms, DMR
Bruce Hicks, DMR – Oil and Gas Division
Ed Murphy, DMR – Geological Survey
Alison Ritter, DMR – Oil and Gas Division
Lawrence Bender, Frederickson & Byron
Wade Mann, Crowley Fleck
Members of the Press

Governor Dalrymple called the Department of Mineral Resources portion of the Industrial Commission meeting to order at 2:20 p.m. following completion of Lignite Research, Development and Marketing Program business.

Mr. Lynn Helms, Department of Mineral Resources Director, presented proposed orders for the cases heard on September 30, October 21, November 16 and 17, 2016: (Copies of the Orders are available in the Commission files.)

Case 25301, Order 27924 Mr. Helms stated that this case involves the unitization of the Glenburn Southeast-Madison Unit Area. He handed out some exhibits from the hearing. (A copy of the handout is available in the Commission files.) He reviewed the handouts that showed the location of the Glenburn Field in Renville County and the proposed unit location; he noted the success of the unit already in the Glenburn Field (a waterflood unit); how the operator plans to operate the unit and the anticipated production response. He noted that there were a couple of issues the staff had identified with the proposed unit and those items have been dealt with in the proposed order. The staff is recommending that the Commission approve the proposed unit and approve Order 27924 as presented. The two issues the staff have identified deal with the unitized interval--the Order changes the interval by a few feet to include the K2 gamma marker. No one has objected to that change. The second item is related to the porosity acre feet numbers. The proposed Order changes the porosity acre feet numbers to match what the Commission geologists have determined. The staff believes their numbers will result in a much more fair Phase II distribution for the mineral owners and working interest owners.

Case 25301: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 27924 issued in Case 25301, providing for the unitized management, operation and further development of the Glenburn Southeast-Madison Unit Area be approved this 8th day of December, 2016. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 25302, Order 27925 - determination of ratification of the plan of unitization for the Glenburn Southeast-Madison Unit Area – Mr. Helms indicated that Order 27925 cannot be signed today because of the conditions that were included in Order 27924 that was just approved. The operator of the unit must comply with those conditions before the ratification order can be signed. He recommended that the Commission authorize him to sign the ratification order once the conditions of Order 27924 have been met. The ratifications have been met – almost 83 percent of the mineral interest owners and almost 73 percent of the working interest owners have ratified. The next step is just adding up the ratifications and making sure the conditions in Order 27924 are met.

Case 25302: It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Mr. Helms be authorized to sign Order 27925 issued in Case 25302 if the conditions are met and the ratifications exceed 60 percent. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 25418, Order 27821 - consideration of termination of the Southwest Starbuck-Spearfish Unit in Bottineau County. Mr. Helms said the unit was put together about seven years ago and nothing happened with the proposed water flood unit until a new operator took over. The new operator did a test that showed they were not going to be able to inject enough water to make the water flood work so the operator is proposing the unit be terminated. It is the staff's recommendation that the unit be terminated and that is what is stated in Order 27821

Case 25418: It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order 27821 issued in Case 25418, terminating the Southwest Starbuck-Spearfish Unit, Bottineau County, be approved this 8th day of December, 2016. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 25412, Order 27926 - consideration of amendments to the current Bakken, Bakken/Three Forks Sanish, and/or Three Forks Pool field rules to eliminate or reduce setbacks currently established for the heel and toe horizontal wells – Mr. Helms distributed a document which included an excerpt from the EERC work that had been done through the Bakken Optimization Program (involving 6 companies) and a list of what the entities that appeared at the hearing were suggesting. (The handout is available in the Commission files.) He indicated that at the hearing four additional parties appeared and it turns out eight are in favor of reducing the setback and two testified they wanted to keep it at 200 feet.

He stated that based on the testimony the staff is recommending that Order 27926 be approved reducing the setbacks. The potential for reducing the setbacks is to increase the recovery from every well drilled from here on in the Bakken by between 5,000 and 15,000 barrels of oil or a total of 200 million barrels as the Bakken, Bakken/Three Forks Sanish and/or Three Forks Pool fields are further developed. He believes correlative rights will be protected by the proposed order. The order states that:

- if an operator cements the liner in place in the lateral they can drill to within fifty feet of the spacing unit boundary;
- if an operator uses a swell packer completion they can drill to within one hundred feet of the spacing unit boundary; and
- if they use open hole where they might frack out the very end they can drill to within one hundred fifty feet of the spacing unit boundary.

This will ensure that the propped fractures stay within the spacing unit and it will be enforced through the drilling permit process and the completion report process. The staff believes this will increase the overall recovery in the Bakken by 200 million barrels and protect correlative rights.

It was noted that there was not a total consensus on this change. Mr. Helms stated that was correct -- companies' models and completion designs differ but a majority of them, eight out of ten, want to see the setback reduced. He did not believe there was a way to get complete consensus. When the setback was changed to 200 feet back in 2010 there wasn't total consensus then.

Case 25412: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 27926 issued in Case 25412, amending the current Bakken, Bakken/Three Forks, Sanish, and /or Three Forks Pool field rules to eliminate or reduce the setbacks

currently established for the heel and toe of horizontal wells be approved this 8th day of December, 2016. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 25407, Order 27811 - consideration of temporary authority to rework and use two wells for injecting in the Bear Creek-Bakken Pool to test the feasibility of injecting CO₂ and other fluids – and

Case 25408, Order 27812 - consideration of creation and establishment of 160-acre spacing unit and recompletion of two wells

Mr. Helms said these two orders can be covered in a single motion. (A handout is available in the Commission files.) He stated that this is an exciting proposal located in Dunn County in a field called Bear Creek. The applicant is requesting the formation of a 160 acre spacing unit for these two vertical wells that are currently not completed in the Bakken pool and to use those vertical wells to test enhanced oil recovery processes – carbon dioxide and other hydrocarbon injectants that could increase the recovery from the Bakken and Three Forks substantially. There is no vertical well spacing in this field so this would set up this 160 acre spacing unit strictly for the purpose of this EOR test. They want to inject about 500 tons of various things into different parts of the pool and see how much they can inject, at what rate and how much oil is recovered by doing that. It is a very well laid out test – the EERC designed the test for them and will be overseeing the data collection and data analyses.

In response to a question regarding injecting various things – is that proprietary, Mr. Helms said it is. The operator wants to keep the exact thing that they inject confidential at least for some period of time. It will be a mixture of hydrocarbons but the exact mixture of how much ethane, methane, propane, butane and possibly carbon dioxide mixed with hydrocarbons – what the mixtures are – they would like to keep proprietary for a period time. As you know there have been some EOR tests in horizontal, hydraulic fractured wells that have failed. This will allow the operator to test what they can inject into a virgin reservoir that has not been fractured and how much of what kind of oil they can recover from that. It will be taking EERC's lab work to the field and taking the next logical step. The EERC and their lab have determined that there are certain characteristics in the Bakken oil that indicate whether it came from upper shale, lower shale, middle Bakken or Three Forks – they want to test that in a field environment and also when they pump, whatever it is they pump in, they want to see which part of the Bakken pool does oil get mobilized from. They call it finger printing. He said both orders are necessary to carry out this project.

Case 25407: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 27811 issued in Case 25407, granting temporary authority to rework and use the Knutson-Werre 34 IR well and the Knutson-Werre 34 3 WIW well, Dunn County, as combined production/injection wells for injecting in the Bear Creek-Bakken Pool to test the feasibility of injecting CO₂ and other fluids in the reservoir of each well and then producing oil and gas from the wells, be approved this 8th day of December, 2016. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 25408: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 27812 issued in Case 25408, amending the field rules for the Bear Creek-Bakken Pool, County, ND to create and establish a 160-acre spacing unit, authorizing the recompletion of the Knutson-Werre 343 WIW Well and the Knutson-Werre 34 IR well for production from the Bear Creek-Bakken Pool, be approved this 8th day of December, 2016. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Helms provided a copy of the letter from Representative Skarphol on NDCC 38-08-06.3 and NDAC 43-02-06-01(6). (royalty statements) (A copy of the letter is available in the Commission files.) He said this letter addresses a situation that has recently arisen pretty frequently. When oil prices collapsed the process of gathering and processing natural gas and recovering the NGLs became uneconomic or very stressed economically and all of the gathering and processing companies cancelled their percent of proceeds contracts and went to fee based contracts. In many cases those fees have exceeded the value of the gas and NGL products and so royalty owners have been getting royalty statements with very large deductions in them. In this case Representative Skarphol and his wife have gotten royalty statements – one is 45 pages long – with lots of deductions and no explanation. Representative Skarphol is asking the Commission to go back and look at our rule regarding royalty statements and also to speak with the oil companies and if necessary to impose penalties for people who don't come into line.

Mr. Helms explained what the Oil and Gas Division has done. The Division has sent letters to all the operators saying submit your latest royalty statements so we can review them and make sure they contain everything that the rules says. Those statements are starting to come in and they vary from wonderful to very poor.

The other thing that has been identified is that the rule in the Administrative Code is not consistent with the Century Code. The Century Code says that operators are to explain all deductions. The Administrative Rule says that the royalty owner has to send the disburser a certified letter asking for the explanation. That shifts the responsibility. After visiting with legal counsel it is their recommendation that the Commission direct the staff to revise the rule to be consistent with the Century Code during the next rule making cycle and take it through the process. This rule has not been revised since 1992.

Attorney General Stenehjem pointed out that the rule is subservient to the statute so it is the statute that controls. Mr. Helms said until the rule is revised they will be pointing that out.

He stated that his recommendation is that the Oil and Gas Division continue what it has already begun which is reviewing all operators royalty statements; that it take up this rule for revision in the next rulemaking cycle and that in our correspondence with the companies point out the language in the statute, the language in the rule and that the statute prevails.

The Commission and Mr. Helms discussed how this law would be enforced. If the royalty statement the operator is submitting now does not comply with the law the Division staff will tell them how it is out of compliance and the Division may actually file a complaint against the operator unless the operator revises their royalty statements and come into compliance with the rule/law. He thought under the existing dilemma of a conflict between an existing rule and the law the Division would recommend that the royalty owners send the certified letter and if the company doesn't respond with a clear description of what the deductions are then the Division would pursue a civil or criminal complaint against the company. We would allow them their due process, we would note that we had a complaint from a royalty owner and look at the response of the company, and in those instances where the disagreement continues, that's the point where he thinks the Commission would probably prepare a complaint and actually go through the process of seeking civil and or in some cases misdemeanor action against the company. That is not a small thing. He thought that operators, once they are made aware of what they are supposed to be doing, will provide the information.

In response to a question regarding state minerals being at issue, Mr. Helms said he had no doubt that there are state minerals that are receiving deductions without an explanation.

Commissioner Goehring said documents he has seen would suggest it is not only the deductions but how do you charge a royalty owner for expenses? Is there a law that prevents that? An analogy, he rents farmland and if he loses money that year he doesn't get to bill back the landowner for his losses. Mr. Helms said there is currently no

law. This is an issue that is dealt with in the lease. It may differ slightly, although most leases are fairly uniform, in the fact that they say you receive a cost free royalty on the hydrocarbons extracted from your mineral interest. There is case law in Texas that says that cost free royalty is based on the value of the gas when it leaves the lease. What they have allowed, in Texas, is for the operator to deduct the cost of processing and transporting that natural gas or the NGLs to the market, the net never being less than zero, obviously because it is cost free. When everything is working properly, those fees would be far less than the value of the gas and the NGLs. In some cases they might exceed it but in his opinion the royalty owners should never be burdened with that cost. That is the case law in Texas and he was not aware of any cases in North Dakota addressing that issue and there is not a statute that addresses it. He thought there may be something brought up in the 2017 Legislature to deal with this issue in more detail.

Mr. Hicks said one of the issues is the gas capture goals. In the past the operator could disconnect their well if it's not economic - if they have to pay to take the gas. Well here there is an incentive to meet those gas capture goals and to stay connected even though it is costing you money because you don't want your oil production restricted. Mr. Helms stated that the gas capture regulations do force the issue to where even if you are losing money on marketing the gas, you have to market it.

Commissioner Goehring said Attorney General Stenehjem made a good point that if the rule doesn't line up with the statute then we need to deal with this sooner rather than later.

Governor Dalrymple commented on his experience in the pasta business with grocery chain stores taking deductions. In the case of a royalty owner, they generally are not a business and do not have the ability to take up that dispute with an operator so there is more to this than just a good rule. Consideration should be given on how to strengthen the position of the royalty owners to begin with and that would require legislation.

Attorney General Stenehjem said for starters the statute requires you to at least know what the deductions are – it is hard to make an argument legally when you don't even know what's been deducted for what purpose.

Mr. Helms said it is almost impossible in Representative Skarphol's case. This operator went back to a time before his wife even owned the minerals – back when her deceased uncle was still the royalty owner and there is absolutely no way to reconstruct that so he has a very good point. He believes there will be legislation that will get discussed concerning this but the State needs to do what it can under the law to make sure that it's a fair fight.

Governor Dalrymple said what Mr. Helms suggested is what the Commission can do and that is a good start but there is more to it than that. Mr. Helms what directed to proceed as discussed.

Mr. Helms reported on the Motion to Intervene and Motion for Preliminary Injunction on BLM Venting and Flaring - Waste Prevention Rule. (A copy is available in the Commission files.) He said it is an email from the law firm who is representing North Dakota in this case. North Dakota was granted intervention in the Wyoming, Montana case against the BLM and North Dakota has filed a motion for preliminary injection. The BLM/Department of Justice's response to that motion is due December 15 and replies from North Dakota and others are due the 23rd and then we are scheduled for a hearing in Casper, Wyoming on January 6. He indicated that no action is required by the Commission but he wanted to inform them of this action

Attorney General Stenehjem said this case also deals with the issue of who it is that is supposed to be regulating under the Clean Air Act. The states have primacy but BLM is stepping in (not the EPA) to claim that BLM has the authority to regulate air quality which is a novel approach for them. Mr. Helms said that is why you see the Health Department listed on this email. This case would take the BLM into the Clean Air Act arena in terms of regulating methane emissions.

Mr. Bruce Hicks presented the Quarterly Oil and Gas Division Report. (A copy of the report is available in the Commission files.)

Mr. Helms presented Governor Dalrymple with a gift and extended their best wishes. Mr. Murphy stated that the stone is a limestone from 4,188 feet in the Mission Canyon in Renville County - the well was drilled in 1963 and is still producing oil with a cumulative production of about 350,000 barrels. The rock was selected by Ms. Julie LeFever who just recently passed away. Mr. Murphy also gave Governor Dalrymple a cast of the Tyrannosaurus Rex tooth.

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

**A Memorial Resolution extending the sympathy and condolences
of the North Dakota Industrial Commission
to the family of Julie LeFever**

Whereas, God in His infinite wisdom has summoned to His side Julie LeFever on December 6, 2016 after a courageous battle against cancer; and

Whereas, Julie LeFever served the State as an employee of the North Dakota Geological Survey for 36 years and was the Director of the Wilson M. Laird Core and Sample Library for 27 years; and

Whereas, Julie LeFever was an expert on the Paleozoic and Mesozoic rocks in the Williston Basin and spent countless hours studying well logs and core and enthusiastically passed that knowledge along to industry geologists, graduate students, and the citizens of North Dakota; and

Whereas, Julie LeFever gave countless geologic presentations, core workshops, and authored 108 publications; and

Whereas, Julie LeFever was recognized as an expert by not only individuals in North Dakota but also on a national level and her work was a significant contribution to the understanding of North Dakota's valuable natural resources; and

Whereas, Julie LeFever was honest and hardworking and will be missed by all who worked with her; and

Whereas, Julie leaves behind her husband, Richard; daughters, Kathryn and Christine, and many other family members who will miss her loving care;

Now, therefore, the North Dakota Industrial Commission honors Julie LeFever for the outstanding work she did for the State of North Dakota and offers its sympathy and sincere condolences to her family on behalf of all the citizens of the State of North Dakota.

Minutes - Page 7
December 8, 2016

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

Being no further Department of Mineral Resources business, Governor Dalrymple adjourned this portion of the meeting at 3:16 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 December 8, 2016 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: Doug Burgum, Governor Elect
JoDee Hanson, Governor Burgum Elect's Staff
Jason Nisbet, Governor's Office
Bonnie Storbakken, Governor's Office
Jessica Pfaff, Agriculture Department
Eric Hardmeyer, Bank of North Dakota
Todd Steinwand, Bank of North Dakota
Joel Erickson, Bank of North Dakota
Kirby Evanger, Bank of North Dakota
Members of the Press

Governor Dalrymple called the Bank of North Dakota portion of the Industrial Commission meeting to order at 3:20 p.m. following completion of Department of Mineral Resources business.

Mr. Eric Hardmeyer, Bank of North Dakota President, presented and discussed the final drafts for the two bills that the Bank is proposing be introduced as agency bills and asked for approval. (Copies of the two proposed bills are available in the Commission files.) The first bill draft deals with ensuring that state means tested aid is protected for those individuals who invest in a North Dakota Achieving a Better Life Experience (ABLE) Plan Account. Bank management does not believe this bill is controversial.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Bank of North Dakota be authorized to submit agency legislation which would 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 with the next bill the Bank is trying to do two things as it relates to defaulted student loans: 1) to move from the current judicial process of obtaining judgements and moving to an administrative process and 2) to allow the Bank to recoup collection costs. He stated that Bank staff has worked extensively with the Attorney General's Office staff to get this bill into the proper format which resulted in a lengthy bill.

Attorney General Stenehjem said he had some concerns about this new process the last time the Commission discussed it because it did not go through the court system to collect debt. He and his staff met with Bank staff and they discussed a program that Alaska has where they go through their Office of Administrative Hearings. That is what is being proposed with this legislation. There will be due process, there will be notice, there will be an opportunity for a hearing and the process will be much quicker which will save time for BND staff and the legal staff. He noted that before the Bank ever gets to the point where they are going through this process, the Bank has done everything they conceivably can do to try to work with these borrowers such as developing payment plans. Unfortunately there is a very small minority of borrowers that will not work with the Bank and will not pay the money that is owed. These borrowers are not going to do anything no matter how much you work with them because the borrower believes that the Bank will not continue to pursue payment because it is too costly for them to do so. This legislation will put this new process in place and clarifies the Bank's authority that the Bank has to collect their collection costs on top of the principal and interest that is owed. The Bank would much rather contact the borrower and get them on a payment plan. This process would only take place when the borrower doesn't want to work with the Bank.

Mr. Hardmeyer indicated that the Bank has over 100,000 student loan customers and the number of borrowers that go through the claims process is about 500. It is a small number of borrowers that are impacted on the collection side.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Bank of North Dakota be authorized to submit agency legislation which amend North Dakota Century Code 15-62.1 to allow the Bank of North Dakota as the North Dakota Guarantee Agency to obtain a judgment through administrative process versus the current judicial process and to allow for the charging of collection costs on defaulted student loans. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Hardmeyer indicated that typically the Bank would do a complete review in August or September of the entire loan policy. This year the Bank has chosen to do the small pieces and save the big review for next year. The Bank is anticipating a comprehensive rewrite at that time. These changes are based on the previous experience that Mr. Evanger and Mr. Steinwand have brought to the Bank.

Mr. Kirby Evanger, Bank of North Dakota Senior Vice President of Credit Administration, discussed amendments to General Loan Policy. He said a common theme for making these changes is to empower the Bank's employees, specifically the business bankers, and looking at efficiencies to help with the loan process. Currently the Bank is doing a number of things that does not have a lot of value and doesn't mitigate risk and yet it is a lot of the administrative burden. These changes also provide some additional credit risk management. He reviewed each change in the Policy and highlighted the reasons for the changes as follows:

- Loan approval for the Economic Development and Government Program area - expanding from 6 months to 12 months due to the nature of those types of loans.
- Extensions - for non-watch list credits allows the business bankers to make the first extension up to 120 days regardless of exposure; anything thereafter would need the appropriate approval based on exposure level.
- Loan Approval and Review Authority - amendments distinguish between Watch List Credits and Non-Watch List Credits. Current policy is silent as to whether the credit is a problem credit or not and that needed to be changed. Under both the Non-Watch List Credits and the Watch List Credits these amendments identify a level for the Business Bankers, E.D. & Govt. Program Manager and Special Assets Manager. Under the Sole Serial Sign-Off for Non-Watch List Credits there is no change for this group but there is an increase under the Dual Serial Sign-Off (an increase from \$3,000,000 to \$5,000,000) and then a subsequent change for the Investment Committee. There were no changes for the Advisory Board or the Industrial Commission--they remained at in excess of \$15,000,000. Under the Watch-List Credits all the authorities are being reduced except for the Investment Committee level is going up.
- Discretionary Lending Authority - This limits the discretionary lending authority for one-year after that credit action is taken by the highest level of authority for that credit to one year. After that one-year period the discretionary lending authority expires and any change would need to go back to the highest level of authority for the next credit action. 15% rule this is also discretionary authority but it goes all the way down to the business banker level and includes provisions that are built in to manage risk. This discretionary authority cannot be used on a watch list credit and it must comply with loan policy.
- Direct Loan Closing - requires that all the Bank's Direct loans with the exception of the bank stock loans and CD secured loans must be closed by a Special Assistant Attorney General.
- Match Program - expands the Match Program to allow for Match funding if the entity is retaining existing primary sector jobs and sets a floor on the interest rate of 2%.

- Health Information Technology (HIT) - increasing the dollar amount as recommended by HIT Advisory Committee
- DEAL Loan Program - gives more empowerment to the Investment Committee - rather than being specific in policy this change would defer decisions to the Investment Committee. These decisions would include such items as the setting of interest rates, disbursement parameters, repayment plans, default determinations, setting terms of loans, consolidation parameters and exceptions.
- Critical Financial Needs Program for Political Subdivisions - establishing that the rate cannot increase by more than 1% per year.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission adopt the following revisions to the General Loan Policy:

RE: 2016 Loan Policy Revisions

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LOAN APPROVAL

Sunset Provisions: An initial commitment by the Bank to make a direct loan or to participate in a loan may not exceed 180 days. In the event that the Bank is not a party to the construction or bridge financing provided to a borrower, but has committed to provide permanent financing to that borrower, the Bank may extend up to a 12-month commitment to accommodate the construction or installation phase. Loans under the Economic Development and Government Program area will be allowed up to 12 months before the initial commitment will expire. Upon expiration as outlined here in, the banker must obtain re-approval from the same authority level that made the original approval.

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EXTENSIONS

For non-watch list credits, extensions totaling no more than 120 days for matured loans regardless of total credit exposure may be granted by the business banker without the prior approval of the Chief Credit Officer or the Financial Institutions Market Manager provided no adverse change has occurred in the borrower's financial condition. Any subsequent extensions must be approved by the Financial Institutions Market Manager or the Chief Credit Officer who shall have the authority to approve extensions of loan payments and maturity dates, or commitment extensions for an additional 120 cumulative days, and approve up to a 0.25% reduction in the Bank's net rate of interest on loans not to exceed \$5,000,000. Extensions beyond the lending authority of the Financial Institutions Market Manager and the Chief Credit Officer must be approved by the Investment Committee.

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INTEREST RATES

Lending Services Financial Institution Market must maintain an interest rate pricing formula that will reflect the current rates being charged on the various types of loans

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PROBLEM LOAN IDENTIFICATION AND ADMINISTRATION

The Special Assets Manager, ~~along with either the~~ Financial Institutions Market Manager ~~or the Chief Credit Officer, along with approval from the Chief Credit Officer~~, may accept debt settlement offers on loans as long as the final loss to the Bank does not exceed \$100,000. The approval must be reported at the next meeting of the Investment Committee.

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ALLOWANCE FOR CREDIT LOSSES

The Bank uses the allowance method in providing for credit losses. Accordingly, the allowance is increased by the current year's provision for credit losses charged to operations and reduced by net charge-offs. Credit losses are charged against the allowance when management believes the uncollectibility of a loan balance is confirmed. Subsequent recoveries, if any, are credited to the allowance.

The adequacy of the allowance for credit losses and the provision for credit losses charged to operations are based on management's evaluation of a number of factors, including recent credit loss experience, continuous evaluation of the loan portfolio quality, current and anticipated economic conditions, various other environmental factors, as well as internal factors. This evaluation is inherently subjective, as it requires estimates that are susceptible to significant revision as more information becomes available.

The allowance consists of specific, general and unallocated components. For all loans that are also classified as impaired, a specific reserve allowance is established when the discounted cash flows (or collateral value or observable market price) of the impaired loan is lower than the carrying value of that loan. The general component covers unimpaired loans and is based on historical loss experience for homogenous pools of loans adjusted for qualitative and quantitative factors. Each homogenous pool of loans represents a distinct risk profile. An unallocated component is maintained to cover uncertainties that could affect management's estimate of probable losses. The unallocated component of the allowance reflects the margin of imprecision inherent in the underlying assumptions used in the methodologies for estimating specific and general losses in the portfolio.

A loan is considered impaired when, based on current information and events, it is probable that the Bank will be unable to collect the scheduled payments of principal or interest when due according to the contractual terms of the loan agreement. Factors considered by management in determining impairment include payment status, collateral value, and the probability of collecting scheduled principal and interest payments when due. Loans that experience insignificant payment delays and payment shortfalls generally are not classified as impaired. Management determines the significance of payment delays and payment shortfalls on a case-by-case basis, taking into consideration all of the circumstances surrounding the loan and the borrower, including the length of the delay, the reasons for the delay, the borrower's prior payment record, and amount of the shortfall in relation to the principal and interest owed.

Impairment is measured on a loan-by-loan basis by ~~for commercial, agricultural, farm real estate, state institution and bank stock loans~~ either the present value of expected future cash flows discounted at the loan's effective interest rate, the loan's obtainable market price, or the fair value of the collateral if the loan is collateral dependent.

The Bank does not separately identify individual guaranteed student and residential loans for impairment disclosures, except for such loans that are placed on nonaccrual.

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LOAN APPROVAL AND REVIEW AUTHORITY

The President, the Chief Credit Officer, Chief Business Development Officer, Financial Institutions Market Manager, Business Bankers, E.D & Govt Program Manager, the Investment Committee, the Advisory Board and the Industrial Commission have the following loan approval levels:

LOAN APPROVAL LEVELS

Sole Serial Sign-Off (requires any of the following to approve):

President	Up to \$1,500,000
Chief Credit Officer	Up to \$1,500,000
Chief Business Development Officer	Up to \$1,500,000
Financial Institutions Market Manager	Up to \$1,500,000

Dual Serial Sign-off (requires two of the following to approve):

President	Up to \$1,500,001 up to \$3,000,000
Chief Credit Officer	Up to \$1,500,001 up to \$3,000,000
Chief Business Development Officer	Up to \$1,500,001 up to \$3,000,000
Financial Institutions Market Manager	Up to \$1,500,001 up to \$3,000,000

Investment Committee authority will be \$3,000,001 to \$15,000,000 of aggregate related exposure

Advisory Board Loans in excess of \$15,000,000**

Industrial Commission Loans in excess of \$15,000,000**

	<u>Non-Watch list credits approval authorities for all credit actions</u>	<u>Watch list credits approval authorities for all credit actions except: charge offs, moves to and from non-accrual, and extensions.</u>
<u>Business Bankers</u>	<u>Up to \$500,000</u>	<u>Up to \$250,000</u>
<u>E.D & Govt Program Manager</u>	<u>Up to \$500,000</u>	<u>Up to \$250,000</u>
<u>Special Assets Manager</u>	<u>Up to \$1,000,000</u>	<u>Up to \$750,000</u>

Sole Serial Sign-Off (requires any of the following to approve):

<u>President</u>	<u>Up to \$1,500,000</u>	<u>Up to \$750,000</u>
<u>Chief Credit Officer</u>	<u>Up to \$1,500,000</u>	<u>Up to \$750,000</u>
<u>Chief Business Development Officer</u>	<u>Up to \$1,500,000</u>	<u>Up to \$750,000</u>
<u>Financial Institutions Market Manager</u>	<u>Up to \$1,500,000</u>	<u>Up to \$750,000</u>

Dual Serial Sign-Off (requires any two of the following to approve):

<u>President</u>	<u>\$1,500,001 up to \$5,000,000</u>	<u>\$750,000 Up to \$2,500,000</u>
<u>Chief Credit Officer</u>	<u>\$1,500,001 up to \$5,000,000</u>	<u>\$750,000 Up to \$2,500,000</u>

<u>Chief Business Development Officer</u>	<u>\$1,500,001 up to</u> <u>\$5,000,000</u>	<u>\$750,000 Up to \$2,500,000</u>
<u>Financial Institutions Market</u> <u>Manager</u>	<u>\$1,500,001 up to</u> <u>\$5,000,000</u>	<u>\$750,000 Up to \$2,500,000</u>
<u>Investment Committee</u>	<u>\$5,000,001 up to</u> <u>\$15,000,000</u>	<u>\$2,500,001 up to \$7,500,000</u>
<u>Advisory Board</u>	<u>Loans in excess of</u> <u>\$15,000,000</u>	<u>Loan in excess of \$7,500,000</u>
<u>Industrial Commission</u>	<u>Loan in excess of</u> <u>\$15,000,000</u>	<u>Loan in excess of \$7,500,000</u>

In the absence of the Chief Credit Officer and the Financial Institutions Market Manager, the President and the Chief Business Development Officer have authority to act on all loan decisions and actions within their approval levels.

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Discretionary Lending Authority on Loans Risk Rated 1-4

For a credit relationship which has the approval of the Investment Committee, the Advisory Board or the Industrial Commission, it will be within the authority of the Financial Institutions Market Manager or Chief Credit Officer to approve an increase in the Bank's exposure equal to the respective lending authority of the Financial Institutions Market Manager or Chief Credit Officer without further action by the Investment Committee, Advisory Board or Industrial Commission. For a credit relationship which has been approved only at the Investment Committee level, this discretionary authority is subject to a cap of \$15,000,000 for overall exposure. This discretionary lending authority is valid for one year after approval at the highest level, whether that is sole approval, dual approval, Investment Committee, Advisory Board and or Industrial Commission. An approved annual review also qualifies for another year of discretionary lending as outlined above.

15% Rule

The 15% rule is intended to give authority to bankers to grant interim loan requests to credits exceeding individual, sole, and dual approval authorities. The Rule allows bankers the authority to grant multiple interim loans totaling up to the lesser of \$250,000 or 15% of the combined aggregate credit exposure as shown on the most recent Annual Review/new request to any borrower, guarantor, or related entity with a maximum \$250,000 limit, without prior approval subject to the following:

1. Current risk rating is 1, 2, 3, or 4.
2. All 15% Rule loans in aggregate granted since the most recent Annual Review/new requests are limited to the lesser of:
15% of combined aggregate exposure as shown on the most recent Annual Review/new request, or \$250,000
3. If granting of a 15% Rule credit extension results in jumping to a higher approval level, at the time of the next credit extension (other than another 15% Rule credit extension) approval at the applicable level will be required.
4. Only one 15% Rule application may be applied per aggregated relationship per annual review (multiple interim loans totaling up to one 15% Rule is acceptable).
5. The 15% rule resets after a loan decision of the highest authority; however, the most recent Annual

Review/new request must be dated within the past 12 months.

6. The new loan granted complies with loan policy.

7. The 15% Rule does not apply to a new borrower to the bank, regardless of existing debt to related entities. The 15% Rule cannot be used to advance to a borrower who does not have existing debt.

8. The combined aggregate credit exposure, including the new proposed debt, DOES NOT exceed in-house lending limits or concentration limits based on the credit's risk rate.

Upon granting a loan under the 15% Rule, the banker must indicate in the file comment that the loan was granted under the 15% Rule; no additional reporting or approval is required.

For a credit relationship which has the approval of the Advisory Board or Industrial Commission, it will be within the authority of the Investment Committee to approve an increase in the Bank's exposure not to exceed \$5,000,000 without further action by either the Advisory Board or Industrial Commission. The Investment Committee minutes will specifically note action taken under this rule.

For a credit relationship which has not previously required the approval of the Advisory Board or the Industrial Commission, it will be within the authority of the Investment Committee to approve an increase or renewal in the Bank's exposure not to exceed \$1,000,000 without further action by either the Advisory Board or Industrial Commission despite the fact that the additional exposure may exceed the \$15,000,000 loan approval level granted to Investment Committee. The Investment Committee minutes will specifically note action taken under this rule.

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Business Banker Lending Authority Levels

The President, with the advice of the Financial Institutions Market Manager or Chief Credit Officer, shall establish lending authority for individual business bankers consistent with their experience, expertise and demonstrated lending judgment and will be reviewed annually.-

Page 16

DIRECT LOAN CLOSINGS

The Bank's Direct ~~Beginning and Established Farmer Real Estate Loans and Community Water Facility~~ Loans, with the exception of bank stock loans and CD secured loans, must be closed by a North Dakota attorney that has been appointed as a Special Assistant of the North Dakota Attorney General.

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MATCH

The primary candidates for this program will be businesses that create new wealth for the state and provide new jobs or retain existing primary sector jobs outside of the retail sector. Companies interested in this program must provide evidence of considerable financial strength and adequate factors that demonstrate security of the principal and interest payments. The company must also demonstrate that they have a long-term investment grade rating from a nationally recognized rating agency.

The interest rate on the Bank's portion of this loan shall be 25-50 basis points over the one to five year US Treasury Yield Rate with a floor of 2%. The interest rate on the Bank's portion may be repriced during the term of the loan depending upon the condition(s) of the match funding sale.

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HEALTH INFORMATION TECHNOLOGY FUNDS

Loan Amount –

The maximum amount of a loan may not exceed the project costs, with the maximum loan limits to be determined by the HIT Advisory Committee as follows:

- ~~\$625,000~~400,000 for hospitals and multi-professional entities
- ~~\$125,000~~000,000 for standalone individual practitioners not affiliated with a multi-professional entity provider system or network
- Entities with three or more provider-owned facilities will be limited to a maximum of ~~\$1,250,000~~800,000.

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STUDENT LOANS

The Bank may make, purchase and hold loans in compliance with N.D.C.C. § 6-09-15(1)(l) which satisfy the requirements set forth in Title IV, Part B, of the Higher Education Act of 1965, as amended (the "Act"), upon terms, conditions, and application procedures commensurate with the regulations issued by the U.S. Department of Education (the "Department") pursuant to the Act, and in compliance with the procedures, rules and regulations adopted from time to time by the North Dakota Guaranteed Student Loan Program d.b.a. Student Loans of North Dakota (SLND) in compliance with the authority granted by N.D.C.C. § 15-62.1 or other student loan guaranty agencies. This authority shall specifically include entering into any agreements with the Department and SLNDa guaranty agency for the purpose of meeting the requirements of the Act and the ~~SLND program guaranty agency~~.

All non-accrual and charge-off activity will be completed in compliance with the Bank's Policy, Department of Education ~~and/or SLND~~ requirements and will be reported to the Investment Committee on a regular basis.

Page 73-74

DAKOTA EDUCATION ALTERNATIVE LOAN (DEAL)

General Information –

The Bank may make the Dakota Education Alternative Loan (DEAL, DEAL One and DEAL Consolidation) as approved by the Industrial Commission and the authority granted by N.D.C.C. § 15-62.1-02. This authority shall specifically include entering into any agreements with Student Loans of North Dakota (SLND) for the purpose of guaranteeing all loans made under the program.

Eligible Uses –

Cost of attendance, fees, supplies, room and board, transportation and other educational expenses authorized by the school or by the Bank's Investment Committee.

Administrative Fees –

Administrative fees, late fees, NSF fees and collection fees Fee(s) will be determined by the Bank's Investment Committee.

Interest –

—The interest rate on the loan may be variable or fixed and reset quarterly. The Bank's Investment Committee determines the parameters used to set interest rates and maximum rates if applicable. Interest rates will be determined on the 15th day of the month preceding the start of a new quarter. If the 15th falls on a weekend or holiday, the interest rate will be set on the preceding business day.

Disbursement of Loan –

Loan disbursement parameters will be established by the Bank's Investment Committee. For loan periods longer than one semester, quarter, or four months for non-term schools, the loan will be disbursed in two or more disbursements.

Disbursements will be sent to the school and may be made co-payable to the borrower and the school.

Repayment –

—A loan will enter repayment six months after the borrower graduates, ceases to be enrolled or decreases their enrollment to less than half-time. The minimum monthly payment is typically \$50. Generally, the same Deferment and forbearance options may be available to borrowers needing temporary assistance. Loans 15 days delinquent will be assessed a late charge as authorized in the promissory note.

A cosigner release option is available for borrowers who meet the Bank's requirements as set by the Bank's Investment Committee.

Default –

The bank's Investment Committee will determine on what date of delinquency a loan will be in default. On the 271st day of delinquency, loans will be in default and steps to file a default claim will be initiated.

—Any loans on which the guarantee guaranty agency has paid a claim and it is subsequently determined to be uncollectable due to an origination/servicing error, the guarantee will be voided and the loan will be repurchased by the bank. been voided will be placed in a non-accrual status until the guarantee is reinstated.

Any loans on which the guarantee has been voided and for which the "cure" procedures provided by regulations have not been successful will be charged off. A recommendation to charge-off a loan must be presented to the Bank's Investment Committee for their approval whenever the charge-off amount exceeds \$1,000. A decision to discontinue collection efforts on a charged off loan will be presented to the Problem Loan Committee for their approval.

Term –

—Loan terms will be established by the Bank's Investment Committee. The loan will be repaid in full no later than 120 months from the first payment due date. A borrower could qualify for an extended repayment schedule

~~not to exceed 25 years if their total student loan indebtedness exceeds \$30,000. Repayment terms may be extended by periods of deferment and forbearance.~~

Consolidation –

~~___ The Bank may participate in a consolidation loan program which refinances all eligible education loans (as determined by the Bank's Investment Committee) and combines them into a single DEAL Consolidation or DEAL One Loan. The Loan term parameters including credit criteria, eligible loans, interest rates, repayment options and terms will be established by the Bank's Investment Committee. is set based on loan balance and shall not exceed 25 years. Loans will enter repayment immediately with a first payment due within 60 days.~~

Exceptions –

Exceptions to this policy should be approved only in limited circumstances. Exceptions may include “look back” loans which allow schools to certify a DEAL loan after the school term has ended. Justification for exceptions to policy should be based upon compelling reasons and should not represent undue risk or exposure to the Bank. Any exception must be approved in writing by the New Loans Supervisor, the Student Loan Manager or the Education Market Manager.

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CRITICAL FINANCIAL NEED PROGRAM FOR POLITICAL SUBDIVISIONS

Interest Rate –

The interest rate established for this program has been set at 1.50% over the 30-day LIBOR adjusted monthly with a floor of 1.75%. Rate not to increase by more than 1.00% per year.

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

Mr. Hardmeyer discussed amendments to the Default Aversion Assistance and Student Loan Claims Policy. He indicated that this policy needed to be amended because the Bank is no longer doing the default work on federal guaranteed student loans. This revised policy states that when the Bank submits a claim to the Guarantor the Guarantor will independently review and approve any payment.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission adopt the revisions to the Default Aversion Assistance and Student Loan Claims policy as follows:

PURPOSE

To define the duties of processing student loan claims and the segregation of those duties between Bank of North Dakota (BND) and Student Loans of North Dakota (the Guarantor) in the performance of these duties.

DEFINITIONS

1) Student Loan Claims:

Student loan claim types include default, death, total and permanent disability, bankruptcy, ineligible borrower, closed school loan discharge, identity theft, and false certification loan discharge. Claims submitted by BND will be independently reviewed and approved by the Guarantor prior to payment.

ELEMENTS

BND's claim files must be accurate and must include all documentation as required. After BND submits a claim, the Guarantor will determine the validity of the claim by verifying that BND administered the loan in compliance with the Guarantor's internal operating procedures. A claim will be paid by the Guarantor if BND has complied with applicable servicing requirements and has not incurred interest penalties or violations sufficient to cause the loss of a guarantee on the loan. If a default claim is paid and it is determined that the debt is not enforceable in court, due to actions performed by BND, the claim will be returned to BND for repurchase.

The Guarantor and BND are segregated and maintain segregation in the processing of student loan claims. Separate personnel are utilized to accomplish the tasks as defined by the internal operating procedures within each department.

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

Mr. Hardmeyer asked the Commission to rescind the Guarantor Expenditures Policy. This is the same issue, we do not need this policy anymore because we are no longer in the federally insured student loan business.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission rescind the Bank of North Dakota Guarantor Expenditures Policy. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Hardmeyer presented the non-confidential Bank of North Dakota Advisory Board October 20, 2016 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 3:57 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 three loans identified as Attachments 25-27. In non-confidential session, on a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Bank of North Dakota business, Governor Dalrymple adjourned this portion of the meeting at 3:58 p.m. and the Commission took up Building Authority business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on December 8, 2016 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: Doug Burgum, Governor Elect
JoDee Hanson, Governor Burgum Elect's Staff
Jason Nisbet, Governor's Office
Bonnie Storbakken, Governor's Office
Jessica Pfaff, Agriculture Department
Eric Hardmeyer, Bank of North Dakota
Collin Engelhardt, Eide Bailly
Members of the Press

Prior to taking up North Dakota Building Authority business, Mr. Eric Hardmeyer, Bank of North Dakota President, presented a thank-you gift (a picture) to Governor Dalrymple for his years of service on the Industrial Commission.

Governor Dalrymple called the North Dakota Building Authority portion of the Industrial Commission meeting to order at 3:58 p.m. following completion of Bank of North Dakota business.

Mr. Collin Engelhardt, Eide Bailly, presented the North Dakota Building Authority June 30, 2016 Audit (a copy of the audit is available in the Commission files). He said the financial statements were presented fairly in accordance with auditing standards generally accepted in the United States of America -- a clean opinion. The independent auditor's report also notes that there were no significant deficiencies or material weaknesses found in internal controls. Eide Bailly issued a separate management letter stating there were no significant changes in accounting policy, no significant accounting estimates, and they didn't propose any significant adjustments, no disagreements with management, and there were no difficulties encountered or major issues. There were no issues with this audit, it went smoothly and it is a clean audit opinion.

Being no further Building Authority business, Governor Dalrymple adjourned this portion of the meeting at 4:05 p.m. and the Commission took up Student Loan Trust business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on December 8, 2016 beginning at 1:00 p.m.
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Present: Governor Jack Dalrymple, Chairman
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Agriculture Commissioner Doug Goehring

Also

Present: Doug Burgum, Governor Elect
JoDee Hanson, Governor Burgum Elect's Staff
Jason Nisbet, Governor's Office
Bonnie Storbakken, Governor's Office
Jessica Pfaff, Agriculture Department
Eric Hardmeyer, Bank of North Dakota
Collin Engelhardt, Eide Bailly
Members of the Press

Governor Dalrymple called the Student Loan Trust portion of the Industrial Commission meeting to order at 4:05 p.m. following completion of Building Authority business.

Mr. Collin Engelhardt, Eide Bailly, presented the North Dakota Student Loan Trust June 30, 2016 Audit. (A copy of the audit is available in the Commission files.) He said the financial statements were presented fairly in accordance with auditing standards generally accepted in the United States of America -- a clean opinion. The independent auditor's report also notes that there were no significant deficiencies or material weaknesses found in internal controls. Eide Bailly also did tests for compliance and there were no compliance issues. He noted that this audit also has a single audit report because there are federal awards. In their opinion the Trust complied in all material respects with the compliance requirements related to the federal program (the Federal Family Education Loan Program). There were no findings or issues with this audit.

Ms. Karlene Fine, Student Loan Trust Authorized Officer, presented her recommendation for selection of underwriter for the North Dakota Student Loan Trust as follows:

RE: North Dakota Student Loan Trust (Trust) Bond Underwriter Proposals

On behalf of the Industrial Commission the attached Request for Proposal (RFP) was distributed to nine bond underwriting firms. As noted in the RFP I informed the firms that the Trust was currently considering a bond issuance secured by a program of supplemental loans which are guaranteed by the State Guarantee Agency, without federal insurance or coinsurance (Supplemental Loans). The Supplemental Loans are currently held by the Bank of North Dakota and include floating rate and fixed rate loans. Three proposals were received from the following firms (listed in alphabetical order):

Bank of America/Merrill Lynch
Piper Jaffray
RBC Capital Markets

The proposals were reviewed based on the following criteria:

- Experience and acceptable performance history
- Expertise of personnel assigned to the Trust's bond issuance
- Service delivery capabilities
- Responsiveness of proposal
- Fees
- Recommendations from references (if needed)

I have attached a matrix that was developed by our financial advisor, Jessica Cameron Mitchell from Public Financial Management, Inc., summarizing the proposals.

Two of the firms have had extensive experience with the issuance of student loan bonds and we believe would do an excellent job as underwriter for the Trust. The third firm, Piper Jaffray, has not served as a senior underwriter on a student loan bond issue. The issuance of student loan bonds has become much more complex. It is important that the Commission have in place an underwriting firm that has experience and the expertise to put together a bond issuance.

John Fox, Jessica Cameron Mitchell and I reviewed the proposals and are unanimously recommending the firm of Bank of America Merrill Lynch for a four-year engagement as ND Student Loan Trust bond underwriter. They have extensive experience, and the personnel assigned to work on the Trust's bond issuance are well qualified. Their firm has the capability and the financial footings to deliver on the bond issuance. We found their proposal to be responsive. We did not check references as Jessica or members of Public Finance Management have had experience working with the firm.

Based on this information it is my recommendation that the Commission name Bank of America Merrill Lynch as bond underwriter for a four-year engagement for the North Dakota Student Loan Trust.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director/Student Loan Trust Authorized Officer and name Bank of America Merrill Lynch as bond underwriter for a four-year engagement for the North Dakota Student Loan Trust. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Attorney General Stenehjem discussed his recommendation for selection of bond counsel for the North Dakota Student Loan Trust as follows:

The attached Request for Proposal (RFP) was distributed to 16 bond counsel firms. As noted in the RFP the engagement for bond counsel services would be for a four-year term. The bond issuance currently being contemplated would be secured by a program of supplemental loans which are guaranteed by the State Guarantee Agency, without federal insurance or coinsurance (Supplemental Loans). The Supplemental Loans are currently held by the Bank of North Dakota and include floating rate and fixed rate loans. Six proposals were received from the following firms (listed in alphabetical order):

Dorsey & Whitney LLP
Fryberger, Buchanan, Smith & Frederick, P.A.
Gilmore Bell
Ice Miller LLP & Arntson Stewart Wegner, PC
Kutak Rock LLP
Ohnstad Twichell, P.C.

The proposals were evaluated on the following criteria:

- Experience and acceptable performance history (with Industrial Commission and with lease revenues bonds or comparable financings)
- Expertise of personnel assigned to the Authority's bond issuance
- North Dakota Bar licensure status
- National Association of Bond Lawyers membership status
- Service delivery capabilities
- Responsiveness of proposal
- Fees
- Recommendations from references (if needed)

The Commission's financial advisor, Jessica Cameron Mitchell with Public Financial Management, put together a matrix regarding the bond counsel proposals. The financial advisor, John Fox and Karlene reviewed the six proposals and recommended that Kutak Rock be named as bond counsel for the Authority for a four-year engagement.

He indicated that based on the analysis that had been done it was his recommendation to name Kutak Rock as bond counsel for the Student Loan Trust.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of Attorney General Stenehjem and name Kutak Rock as bond counsel for a four-year engagement for the North Dakota Student Loan Trust. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Student Loan Trust business, Governor Dalrymple adjourned this portion of the meeting at 4:11 p.m. and the Commission took up Transmission Authority business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on December 8, 2016 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
Bonnie Storbakken, Governor's Office
Jessica Pfaff, Agriculture Department
Members of the Press

Governor Dalrymple called the North Dakota Transmission Authority portion of the Industrial Commission meeting to order at 4:11 p.m. following completion of Student Loan Trust business.

Ms. Karlene Fine, Executive Director, presented the Transmission Authority Annual Financial Report as follows:

**NORTH DAKOTA TRANSMISSION AUTHORITY
BALANCE SHEET
June 30, 2016**

Assets

Current Assets	
Cash	0
	<hr/>
Total assets	<u>0</u>

Liabilities

Current Liabilities	
Accounts Payable	0
	<hr/>
Total Liabilities	<u>0</u>

Net Assets

Net Assets:	
Unreserved	0
	<hr/>
Total net assets	<u>0</u>
	<hr/>
Total liabilities and net assets	<u><u>0</u></u>

**NORTH DAKOTA TRANSMISSION AUTHORITY
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN NET
ASSETS
For the Fiscal Year Ended June 30, 2016**

Expenditures:

Salaries and benefits	49,271
Grant - study	0
Office and Travel expenses	5,085
Consultants	16,000

Total Expenditures	<u>70,356</u>
Revenues Over (Under) Expenditures	<u>(70,356)</u>
Other Financing Sources:	
Transfers In	<u>70,356</u>
Total Other Financing Sources	<u>70,356</u>
Revenues and Other Financing Sources Over (Under) Expenditures and Other Financing Uses	0
Net Assets Beginning of Year	0
Net Assets End of Year	<u><u>0</u></u>

Being no further Transmission Authority business, Governor Dalrymple adjourned this portion of the meeting at 4:13 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 December 8, 2016 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
Bonnie Storbakken, Governor's Office
Jessica Pfaff, Agriculture Department

Governor Dalrymple called the Administrative portion of the Industrial Commission meeting to order at 4:13 p.m. following completion of Transmission Authority business.

Ms. Karlene Fine, Executive Director, presented the November 7, 2016 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 Industrial Commission approve the November 7, 2016 confidential and non-confidential meeting minutes. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Attorney General Stenehjem and Commissioner Goehring stated that it had been a pleasure working with Governor Dalrymple and thanked him for his service on the Industrial Commission noting that they had appreciated all the knowledge and expertise that he had provided over the last 6 years. They said Governor Dalrymple can be proud of the condition he leaves the State of North Dakota in.

Ms. Fine also expressed her thanks for having the opportunity to work with the Governor as Chairman of the Industrial Commission.

Governor Dalrymple thanked Attorney General Stenehjem and Commission Goehring for their work and stated that he had enjoyed working with them. He thanked Karlene Fine stating it has been a joy working with her and noted her legendary ability to accomplish work and indicated the need to get a Deputy hired.

Being no further Administrative business, Governor Dalrymple adjourned the meeting at 4:16 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary