

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on April 20, 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: Eric Hardmeyer, Bank of North Dakota  
Kirby Evanger, Bank of North Dakota  
Joel Erickson, Bank of North Dakota  
Darrell Lingle, Eide Bailly  
Jason Nisbet, Governor's Office  
Jessica Pfaff, Agriculture Department  
Members of the Press

Governor Dalrymple called the Industrial Commission meeting to order at 1:05 p.m. and the Commission took up Bank of North Dakota business.

Mr. Eric Hardmeyer, Bank of North Dakota President, presented the 2015 Bank of North Dakota Annual Report. (A copy of the report is available in the Commission files.) He said it is a unique report that ties into the Bank's new vision statement--To be an agile partner that creates financial solutions for current and emerging economic needs. The "elements" theme on the cover was done to show the agility of the Bank and that there is a lot of significance within the different elements. He stated that this was a record setting year for BND – the 12<sup>th</sup> consecutive year of record profits with more than \$130 million in income. The Bank's assets increased to \$7.4 billion – the highest level ever, and the Bank's loan portfolio increased \$486 million or about a 12% increase. He pointed out various parts of the Annual Report - the discussion on the Bank's new programs--Medical PACE, School Construction, Infrastructure Program and Farm Financial Stability Program. Also included is information on the reorganization of BND particularly the lending department. Once again the Bank included stories of people and businesses that received financing from the Bank – the most important thing the Bank does is help people get the capital they need to start up a business or go to college and become a farmer or business person. Mr. Hardmeyer also reviewed the ten-year history. The Commission commended the Bank employees on an exceptional year and also on the clever annual report. It is very well done. Mr. Hardmeyer noted that the Bank's employees once again did an outstanding job--because of the employees the Bank has been successful.

Mr. Darrell Lingle, Eide Bailly, presented Independent Auditor's Report and Financial Statement - 12/31/15 (FASB version). (A copy of the report is available in the Commission files.) He said these are the financial statements that are prepared under the financial accounting standards (FASB). The FASB accounting standards are similar to what you would see for any of the community banks throughout the United States. BND, because of its unique status, also has an audit done using the government auditing standards. For purposes of the printed financial report the Bank uses the FASB version as if it was like a community bank.

Mr. Lingle stated that Eide Bailly had issued an unmodified opinion or an unqualified opinion on the Bank's financial statements as of December 31, 2015 which is the same as prior years and is the highest level of assurance that Eide Bailly can provide. In their opinion the financials and the related footnotes conform to the Financial Accounting Standards Board of accounting standards. He reviewed the balance sheet (increase from \$7.2 billion to \$7.4 billion), the loan loss allowance (the most significant estimate within the financial statement as the loans are the highest risk asset of the Bank) 1.51% to 1.59%: and the statement of income. He noted there were no Federal Home Loan Bank prepayment fees this year. He indicated that under the footnotes there was discussion regarding the pension plan and unfunded liabilities. He explained to the Commission how the multi-employer plans are treated on the financial statements under the FASB standards as compared to the GASB statements.

Mr. Lingle reviewed in the footnotes the interest rate swap contracts and how they are reflected on the balance sheet. He also explained the disclosure on the value of financial instruments - Levels 1, 2 and 3 - and how those levels are determined.

Mr. Hardmeyer presented the First Quarter 2016 Performance Highlights. (A copy of the report is available in the Commission files.) He noted the following items:

- Ended the first quarter at about \$7.4 billion in assets; down a little from projections at \$7.5 billion.
- Assets are down from projections in the farm loan area by \$116 million due to the Farm Financial Stability Program – BND management had projected the entire \$300 million would go out during the year but so far BND has approved loans for about half that amount.
- Deposits are running down a little and the Bank is expecting to see that trend throughout the year. The Bank did end up with \$18 million more in equity than projected.
- Profitability is at \$37.5 million; projected to be at \$34.5 million. The Bank is on course for another record setting year.
- Provision for loan loss – the Bank put in large amounts in 2014 and 2015 so in the first quarter the Bank did not reserve anything. Beginning April 1 the Bank has begun to add about \$500,000 a month to the provision for loan loss.
- Leverage ratio or equity position – The Bank is at the highest level it has been at in over two decades--at 10.51% which is a very strong equity position. The Bank is above the North Dakota average which is slightly below 10%.
- Net loans to earning assets – 61.5% of the Bank's assets are in loans. This percentage has been growing over the last four or five quarters partially due to growth and partially due to the size of the Bank. Mr. Hardmeyer indicated that the Bank is working to grow the loan portfolio a little bit more.
- Loans originated in each of the categories. Overall the Bank had \$164 million of net growth the first quarter which is far larger than any other year and they look for good things to continue in 2016.
- PACE and Ag PACE; the new School Construction Loan Program; Beginning Farmers Program and the FELP program. He noted that the Bank is about to cross the billion dollar mark in DEAL loans--the Bank has funded \$990 million.
- Delinquency report – the student loan portfolio has a lower delinquency as the Bank books more and more of the DEAL One/Consolidation loans. The DEAL loans are high quality with low delinquency levels (the loans have been income tested and have been in repayment, etc.).
- Loan Loss Allowance is at \$69 million – as a percentage of the Bank's total portfolio it is 1.53 percent with the State average of 1.25 percent.
- College SAVE 529 Plan continues to show great results in terms of contributions; net assets are over \$400 million. The College SAVE North Dakotan accounts continue to grow with 18,000 accounts and \$97.8 million of assets that North Dakotans have saved for their children.

The Commission noted that there has been a lot of activity in the first quarter -- Mr. Hardmeyer stated that the Bank's lending staff is very busy.

Mr. Hardmeyer provided an update on the Farm Financial Stability Loan Program. He said the Bank had done 276 loans for \$124 million. Originally Bank management along with its banking partners had anticipated the amount would be at \$300 million. They now anticipate that number will be closer to \$150 million. Mr. Hardmeyer said the other surprise is the size of the loan. The loans are much smaller than anticipated with the average at \$431,000. Under the program's guidelines the maximum amount of a loan could be \$2.25 million. The Commission members stated that the program has been well received--it doesn't work for everyone but the Bank's offering of the program has been appreciated.

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Mr. Hardmeyer stated that the Department of Financial Institutions has been at the Bank for the last two weeks doing their exam. The exam has gone well and the Department will present the exam to the Commission.

Mr. Hardmeyer presented the non-confidential Bank of North Dakota Advisory Board February 18, 2016 meeting minutes.

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

Governor Dalrymple closed the meeting at 1:42 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.

Being no further business, Governor Dalrymple adjourned this portion of the meeting at 1:42 p.m. and the Commission took up Bank confidential business followed by State Mill confidential business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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

Also  
Present: Vance Taylor, State Mill  
Edward Barchenger, State Mill  
Jason Nisbet, Governor's Office  
Jessica Pfaff, Agriculture Department  
Members of the Press

Governor Dalrymple called the State Mill non-confidential portion of the Industrial Commission meeting to order at 2:13 p.m. following completion of confidential State Mill business.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that North Dakota Mill Management be authorized to proceed with negotiations on a land exchange/purchase with Burlington Northern for the purposes of relocating a rail track. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Vance Taylor, State Mill President and General Manager, presented the FY2016 Third Quarter Report as follows:

North Dakota Mill  
Review of Operations  
3<sup>rd</sup> Quarter Ended 3/31/16

SUMMARY

Profits for the 3rd Quarter of the year were \$1,706,126 compared to \$5,203,354 last year. Operating activity for the nine months ending March resulted in a profit of \$6,661,970 compared to \$14,299,848 last year.

	<u>Quarter</u>		<u>Year-to-Date</u>	
	<u>3/16</u>	<u>3/15</u>	<u>3/16</u>	<u>3/15</u>
Profits	1,706,126	5,203,354	6,661,970	14,299,848
Sales	65,272,138	74,574,188	206,247,273	230,544,474
Cwt. Shipped:				
Spring	2,850,295	2,856,905	8,879,961	8,557,856
% to Total	91.1%	92.6%	91.6%	92.0%
Durum	<u>277,698</u>	<u>228,471</u>	<u>811,400</u>	<u>742,061</u>
	<u>3,127,993</u>	<u>3,085,376</u>	<u>9,691,361</u>	<u>9,299,917</u>
Bag Shipments	621,473	640,259	1,965,476	2,054,661
% to Total	19.9%	20.8%	20.3%	22.1%
Tote Shipments	29,959	27,159	95,003	86,804
% to Total	1.0%	0.9%	1.0%	0.9%
Family Flour Shipments	65,314	71,066	219,009	254,115

Organic Flour Shipments	40,480	24,725	137,766	78,047
Grain Purchased:				
Spring	6,089,290	6,271,324	18,127,101	18,572,541
Durum	<u>560,929</u>	<u>321,729</u>	<u>1,471,666</u>	<u>1,323,451</u>
Total	<u>6,650,219</u>	<u>6,593,053</u>	<u>19,598,767</u>	<u>19,895,992</u>

SALES

3<sup>rd</sup> Quarter

Sales for the 3<sup>rd</sup> Quarter were \$65,272,138 compared to \$74,574,188 last year. Shipments of 3,127,993 cwts. are 42,617 cwts. above last year. Bag shipments for the 3<sup>rd</sup> Quarter are 621,473 cwts., which is 18,786 cwts. below last year's 3<sup>rd</sup> Quarter. Tote shipments for the 3<sup>rd</sup> Quarter are 29,959 cwts., which is 2,800 cwts. above last year. Family flour shipments reached 65,314 cwts., which is 8.1% below last year's 3<sup>rd</sup> Quarter.

Year-to-Date

Sales for the nine months ended March were \$206,247,273 compared to \$230,544,474 last year, a decrease of 10.5%. Shipments of 9,671,361 cwts. are 371,444 cwts. above last year, an increase of 4.0%. This is a new record for 9 months of shipments. Shipments being up 4.0% while sales dollars were down is due to the reduction in the average settled price of grain. The average settled price decreased \$1.51 per bushel from last year. Year-to-date bag shipments are 1,965,476 cwts., a decrease of 89,185 cwts. from last year. Tote shipments for the year are 95,003 cwts., which is 8,199 cwts. below last year. Family flour shipments for the nine months ended are 219,009 cwts., a decrease of 13.8% from last year. Organic flour shipments were 137,766 cwts., an increase of 76.5% from last year.

OPERATING COSTS

3<sup>rd</sup> Quarter

Operating costs for the 3<sup>rd</sup> Quarter were \$6,533,450 compared to \$6,832,889 last year, a decrease of \$299,439. Operating cost per cwt. of production was \$2.14 compared to \$2.26 last year, a decrease of \$0.12.

Year-to-Date

Year-to-date operating costs are \$19,575,281 compared to \$20,417,114 last year, a decrease of 4.1%. Operating cost per cwt. of production for the nine months ended was \$2.13 compared to \$2.20 last year, a decrease of 3.2%.

PROFITS

3<sup>rd</sup> Quarter

Profits for the 3<sup>rd</sup> Quarter were \$1,706,126 compared to \$5,203,354 last year. Gross margins as a percent of gross sales for the quarter were 12.7% compared to 16.2% last year.

Year-to-Date

Operating activity for the nine months ended March led to a profit of \$6,661,970 compared to \$14,299,848 last year. Year-to-date gross margins are 12.8% compared to 15.2% last year.

Risk Management Position

The table below shows our hedge ratio by futures month going forward. A hedge ratio shows the relationship between our net cash position and our futures position.

Period	Hedge Ratio
May-16	1.1
July-16	1.1
Sept-16	1.0
Dec-16	1.0
Mar-17	1.0
Net Position	1.0

Mr. Taylor said going forward into the fourth quarter he expects similar results driven by continued strong mill run time and tempered by the tough market conditions the Mill is seeing this year versus the much more favorable conditions last year. Profits in fiscal year 2016 are similar to 2012. Planting is progressing pretty well; as of Monday 14% had been planted for Spring Wheat and there had been some recent rains which were very much needed.

Mr. Taylor reported on the status of capital projects. He distributed photos of the interior of the G Mill noting the installation of the roll stands, grinding equipment, purifiers, dusters, sifters, stainless steel flour collection conveyers, etc. (Copies are available in the Commission's files.) He stated that the project is going well with the G Mill scheduled to be completed in late July and on budget. There was discussion about having a meeting at the State Mill in September--with a grand opening of the G Mill.

Mr. Taylor stated Mill management is very close to going out for bids on the Phase One High Speed Unloading Track and Pit Project. He anticipated that if the bidding is done in a couple weeks the Project could be finished by the end of the year.

Being no further State Mill business, Governor Dalrymple adjourned this portion of the meeting at 2:21 p.m. and the Commission took up Pipeline Authority business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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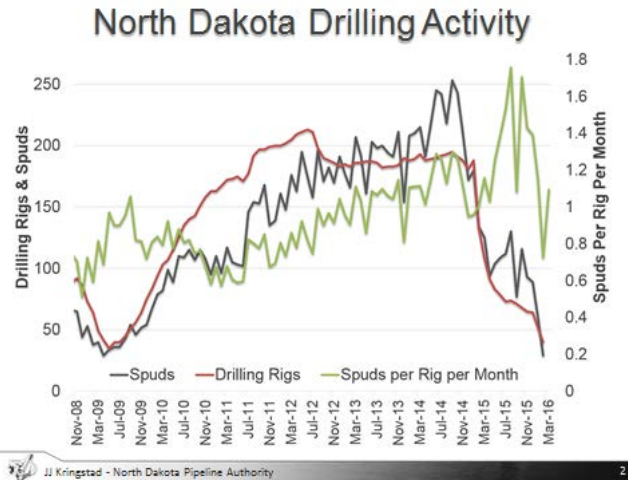
Also Present: Justin Kringstad, Pipeline Authority  
 Jaret Wirtz, WAWSA  
 Jason Nisbet, Governor's Office  
 Jessica Pfaff, Agriculture Department  
 Members of the Press

Governor Dalrymple called the Pipeline Authority portion of the Industrial Commission meeting to order at 2:21 p.m. following completion of State Mill business.

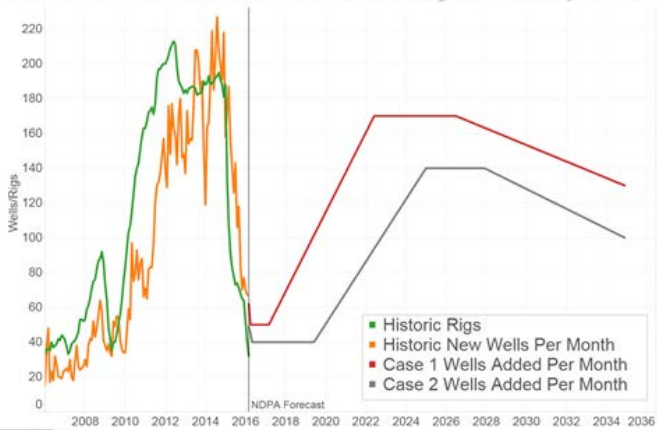
Mr. Justin Kringstad, Pipeline Authority Director, presented the Quarterly Pipeline Authority report as follows:



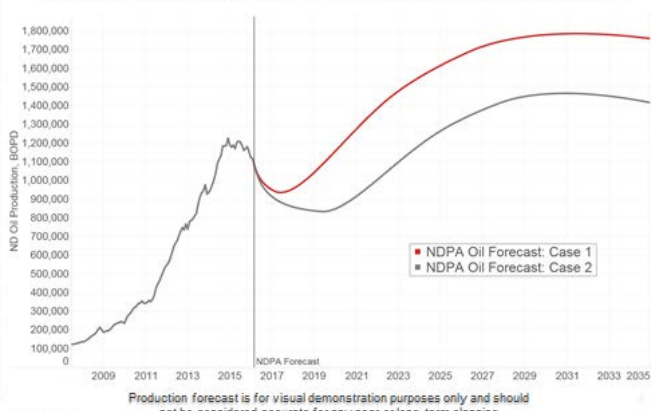
**Industrial Commission Update**  
 North Dakota Pipeline Authority  
 Justin J. Kringstad  
 April 20, 2016 - Bismarck, ND



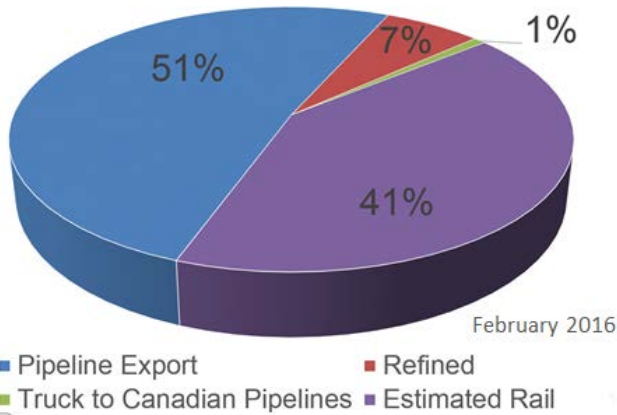
**North Dakota Forecast Activity Assumptions**



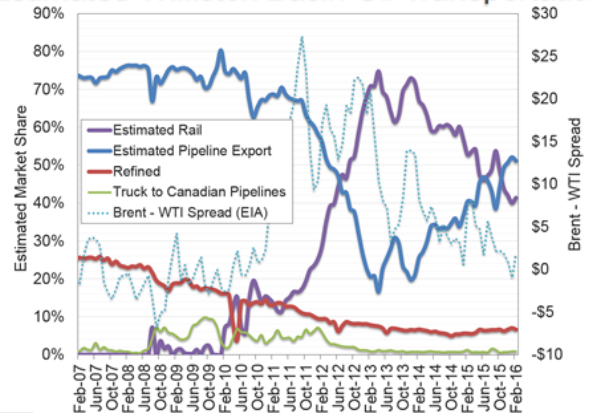
**North Dakota Oil Production Forecast**



### Estimated Williston Basin Oil Transportation



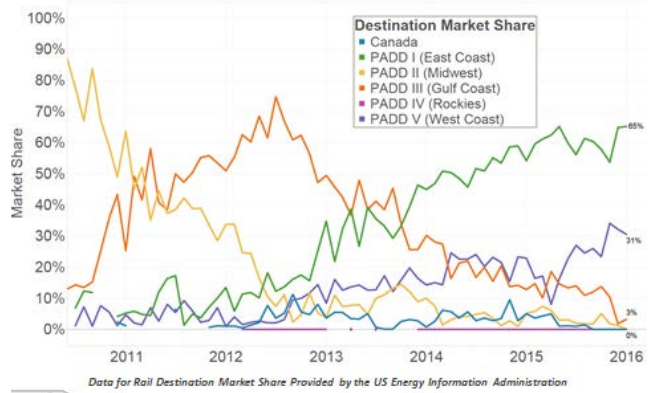
### Estimated Williston Basin Oil Transportation



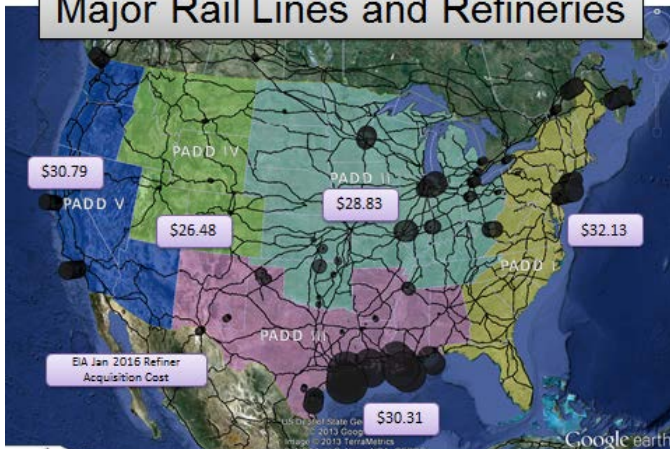
### Estimated ND Rail Export Volumes



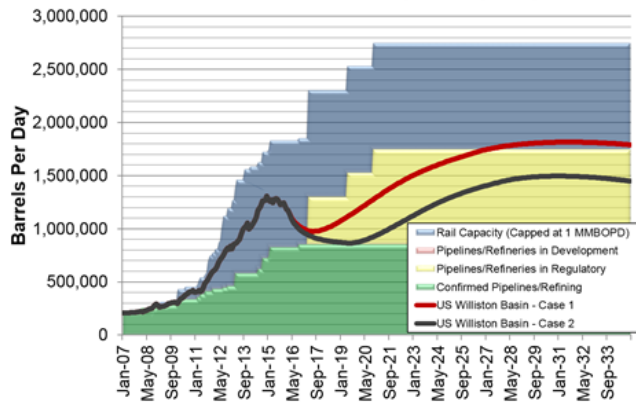
### Rail Destinations Market Share (Jan 2016)



### Major Rail Lines and Refineries



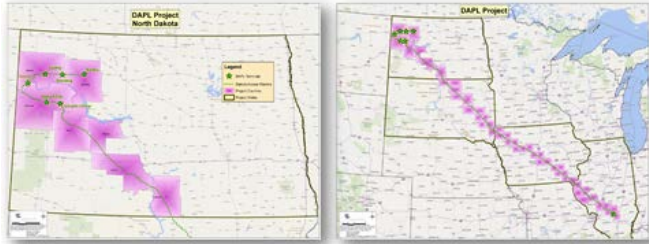
### Williston Basin Oil Production & Export Capacity, BOPD



Production forecast is for visual demonstration purposes only and should not be considered accurate for any near or long term planning.



### Energy Transfer Partners: Dakota Access



- Successful Open Season During the First Half of 2014
- 450,000 BOPD Capacity to Patoka, IL (30")
- Expandable Up To 570,000 BOPD if Shipper Demand Exists
- Target In-service Date: Late 2016

Map Source: Energy Transfer Partners

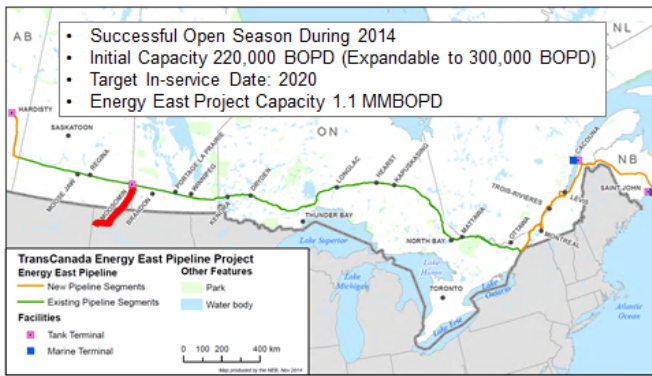
### Sandpiper Pipeline



- North Dakota Pipeline Company LLC - formerly known as Enbridge Pipelines (North Dakota) LLC
- Open Season Dates: November 26, 2013 – January 24, 2014
  - 225,000 BOPD ND Capacity to Clearbrook, MN (24")
  - 375,000 BOPD Clearbrook, MN to Superior, WI (30")
  - Target In-service Date: 2019

Map: Enbridge

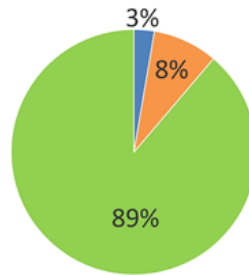
### TransCanada: Upland Pipeline



- Successful Open Season During 2014
- Initial Capacity 220,000 BOPD (Expandable to 300,000 BOPD)
- Target In-service Date: 2020
- Energy East Project Capacity 1.1 MMBOPD

Map: NEB – NDPA Upland Addition

### Solving the Flaring Challenge



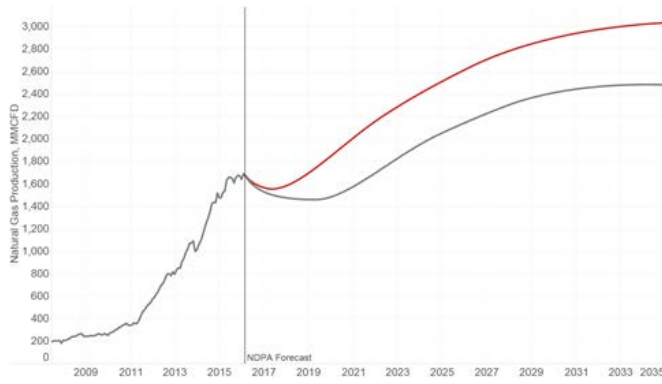
GREEN – % of gas captured and sold  
 Blue – % flared from zero sales wells  
 Orange – % flared from wells with at least one mcf sold.

Simple Terms  
 Blue – Lack of pipelines  
 Orange – Challenges on existing infrastructure

Statewide

February 2016 Data – Non-Confidential Wells

### North Dakota Gas Production Forecast



Production forecast is for visual demonstration purposes only and should not be considered accurate for any near or long term planning.

### North Dakota Oil Differential



Based on EIA Data

In response to a question Mr. Kringstad stated that 175,000 barrels of oil that originated in the Bakken had been exported out of the Gulf Coast to Europe by Hess. He stated this had been done as a result of the lifting of the export ban and price incentives. He indicated that potentially a Bakken type barrel of oil is a good fit in Europe;

they are a diesel driven economy and Bakken barrels are more weighted towards the light ends so diesel production is a fairly easy process.

In response to a question Mr. Kringstad noted that his forecast shows the oil production level dropping to 900,000 by the end of the year or early next year. He noted that the reduction last month was 4,000 per day less than what had been forecasted. He is continuing to look at what that means going forward.

In response to a question Mr. Kringstad said, based on what he is seeing in the numbers from the different companies, that they are expecting for the next six to nine months relatively low activity unless something substantial happens on the pricing side.

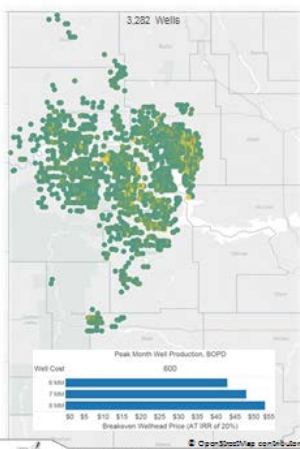
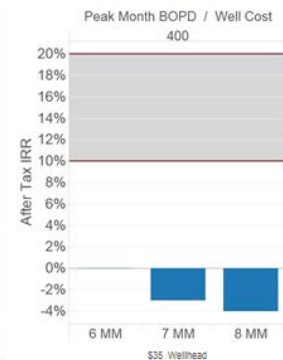
Mr. Kringstad said the remaining slides have been updated to reflect current well production information with the well head price at the more realistic current price environment which is about \$35.00 at the well head as of yesterday. The slides show that moving forward it is not until you start hitting the 700 to 800 barrels a day wells that you start getting anything north of an after tax rate of return 10% or higher – depending upon the completed well cost.

### Key Economic Assumptions

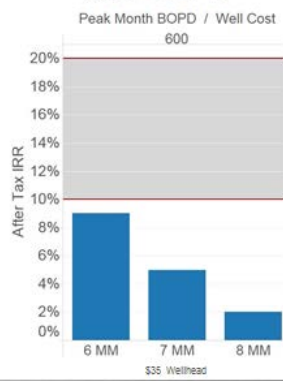
- \$6-\$8 Million Well Costs
- \$35/BBL & \$3.00/MCF Wellhead Pricing
- 1/6 Royalty
- Zero Flaring
- Assumed 10-20% IRR to drill (calculated after production taxes and royalties)
- No Tax Incentives Included
- Production rate is 30-day average
- All Bakken/Three Forks wells drilled in 2008+



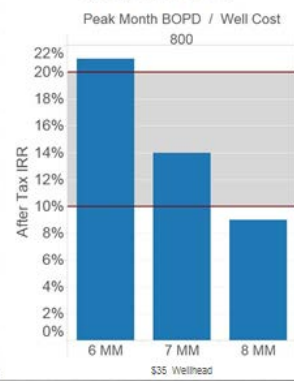
### Peak Month Minimum 400 BOPD

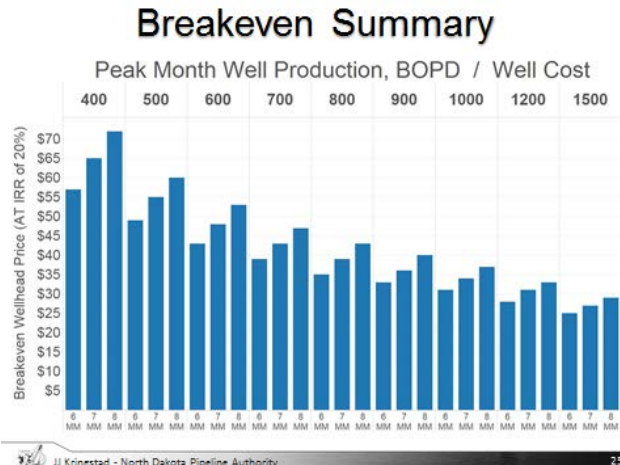
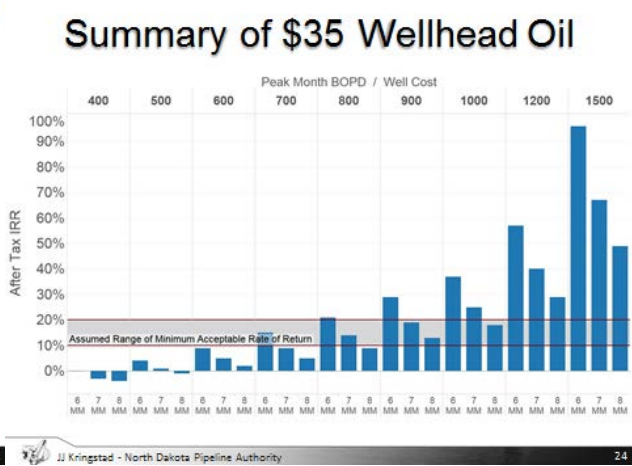
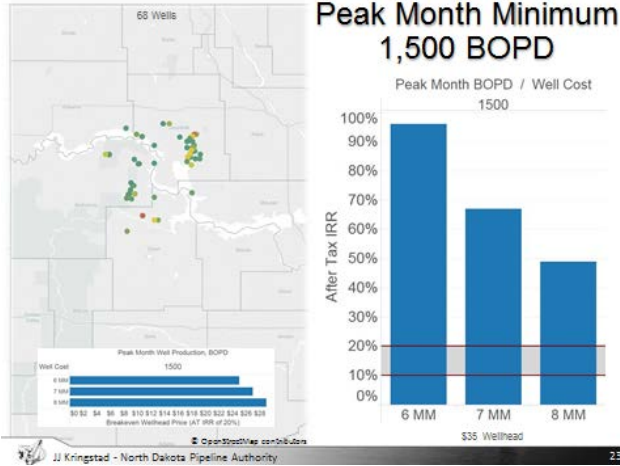
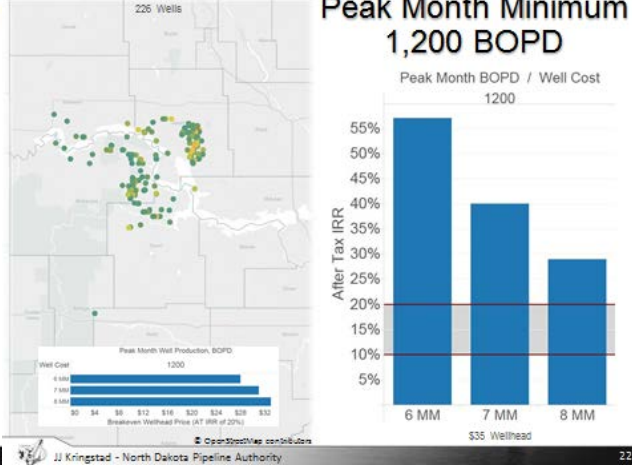
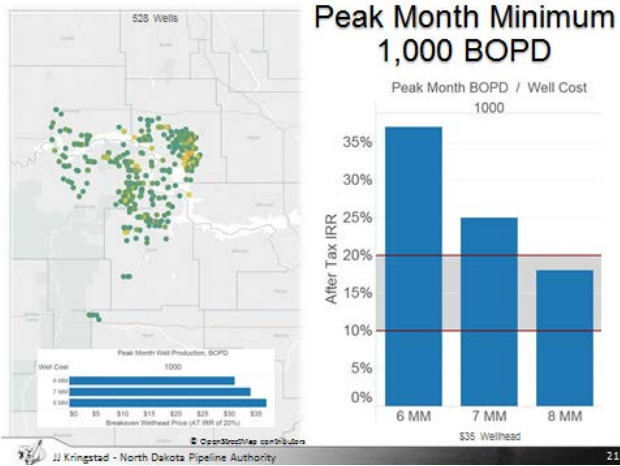


### Peak Month Minimum 600 BOPD



### Peak Month Minimum 800 BOPD





**Contact Information**

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[www.pipeline.nd.gov](http://www.pipeline.nd.gov)  
[www.northdakotapipelines.com](http://www.northdakotapipelines.com)



Mr. Kringstad said the last couple slides are a summary of the different well performance levels, different completed well costs and what a company's economics may look like depending upon how much it costs them to drill and how much oil they produce from these various wells. Slide 25 is the breakeven summary – it is trying to answer the question of what is the breakeven price for North Dakota oil. That is going to depend upon what the completed well cost is and what the geology is like in each given area. It could range from \$55.00 plus in some of

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the fringe areas to the low \$30.00's in some of the higher performing areas in North Dakota. He stated that there is not an easy answer to the breakeven price question.

Being no further Pipeline Authority business, Governor Dalrymple adjourned this portion of the meeting at 2:38 p.m. and the Commission took up Western Area Water Supply Authority business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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John Ward, Savage  
Joel Erickson, Bank of North Dakota  
Jason Nisbet, Governor's Office  
Jessica Pfaff, Agriculture Department  
Members of the Press

Governor Dalrymple called the Western Area Water Supply Authority (WAWS) portion of the Industrial Commission meeting to order at 2:38 p.m. following completion of Pipeline Authority business.

Ms. Karlene Fine, Industrial Commission Executive Director, presented the WAWS March financial summary report as follows: (The attachments are available in the Commission files.)

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

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

Page 1 prepared by the Bank of North Dakota, reflects debt service payments through the month of March, 2016. In March interest was paid on the two BND loans and two Water Commission loans and principal was paid on the \$40 million BND loan.

The next 3 pages (pages 2, 3 & 4) I prepared based on the information provided by WAWS staff reflecting March revenues and expenses and net income. On page 2 you will see there were no capital improvement disbursements (highlighted in orange) and the one principal payment made in March is highlighted in yellow. Net income for the month of March was \$1,028,259.99 before making their principal payment. The reason for the significant increase in net income is the reversal of the baseline sales payments for the first two months of the year and no baseline sales payments in March. You see that reflected on a new line item titled Deferred Expense Asset. For the first three months of the year it totals \$1,199,946.27. You also see on this page that sales were up in March to just under \$900,000. (As you will recall from the overall Debt Service spread sheet the breakeven sales monthly number is \$871,750 without the baseline sales payments.) Page 5 is the balance sheet prepared by WAWS staff as of March 31, 2016. As noted on the Balance Sheet the Accounts Receivables are \$1,899,223.65 which is included in the assets of \$3,115,100.59. Note: The assets now include a deferred expense line item which reflects the deferred expenses for the Baseline Sales.

If you have questions I will be available to review the numbers. Jaret Wirtz will be at the meeting to respond to questions regarding the sales during the month of March.

Mr. Jaret Wirtz, WAWS Executive Director, indicated that six of the seven revised baseline agreements with the member entities have been signed. The Williston City Commission is scheduled to vote on their agreement at their April 26 meeting. He is anticipating that it will be passed. With the signing of those revised baseline agreements WAWS will no longer be paying the entities in months with shortfalls; the member entities will be paid in those months when all the payments have been made including the deferred interest and any deferred principal payments (currently no payments are being made on one BND loan as WAWS had previously made prepayments on the loan). He noted that in order for the baseline payments to be made WAWS will need to have monthly revenues of approximately \$2 to \$2.3 million. Governor Dalrymple congratulated Mr. Wirtz on a good job getting all the revised agreements signed.

Ms. Fine presented the status of updated information from the Water Commission on market share as follows:

RE: WAWS Market Share information

At last month's Industrial Commission meeting you asked for detailed information on WAWS market share information. I have been in touch with the Water Commission and have discovered that there is a great deal of information about water permits--it is quite interesting what all is available. The Water Commission is finalizing this information for 2015. We hope to provide the data as it relates to those areas where WAWS operates. My current discussions with Water Commission staff are that a county breakdown is probably not very useful because of the movement of water around the Williston Basin. I will continue to work with Water Commission staff and, hopefully, bring some statistics to you at next month's meeting. However, I don't have it available for this meeting.

Ms. Fine said the Water Commission is just finalizing their information for 2015 so she could not provide any charts for this meeting but will keep it on her agenda and bring it back when she has had some time to understand the data. There are some challenges breaking it out by county but she will work with the Water Commission to refine the information down to the WAWS area.

Mr. Wirtz reported on the interest that WAWS has received based on the new pricing structure. They have had a number of calls with companies very interested and glad that WAWS is trying to do something so that WAWS water can be at least considered for purchase. There has been a lot of interest on maintenance water needs during this slow time. Companies are trying to find ways to save money and reduce trucking costs. He is continuing to work with companies to figure out how to make connections to WAWS and determine how much money the company will be saving in the long term.. He will continue those discussions and, hopefully, get some more wells connected and guarantee sales for not only the short term but for 20 to 40 years. Once the wells pads are connected, WAWS doesn't see the oil company looking to try to get water from somewhere else because the water is directly piped on to their well pads.

In response to a question Mr. Wirtz said WAWS was built for domestic users and the only dollars that have ever been expended on the industrial sales is just at the depots and that was in 2011 and 2012. Since then, no dollars have been used for industrial sales through WAWS funding other than the dollars that have been expended as Industrial Commission approved capital costs; small amounts have been used over the last two years.

In response to a question, Mr. Wirtz said the \$80 million funding that was approved for the 2015-2017 biennium is for domestic sales. Some of that work was done last year; 300 to 400 users were added last summer and it will be close to 600 to 700 users added this construction season. For the biennium WAWS is anticipating getting almost a thousand miles of rural pipeline in the ground. That is WAWS' primary focus. He noted that there will be some industrial connections along the way if the companies pay for it.

In response to a question there was discussion as to whether there should be any consideration given to selling the water depots. Mr. Wirtz indicated that currently WAWS is managing the depots on behalf of the Commission--WAWS supplies the water to the depots and sells the water at an industrial rate determined by the Commission. He is not aware of any entity being interested in purchasing the depots.

Being no further Western Area Water Supply Authority business, Governor Dalrymple adjourned this portion of the meeting at 2:51 p.m. and the Commission took up Public Finance Authority business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on April 20, 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: DeAnn Ament, Public Finance Authority  
Jason Nisbet, Governor's Office  
Jessica Pfaff, Agriculture Department  
Members of the Press

Governor Dalrymple called the Public Finance Authority portion of the Industrial Commission meeting to order at 2:51 p.m. following completion of Western Area Water Supply Authority business.

Ms. DeAnn Ament, Public Finance Authority Executive Director, presented the following two Drinking Water State Revolving Fund Program loan requests:

North Prairie Rural Water District - \$1,126,000 – Ms. Ament stated the loan proceeds would be used for a water tower south of Minot, underground storage tank and connections to the main pump stations. The District has agreed to raise their rates by \$1.00 per user per year which should be sufficient, coupled with their net operating earnings, to meet the Public Finance Authority's coverage requirements. The PFA Advisory Committee recommended approval.

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

RESOLUTION APPROVING  
LOAN FROM DRINKING WATER STATE REVOLVING FUND

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Drinking Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4, 61-28.1, and 61-28.2; and

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

WHEREAS, North Prairie Rural Water District (the "Political Subdivision") has requested a loan in the amount of \$1,126,000 from the Program to finance a water tower, water storage tank and water main; and

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

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

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

1. The Loan is hereby approved, as recommended by the Advisory Committee.
2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.
3. The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political

Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.

4. The Commission declares its intent pursuant to Treasury Regulations §1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

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

Stutsman Rural Water District - \$1,706,000. Ms. Ament stated that the loan proceeds would be used for an underground storage reservoir and a new water tower. It is a \$5.8 million project with \$4.1 million coming from the State Water Commission. They requested a 30 year term with the intention of increasing the number of users and plan to raise their base rates by \$5.00 per user per month which would generate sufficient funds to meet the Public Finance Authority's coverage requirements. The PFA Advisory Committee recommended approval.

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

RESOLUTION APPROVING  
LOAN FROM DRINKING WATER STATE REVOLVING FUND

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Drinking Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4, 61-28.1, and 61-28.2; and

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

WHEREAS, Stutsman Rural Water District (the "Political Subdivision") has requested a loan in the amount of \$1,706,000 from the Program to finance a water tower and underground storage expansion; and

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

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

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

1. The Loan is hereby approved, as recommended by the Advisory Committee.
2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.
3. The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.



4. The Commission declares its intent pursuant to Treasury Regulations §1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

There was a brief discussion regarding how many underground water storage facilities are located in North Dakota. Ms. Ament indicated that the majority of loans financed by the Public Finance Authority are for above ground storage.

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

Governor Dalrymple noted that there will be less money available in the Resources Trust Fund next biennium in general and encouraged Ms. Ament to be thinking about ways that the Public Finance Authority can assist political subdivisions in meeting their financing needs for water infrastructure projects.

Ms. Ament said many of the water infrastructure projects are on the State Health Department's Intended Use Plan. Many of the political subdivisions want to go first to the State Water Commission to get as much grant money as they can before coming to the Public Finance Authority for a loan. She noted that both of the projects considered today included State Water Commission dollars. The entities got Water Commission grant dollars and then they came to the Public Finance Authority to get a loan for the needed local funding. She stated that the State Revolving Fund program is there to assist these communities and it can be leveraged more if more dollars are needed.

Being no further Public Finance Authority business, Governor Dalrymple adjourned this portion of the meeting at 2:58 p.m. and the Commission took up Department of Mineral Resources business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on April 20, 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: Lynn Helms, Department of Mineral Resources Director  
Bruce Hicks, Department of Mineral Resources Oil and Gas Division Assistant Director  
Alison Ritter, Department of Mineral Resources Public Information Officer  
Hope Hogan, Assistant Attorney General, Office of the Attorney General  
David Garner, Assistant Attorney General, Office of the Attorney General  
Jan Swenson, Badlands Conservation Alliance  
Ron Ness, Petroleum Council  
Jolene Kline, Housing Finance Agency  
Jennifer Henderson, Housing Finance Agency  
Max Wetz, Housing Finance Agency  
Jason Nisbet, Governor's Office  
Jessica Pfaff, Agriculture Department  
Members of the Press

Governor Dalrymple called the Housing Finance Agency portion of the Industrial Commission meeting to order at 3:27 p.m. following completion of a portion of the Department of Mineral Resources business and a short break.

Ms. Jolene Kline, Housing Finance Agency Executive Director, presented the Housing Finance Agency Advisory Board's recommendation to approve Annual Income Limits effective May 1, 2016 for the FirstHome Programs (Program Directive 106), ND Roots Program and DCA Program as follows:

RE: FirstHome and ND Roots Income Limits

The North Dakota Housing Finance Agency Advisory Board recommends that the Industrial Commission approve the attached Exhibit 1, Program Directive 106, as income limits for the FirstHome programs, Exhibit 2 as income limits for the ND Roots program, and Exhibit 3 as income limits for the DCA program effective May 1, 2016.

NDHFA Homeownership Programs Income Limit Proposal

The Department of Housing and Urban Development (HUD) published new median income numbers on March 28, 2016. These numbers are used to establish the Annual Income limits for the FirstHome, HomeAccess, Start, DCA and ND Roots programs. MRB regulations allow the use of the greater of county or state median income. Mortgage Revenue Bond (MRB) regulations and NDHFA policy limit household incomes to:

- 100% of median income for one and two member households (MRB regulation)
- 115% for households of three or more (MRB regulation)
- Targeted areas are set at 120% and 140% percent according to household size (MRB regulation)
- DCA limits may be up to 80% of median income by family size and county (NDHFA policy)
- ND Roots income limits are at 140% of HUD median income limits regardless of household size (NDHFA policy)

The statewide median income for North Dakota increased \$1,500 (2%) to \$75,800 for 2016. This compares to the national median income decrease of \$100 (-0.2%) to \$65,700.

She noted that the Burleigh-Morton Counties income limits went up about 10% from last year. Cass County went down about 4%.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Housing Finance Agency Advisory Board and approves Annual Income Limits effective May 1, 2016 for the FirstHome Programs, ND Roots Program and DCA Program as follows:**

**NORTH DAKOTA HOUSING FINANCE AGENCY  
 HOME MORTGAGE FINANCE PROGRAM (FirstHome)**

**PROGRAM DIRECTIVE NO. 106  
 MAXIMUM ANNUAL INCOME**

The following Program Directive will serve as written notice of the applicable “Maximum” “Annual Income” (as defined in the 1994 Mortgage Purchase Agreement dated as of August 3, 1994) for an Eligible Mortgagor of a Mortgage Loan. These Maximum Annual Income limits are **effective for Mortgage Loans in which the Reservation is dated on or after the herein effective date May 1, 2016.**

**Maximum Annual Income  
 FirstHome/Start/HomeAccess**

<b>County</b>	<b>Family Size Less than 3</b>	<b>Family Size 3 or More</b>
Burleigh/Morton	88,300	101,545
Cass	76,600	88,090
Dunn	78,400	90,160
McKenzie	79,400	91,310
Mercer	83,000	95,450
Mountrail	78,300	90,045
Oliver	83,600	96,140
Stark	77,300	88,895
Williams	88,600	101,890
All Other Counties	75,800	87,170

Effective date of this Program Directive No. 106: May 1, 2016

**NORTH DAKOTA HOUSING FINANCE AGENCY**

**ND ROOTS PROGRAM  
 MAXIMUM ANNUAL INCOME**

These Maximum Annual Income limits are **effective for ND Roots Mortgage Loans in which the Reservation is dated on or after the herein effective date of May 1, 2016.**

<b>County</b>	<b>Income Limit</b>
Burleigh/Morton	123,620
Cass	107,240
Dunn	109,670
McKenzie	111,160
Mercer	116,200
Mountrail	109,620
Oliver	117,040
Stark	108,220
Williams	124,040
All Other Counties	106,120

**NORTH DAKOTA HOUSING FINANCE AGENCY**

**DCA PROGRAM  
 MAXIMUM ANNUAL INCOME**

These Maximum Annual Income limits are **effective for DCA assisted FirstHome Loans in which the Reservation is dated on or after the herein effective date of May 1, 2016.**

**FAMILY SIZE\***

<b>COUNTY</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>
Burleigh	46,000	52,600	59,150	65,700	71,000	76,250	81,500	86,750
Cass	42,750	48,850	54,950	61,050	65,950	70,850	75,750	80,600
Mercer	46,000	52,600	59,150	65,700	71,000	76,250	81,500	86,750
Morton	46,000	52,600	59,150	65,700	71,000	76,250	81,500	86,750
Oliver	46,000	52,600	59,150	65,700	71,000	76,250	81,500	86,750

Stark	43,300	49,500	55,700	61,850	66,800	71,750	76,700	81,650
All Others	41,200	47,050	52,950	58,800	63,550	68,250	72,950	77,650

*\*Larger families, check with NDHFA for limits.*

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

Ms. Kline presented the Housing Finance Agency Advisory Board's recommendation to approve the FY 2016 Helping HAND grants as follows:

RE: 2016 Helping Hand Program

The NDHFA Advisory Board recommends the Industrial Commission approve the FY 2016 Helping HAND grants as follows:

The proposed award of funds is consistent with Program Criteria (attached) as well as the previously established set-asides of \$177,000 for Community Action agencies (distributed by poverty level amongst seven agencies); \$55,000 for tribal entities (six tribal entities with a maximum of \$9,166 per entity); \$15,000 for Habitat chapters (four affiliates with a maximum of \$3,750 per affiliate) and \$3,000 for three eligible non-profits (Rebuilding Together Bismarck/Mandan Area, Rebuilding Together Fargo/Moorhead Area and Camp of the Cross Ministries-Dream Catchers with a maximum of \$1,000 per non-profit). The previously approved eligible entities of Spirit Lake Housing Corporation, Standing Rock Sioux Tribe/HIP Office, Dakota Nation Housing Development Corporation, Fergus Falls Area Habitat for Humanity and Habitat for Humanity Northern Lights did not apply for 2016 funds.

Three Affiliated Tribes is currently ineligible to participate in the Helping HAND program due to outstanding audit issues.

The Helping HAND program grant funds are available to eligible entities to support the new construction and/or renovation of existing single family or multi-family housing.

Helping HAND 2016 Program Criteria  
Planning and Housing Development Division

Funds are intended to support the new construction or rehabilitation of existing single family or multi-family housing programs (inclusive of homeless shelters). Funds may not be used for an organization's general operating expenses. Existing housing projects with project-based rental assistance are not eligible to receive funding.

1. The allocation plan does not represent an entitlement to funds. Eligible Helping HAND recipients must submit an application for an allocation of funds.
2. Only one application from each Habitat, Reservation, CAA or Rebuilding Together/Dream Catchers will be approved.
3. Helping HAND funds must be used to address housing needs of families or individuals with household incomes that do not exceed 80 percent of the HUD median income for the county in which the property is located.
4. Matching funds, from a non-NDHFA source, of at least 25 percent of the total project costs are required.

5. Helping HAND funds may be used only for the purpose stated in the Helping HAND recipient's application for approval, unless a change is approved by NDHFA.
6. Community Action Agencies and Native American grantees are encouraged to use funding to benefit the largest number of households.
7. Grantees may request reimbursement for costs incurred on a **monthly** basis by submitting a Request for Reimbursement form (SFN 52025) available on our website, [www.ndhfa.org](http://www.ndhfa.org). Before final disbursement is completed grantees must submit a narrative description of their project(s).
8. NDHFA reserves the right to audit the use of Helping HAND funds.
9. Helping HAND funds must be expended (Request for Reimbursement received by the Agency) for eligible projects within twelve months of receiving notice of the award.
10. Final total project costs must be submitted upon project completion.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendation of the Housing Finance Agency Advisory Board and approves the FY2016 Helping HAND grants as follows:**

<b>Applicant</b>	<b>Community</b>	<b>Amount</b>
Community Action Partnership Regions 1 & 8 Combined	Dickinson/Williston	15,769
Community Action Partnership - Minot Region	Minot	19,545
Dakota Prairie Community Action Agency	Devils Lake	19,614
Red River Valley Community Action	Grand Forks	29,325
Southeastern ND Community Action Agency	Fargo	47,484
Community Action Region VI	Jamestown	12,986
Community Action Program Region VII, Inc.	Bismarck	32,277
<b>Subtotal - CA Agencies</b>		<b>\$177,000</b>
Trenton Indian Service Area	Trenton	9,166
Turtle Mountain Band of Chippewa	Belcourt	9,166
<b>Subtotal - Tribal Housing</b>		<b>\$ 18,332</b>
Red River Valley Habitat for Humanity	Grand Forks	3,750
Lake Agassiz Habitat for Humanity	Moorhead	3,750
<b>Subtotal - Habitat for Humanity</b>		<b>\$ 7,500</b>
Rebuilding Together Bismarck/Mandan Area	Bismarck	1,000
Rebuilding Together Fargo/Moorhead Area	Fargo	1,000
Camp of the Cross Ministries-Dream Catchers	Garrison	1,000
<b>Subtotal - Non-Profits</b>		<b>\$ 3,000</b>
<b>Total</b>		<b>\$205,832</b>

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

Ms. Kline presented a memorandum regarding the National Housing Trust Fund 24 CFR part 93 and consideration of appointment of a Public Hearing Representative for a public hearing regarding the Housing Finance Agency's proposed 2016 National Housing Trust Fund Allocation Plan as follows:

RE: National Housing Trust Fund 24 CFR part 93

The National Housing Trust Fund (HTF) is a permanent federal program, established as part of the Housing and Economic Recovery Act of 2008 and codified in the Code of Federal Regulations, Title 24, Parts 91 and 93. The primary purpose of the HTF is to provide grants to state governments to increase and preserve the supply of affordable rental housing for extremely low income (ELI) households, defined as those earning less than 30% of the area median income (AMI), including homeless families. The HTF is funded by an assessment of the percentage of new business booked by Fannie Mae and Freddie Mac. Regulation requires that 100 percent of the fund must support ELI households if the total fund balance is less than \$1 billion or 75 percent if the fund is greater than \$1 billion. It is anticipated that the fund balance will be below \$1 billion for the first two to five years. While authorized under HERA in 2008, no deposits were made into the HTF until this year, based on 2015 earnings from Fannie Mae and Freddie Mac.

States will receive funding through a formula allocation based on the shortage and availability of rental properties to Extremely Low Income (ELI) and Very Low Income (VLI) households with a small state minimum of \$3 million, assuming sufficient funds to meet this goal. On April 4, 2016 HUD announced availability of just under \$174 million in funds. The official state by state allocation is expected to be announced by HUD by the end of April, however we anticipate North Dakota receiving the small state minimum.

HTF can be used to support activities to produce, preserve and rehabilitate affordable rental housing and up to one third of the fund can be used for operating cost assistance for the project. Properties receiving housing trust funds must commit to at least a thirty year affordability period.

NDHFA is responsible for the administration of the HTF for the State of North Dakota, including the development of an Annual Allocation Plan (the Plan) which defines the process by which HTF funds are distributed to qualifying properties throughout the state. The Plan will promote the selection of those properties which serve to address the most crucial needs of the state within the priorities outlined in the North Dakota Consolidated Plan, as well as the relevant strategies identified in North Dakota's 10-Year Plan to End Long Term Homelessness:

*North Dakota Consolidated Plan Housing Strategies*

- Preserve and improve the quality and condition of the existing rental and owner-occupied housing stock through the rehabilitation of lower-income, disabled, and elderly households.
- Fund homeownership opportunities for lower income residents.
- Provide funding to increase the supply of multifamily housing.

*North Dakota Consolidated Plan Homeless Strategies*

- Support emergency shelters and transitional housing for the homeless.
- Create additional transitional and permanent supportive housing facilities.
- Provide financial support to assist those at imminent risk of homelessness, including rapid rehousing.
- Fund homeless prevention activities, including data collection and prevention services.

*North Dakota's 10-Year Plan to End Long Term Homelessness: Relevant Strategies*

- Develop permanent supportive housing.
- Improve the ability to pay rent.
- Expand supportive services to wrap around housing.

Projects selected must meet the state's priority housing needs identified above, but also the Allocation plan must give priority for funding based on the following factors:

- geographic diversity
- the extent to which rents will be affordable, especially for ELI households,
- the length of time rents will remain affordable,

- the merits of an applicant's proposed activity. (The interim rule offers as examples of merit: housing accessible to transit or employment centers; housing that includes green building and sustainable elements, and housing that serves people with special needs.)
- the use of other funding sources, and
- the applicant's ability to obligate HTF dollars and undertake funded activities in a timely manner.

The Agency has conducted a stakeholder survey and forum to discuss priorities and needs of the State. The results of the survey indicated a priority concern for rehabilitation of aged properties. The forum, however, indicated priority needs to serve the most vulnerable populations in the state, those at risk of or facing homelessness as well as frail elderly. It is anticipated the final draft of the allocation plan will mirror the LIHTC qualified allocation plan. A public hearing and comment period is scheduled for May 6<sup>th</sup> with a final draft scheduled to be presented to the Industrial Commission for approval at the May 20<sup>th</sup> meeting. Once approved Department of Commerce Division of Community Services will complete the substantial amendment process for the Consolidated Plan and submit to HUD. The Agency anticipates holding a September 2016 application round with commitment recommendations announced in November.

INDUSTRIAL COMMISSION OF NORTH DAKOTA  
Acting as the  
NORTH DAKOTA HOUSING FINANCE AGENCY

Appointment of Public Hearing Representative

Jolene Kline, the Executive Director of the North Dakota Housing Finance Agency (the "Agency"), is hereby appointed to act as the representative of the North Dakota Industrial Commission, acting as the Agency at a public hearing regarding the Agency's proposed 2016 National Housing Trust Fund Allocation Plan. The hearing will be held in Bismarck, North Dakota, on May 6, 2016 at 11:00 A.M. (CST), as noticed by the Notice of Public Hearing hereto attached.

As Hearing Representative, Jolene Kline will receive in behalf of the Agency public comments, oral or written, and advise the Agency of the substance of the testimony given at the public hearing prior to the date of adoption of the Plan.

In addition to what had been stated in the memorandum, Ms. Kline noted that the Agency envisions leveraging this money with the federal Low Income Housing Tax Credit Program (LIHTC) and potentially the Housing Incentive Fund dollars and using the funding to help address the State's homeless needs--to use it for permanent supportive housing projects. Those projects do not cash flow with any debt so if the Agency can leverage those three sources of funds the Agency could conceivably create a viable permanent supportive housing project. The Agency will be running this program in tandem with the federal LIHTC program meaning that the applicants would apply September 30 for both Housing Trust Fund as well as LIHTC funding.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission appoints the Executive Director of the Housing Finance Agency to represent the Commission at the public hearing to be held on May 6, 2016 regarding the Agency's proposed 2016 National Housing Trust Fund Allocation Plan.**

Governor Dalrymple requested a memorandum specifically stating how this might help the homeless situation in North Dakota. Ms. Kline stated the Agency has been contacted by a non-profit organization that is looking at this as an opportunity to replicate the Cooper House that was done in Fargo a number of years ago with the federal LIHTC program and these would be the funds that would make that a viable project.



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

Ms. Kline discussed the appointment of a Public Hearing Representative for a public hearing regarding the Housing Finance Agency's proposed Low Income Housing Tax Credit Program Qualified Allocation Plan as follows:

INDUSTRIAL COMMISSION OF NORTH DAKOTA  
Acting as the  
NORTH DAKOTA HOUSING FINANCE AGENCY

Appointment of Public Hearing Representative

Jolene Kline, the Executive Director of the North Dakota Housing Finance Agency (the "Agency"), is hereby appointed to act as the representative of the North Dakota Industrial Commission, acting as the Agency at a public hearing regarding the Agency's proposed Low Income Housing Tax Credit Program Qualified Allocation Plan. The hearing will be held in Bismarck, North Dakota, on May 6, 2016 at 10:00 A.M. (CST), as noticed by the Notice of Public Hearing hereto attached.

As Hearing Representative, Jolene Kline will receive in behalf of the Agency public comments, oral or written, and advise the Agency of the substance of the testimony given at the public hearing prior to the date of adoption of the Plan.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission appoints the Executive Director of the Housing Finance Agency to represent the Commission at the public hearing to be held on May 6, 2016 regarding the Agency's proposed Low income Housing Tax Credit Program Qualified Allocation Plan. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Ms. Kline reported that the Agency went out on Monday and Tuesday and successfully sold another \$148 million in bonds for the Agency's single family programs. Activity has been very strong for both FirstHome as well as the Roots Program. She noted that the Agency is celebrating the financing of its 40,000<sup>th</sup> loan--primarily FirstHome but there are some Roots loans. To put it in perspective, the 40,000 loans is the equivalent of every single family home in Bismarck and Fargo combined. In response to a question Ms. Kline indicated that the demand is stronger in the larger counties but there has been a loan made in every single county in North Dakota.

Being no further Housing Finance Agency business, Governor Dalrymple adjourned this portion of the meeting at 3:38 p.m. and the Commission took up additional Department of Mineral Resources business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on April 20, 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: Lynn Helms, Department of Mineral Resources Director  
Bruce Hicks, Department of Mineral Resources Oil and Gas Division Assistant Director  
Alison Ritter, Department of Mineral Resources Public Information Officer  
Hope Hogan, Assistant Attorney General, Office of the Attorney General  
Matt Sagsveen, Assistant Attorney General, Office of the Attorney General  
David Garner, Assistant Attorney General, Office of the Attorney General  
John Morrison, Crowley Fleck  
Jan Swenson, Badlands Conservation Alliance  
Ron Ness, Petroleum Council  
John Ward, Savage  
Jolene Kline, Housing Finance Agency  
Jennifer Henderson, Housing Finance Agency  
Max Wetz, Housing Finance Agency  
Jason Nisbet, Governor's Office  
Jessica Pfaff, Agriculture Department  
Members of the Press

Governor Dalrymple called the Department of Mineral Resources portion of the Industrial Commission meeting to order at 2:58 p.m. following completion of Public Finance Authority business.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2 the Industrial Commission close the meeting to the public and enter executive session for the purpose of attorney consultation. The purpose of the executive session is to consult with the Commission's attorney regarding the pending adversarial administrative proceeding on Case 22057. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

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

At 2:58 p.m. the Commission entered into executive session for purposes of attorney consultation regarding the pending adversarial administrative proceeding.

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EXECUTIVE SESSION

**Members Present:**

Governor Jack Dalrymple  
Attorney General Stenehjem  
Agriculture Commissioner Doug Goehring

**Department of Mineral Resources Personnel Present:**

Lynn Helms                    Department of Mineral Resources Director  
Bruce Hicks                 Department of Mineral Resources Oil and Gas Division Assistant Director  
Alison Ritter                Department of Mineral Resources Public Information Officer

**Others in Attendance:**

Matthew Sagsveen         Assistant Attorney General, Office of the Attorney General  
David Garner               Assistant Attorney General, Office of the Attorney General  
Jason Nisbet                Governor's Office  
Jessie Pfaff                 Agriculture Department

No action was taken during the Executive Session which was adjourned at 3:17 p.m. and the Commission returned to open session and the public was invited to return to the meeting.

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Governor Dalrymple reconvened the open portion of the meeting at 3:17 p.m. He stated that the Commission had consulted with its attorney regarding Case No. 22057.

Attorney General Stenehjem said they considered the response of the Commission with respect to the recommendation of the Administrative Law Judge and have discussed a proposed draft order that was presented to reject that recommendation and his conclusion of law and findings of fact and conclusions of law in order for judgment and substitute our own that has been drafted by counsel and he moves that they do so.

**Case 22057: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 23682 issued in Case 22057, be approved this 20<sup>th</sup> day of April, 2016. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

The Commission members took a short break and then took up Housing Finance Agency business.

Governor Dalrymple called the Department of Mineral Resources portion of the Industrial Commission meeting to order at 3:38 p.m. following completion of Housing Finance Agency business.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2 the Industrial Commission close the meeting to the public and enter executive session for the purpose of attorney consultation. The purpose of the executive session is to consult with the Commission's attorneys regarding the following pending adversarial administrative proceedings on Case 23088 and Case 24891. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Governor Dalrymple stated that the same requirements that were stated earlier in the meeting also apply to this executive session which is anticipated to last approximately 10 minutes and will begin at 3:38 p.m. When the executive session ends the Commission will reconvene in open session.

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EXECUTIVE SESSION

**Members Present:**

Governor Jack Dalrymple  
Attorney General Stenehjem  
Agriculture Commissioner Doug Goehring

**Department of Mineral Resources Personnel Present:**

Lynn Helms	Department of Mineral Resources Director
Bruce Hicks	Department of Mineral Resources Oil and Gas Division Assistant Director
Alison Ritter	Department of Mineral Resources Public Information Officer

**Others in Attendance:**

Hope Hogan	Assistant Attorney General, Office of the Attorney General
David Garner	Assistant Attorney General, Office of the Attorney General
Jason Nisbet	Governor's Office
Jessie Pfaff	Agriculture Department

No action was taken during the Executive Session which was adjourned at 3:50 p.m. and the Commission returned to open session and the public was invited to return to the meeting.

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Governor Dalrymple reconvened the open portion of the meeting at 3:50 p.m. and the public was invited to return to the meeting room. Governor Dalrymple stated that no final action will be taken by the Commission at this time as a result of the executive session discussion. The Commission has provided to its attorney(s) guidance regarding the development of orders for Case 23088 and Case 24891.

Mr. Lynn Helms, Department of Mineral Resources Director, presented draft comments regarding Bureau of Land Management proposed regulations that would be codified at 43 CFR subparts 3178 and 3179 to replace the existing provisions related to venting, flaring and royalty-free use of gas contained in the 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A). (The exhibits are available in the Commission's files.) He noted that the comments are extensive. He said there are three main points:

- One, the comments address BLM's legal authority and jurisdiction to publish and finalize this rule and states that BLM does not have that jurisdiction. It is under Clean Air Act jurisdiction which belongs to the EPA and has been occupied by the EPA through their rules.
- Two, this proposed rule would apply to all minerals and ownership within a federal communitized area or producing area or unit including state and private minerals. That is a violation of BLM jurisdiction.
- Three, this set of rules applies a 1980's vintage prescriptive flare rate to wells that they got from Wyoming and Utah that makes no sense for unconventional oil formations. He indicated that the proposed comments illustrate how unworkable their rule is. He indicated that the EERC helped him with two different completion scenarios for a typical Bakken multi-well pad. (The scenarios are attached to the comments as exhibits.) If you use the BLM prescriptive number, the first year a multi-well pad comes online their number would allow 12% of the gas to be flared (currently only 11% is being flared in North Dakota). By year four the BLM number would allow 75 to 100% of the gas to be flared. It simply doesn't work for unconventional oil resources that have the tremendous decline rate that Bakken and Three Forks do whereas the increasing percentage capture rule the Commission put in place about a year and a half ago is working beautifully.

Mr. Helms stated that those are three top issues with the rule. He asked for approval of the comments and that they be submitted to BLM.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission submit the following comments regarding Bureau of Land Management proposed regulations that would be codified at 43 CFR subparts 3178 and 3179 to replace the existing provisions related to venting, flaring and royalty-free use of gas contained in the 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A).**

Minutes - Page 4  
April 20, 2016

U.S. Department of the Interior  
Director (630)  
Bureau of Land Management  
Mail Stop 2134 LM  
1849 C St., NW.  
Washington, DC 20240  
Attention: 1004-AE14  
Electronic mail: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov)  
“Attention: OMB Control Number 1004-XXXX,”

Dear Bureau of Land Management:

The North Dakota Industrial Commission (NDIC) appreciates this opportunity to provide comments on the Bureau of Land Management proposed regulations that would be codified at 43 CFR subparts 3178 and 3179 to replace the existing provisions related to venting, flaring, and royalty-free use of gas contained in the 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A).

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

Implementation of this rule will result in an anticipated loss in state revenue from royalties and taxes estimated to be \$24 million per year. The impact from this loss is expected to last through the entire 30 year development life of the Bakken. North Dakota’s revenues from the gross production tax and oil extraction tax fund various programs through a series of 12 funds that each must reach a maximum before funds can be appropriated to the next fund in the series. Even a brief revenue delay can result in a high priority fund not reaching the maximum appropriation with lower priority funds then receiving no revenue for the biennium. This forces a reprioritization and fund transfers in future biennium that can take decades to correct. This occurred in 1987-2004 when low oil prices generated only enough revenue to partially fund appropriations to counties and to water resource projects, the top 2 out of 12 priorities, for 17 years. Under the current revenue distribution structure, the impact would be to eliminate revenue to funds such as the strategic infrastructure investment fund, oil impact grant fund and property tax relief fund.

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

Mineral ownership of North Dakota lands upon which oil and gas development has occurred consists of approximately 85% private lands, 9% federal lands, and 6% state lands. Many of the private lands in North Dakota upon which oil and gas development has occurred are split estate lands, with more than 30% of the potential development on private surface involving federal minerals and therefore subject to the proposed rule.

North Dakota has a unique history of land ownership that has resulted in a significant portion of the state consisting of split estate lands that could be adversely affected by the proposed rule. Unlike many western states that contain large blocks of unified federal surface and federal mineral ownership, the surface and mineral estates in North Dakota were at one time more than 97% private and state owned as a result of the railroad and homestead acts of the late 1800s. However, during the depression and drought years of the 1930s, numerous small tracts in North Dakota went through foreclosure. The federal government, through the Federal Land Bank and the Bankhead Jones Act, foreclosed on many farms taking ownership of both the mineral and surface estates. Many of the surface estates were later sold to private parties with some or all of the mineral estates retained by the federal government. This resulted in a very large number of small federally-owned mineral estate tracts scattered throughout western North Dakota. Those federal mineral estates impact more than 30% of the oil and gas spacing units that are typically recognized as a communitized area (CA) by the BLM. There are a few large blocks of federal mineral ownership, for which the federal government has trust responsibility and also manages the surface estate through the U.S. Forest Service or Bureau of Indian Affairs. These are on the Dakota Prairie Grasslands in southern McKenzie County and northern Billings County as well as on the Fort Berthold Indian Reservation. See map, Exhibit 1. Even within those areas, federal mineral ownership is interspersed with a “checkerboard” of private and state mineral or surface ownership. Therefore, virtually all federal management of North Dakota’s oil and gas producing region consists of some form of split estate.

Given North Dakota’s unique land ownership situation, the proposed rule could have far-reaching adverse impacts on North Dakota’s ability to administer its oil and gas regulatory program. This is reflected in the preamble to the proposed rule which states:

*“Of the vented and flared gas reported to ONRR, 15.2 percent came from wells extracting only Federal minerals; 9.0 percent from Indian ownership, and 75.8 percent from mixed ownership (some combination of Federal, Indian, fee (private) and State land). While all of the natural gas flared or vented from the Federal and Indian lands categories originates from the Federal and Indian mineral estates, only a portion of the natural gas flared or vented from the mixed ownership category originates from the Federal and Indian mineral estates.”*

**Federalism:** The preamble to the proposed rule states, *“The proposed rule would not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the levels of government. It would not apply to States or local governments or State or local government entities. Therefore, in accordance with Executive Order 13132, the BLM has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.”*

However this contradicts Section **3179.11 Coordination with State regulatory authority** which states, *“To the extent that any BLM action to enforce a prohibition, limitation, or order under this subpart adversely affects production of oil or gas that comes from non-Federal and non-Indian mineral interests, the BLM will coordinate, on a case-by-case basis, with the State regulatory authority having jurisdiction over the oil and gas production from the non-Federal and non-Indian interests.”* The proposed rule anticipates adverse effects on production of oil and gas from non-Federal and non-Indian mineral interests.

Therefore, a federalism assessment is needed because the rule itself recognizes potential implications on the state’s regulatory authority. The adverse impacts of the proposed rule on North Dakota’s ability to administer its oil and gas regulatory program are explained below:

**Prescriptive limits on flared volume are not appropriate for unconventional oil production:** As noted in the preamble to the proposed rule, the primary means by which the BLM proposes to reduce flaring is based on Wyoming and Utah approaches to flaring limits and proposes to limit the average rate at which gas may be flared to 1,800 Mcf/month, per producing well on a lease. BLM states *that operators have multiple avenues to reduce high levels of flaring. One is to speed up connection to pipelines, or another is to boost compression to access existing pipelines with capacity issues. BLM believes there are additional options available to avoid this waste, the economics of alternative on-site capture technologies improve as the quantities of gas increase, and that imposing a limit on the overall rate of flaring on a lease would provide operators an incentive to implement these technologies, where net costs are not prohibitive, to allow the wells to produce oil at the maximum rate. Alternatively, an operator could slow production sufficiently to stay below a flaring limit. Slowing the rate of flaring is likely to conserve gas overall because less gas is lost before capture infrastructure comes on line (or is upgraded, in the case of a field with insufficient capacity).*

Section 3179.10 of the proposed rule states specifically that, if production from a new well would force an existing producing well already connected to the pipeline to go offline, then notwithstanding the requirements in 3179.6 and 3179.7, the BLM could limit the volume of production from the new well for a period of time while gas pressures from the new well stabilize.

The Wyoming and Utah flaring limits were developed in the 1980’s for associated gas produced from conventional oil reservoirs and are not appropriate for control of flaring from unconventional oil resources. The attached typical Bakken well completion scenarios (Exhibit 2 and Exhibit 3) illustrate how the 1,800 Mcf/month per producing well, or 60 Mcf/day, equals approximately 6-9% of the produced gas volume at initial production, but due to the very rapid decline rate of such unconventional oil wells, by year 4 the 60 Mcf/day is 67% to 100% of the produced gas from a typical Bakken well.

NDIC has implemented flaring reduction regulations which utilize declining allowable flared percentages of 20% 4/1/16 through 12/31/17, 15% 1/1/17 through 12/31/17, 12% from 1/1/18 through 1/1/20 and 7-9% thereafter. Four years from now the typical well will be allowed to flare 67-100% of the gas produced under the proposed BLM rule, but only 7-9% under NDIC regulations.

The average Bakken pool gas oil ratio of 1 Mcf/barrels means that restricting wells to oil production rates equivalent to 1,800 Mcf/month will result in uneconomic initial production rates of 60 barrels of oil per day or less.

Restricting flaring on federal wells to 1,800 Mcf/month and prioritizing existing wells over new wells will force operators to give gas produced from federal wells priority over gas produced from state and private wells, potentially increasing flared volumes from state and private wells and as illustrated previously directly conflicting with state rules designed to increase gas capture.

The NDIC strongly recommends that the average rate limits be changed to limit the average percentage of gas captured in order to better manage gas capture from unconventional oil resources and minimize conflicts with North Dakota's flaring reduction regulations.

**§ 3179.103 Initial production testing:** *This proposed section would clarify when gas may be flared, royalty-free or otherwise, during a well's initial production test. It provides that gas may be flared royalty-free during initial production testing for up to 30 days or 20 MMcf of flared gas, whichever occurs first. Volumes flared during well completion under proposed § 3179.102(a)(2) would count towards the 20 MMcf limit.*

Many North Dakota Bakken wells are capable of producing more than 20MMcf in the 14 days of unrestricted production allowed under NDIC Order No. 24665.

The 20 MMcf limit in the proposed rule creates a direct conflict with North Dakota's ability to administer its oil and gas regulatory program. In some cases, the proposed rule will allow flaring to continue twice as long as NDIC regulations; and in other cases, the proposed rules will require flaring to cease before the full flow back period allowed under NDIC regulations in the well reaches 20 MMcf of flared gas.

The NDIC strongly recommends that the limit be changed from a total volume to a total time period consistent with NDIC Order No. 24665.

**§ 3162.3-1 Drilling applications and plans:** *When submitting an Application for Permit to Drill an oil well, the operator must also submit a plan to minimize waste of natural gas from that well.*

The proposed rule duplicates North Dakota's requirement for gas capture plans in part, but the required information under the proposed rule is not entirely consistent with the North Dakota regulations. This requirement could create a direct conflict with North Dakota's ability to administer its oil and gas regulatory program. The proposed rule states, "failure to submit a complete and adequate waste minimization plan is grounds for denying or disapproving an Application for Permit to Drill." Since North Dakota drilling permits and gas capture plans are only valid for one year, BLM denying or disapproving an Application for Permit to Drill on the basis of information the NDIC believes is unnecessary is likely to result in numerous North Dakota drilling permits to expire.

**§ 3178.2 Scope.**

(a) *This subpart applies to:*

(1) *All onshore Federal and Indian (other than Osage Tribe) oil and gas leases, units, and CAs, except as otherwise provided in this subpart;*

(2) *Indian Mineral Development Act (IMDA) oil and gas agreements, unless specifically excluded in the agreement or unless the relevant provisions of this subpart are inconsistent with the agreement;*



*(3) Leases and other business agreements and contracts for the development of tribal energy resources under a Tribal Energy Resource Agreement entered into with the Secretary, unless specifically excluded in the lease, other business agreement, or Tribal Energy Resource Agreement;*

*(4) Committed State or private tracts in a federally approved unit or communitization agreement defined by or established under 43 CFR subpart 3105 or 43 CFR part 3180;*

*(5) All onshore wells, tanks, compressors, and other facilities located on a Federal or Indian lease or a federally approved unit or CA; and*

*(6) All gas lines located on a Federal or Indian lease or federally approved unit or CA that are owned or operated by the operator of the lease, unit, or communitization agreement.*

*(b) For purposes of this subpart, the term “lease” also includes IMDA agreements.*

Because wells in North Dakota’s unconventional Bakken play require a 2 mile horizontal lateral to be economic, a large number of wells in North Dakota are commingled down hole, and many have central tank batteries in North Dakota which commingle private, state, and federal mineral interests. Under the proposed rule, many wells in established spacing units and CA will now require a BLM drilling permit and a waste management plan. Private mineral interests, as well as the State of North Dakota, will be directly impacted by BLM permitting delays.

The NDIC strongly recommends that this section of the proposed rule be rewritten to exclude: State or private tracts in a federally approved unit or CA; all onshore wells, tanks, compressors, and other facilities located on a Federal or Indian lease or a federally approved unit or CA; and all gas lines located on a Federal or Indian lease or federally approved unit or CA that are owned or operated by the operator of the lease.

**§ 3179.6 When flaring or venting is prohibited:** *The operator must flare rather than vent any gas that is not captured with some exceptions.*

The proposed rule duplicates North Dakota’s prohibition of venting natural gas in part. The proposed rule allows venting in four explicit circumstances; NDIC rule and regulations do not allow explicit exceptions but allow the NDIC to grant an exception after notice and public hearing. Any exception granted by the BLM will likely create a direct conflict with North Dakota’s ability to administer its oil and gas regulatory program.

The NDIC recommends that this section of the proposed rule be withdrawn and BLM work within NDIC regulations to prevent venting as an active participant in any hearings scheduled for venting exceptions on federal wells.

**LEAK DETECTION AND REPAIR (LDAR):** The highly detailed leak detection and repair requirements in the proposed rule may be consistent with EPA OOOO initially, but will likely result in conflicting requirements when either agency makes changes or issues guidance. On March 11, 2016, EPA announced plans for rule making that will duplicate or conflict with the requirements of the proposed rule. In addition, the BLM has no Clean Air Act authority and the proposed rule contains numerous references to EPA regulations at 40CFR part 60 subpart OOOO. Finally, the very restrictive requirement to make repairs within 15 days of detecting a leak and then retesting within 15 days does not recognize the seasonal variability of work conditions in North Dakota and could result in exposing workers to very hazardous weather conditions.

The NDIC strongly recommends that the leak detection and repair requirements be eliminated from the proposed rule.

**§ 3179.8 Measuring and reporting volumes of gas vented and flared from wells:** *If the operator estimates that the volume of gas vented or flared from a flare stack or manifold equals or exceeds 50 Mcf per day; or if the BLM determines and informs the operator that the additional accuracy offered by measurement is necessary for effective implementation of this Subpart the operator must measure all volumes of gas vented or flared.*

NDIC oil and gas measurement personnel have not been able to identify any existing meter systems that can accurately determine flare gas volumes over the extreme range of pressures and rates typically encountered on producing wells. Therefore, NDIC Order 24665 requires operators to accurately measure total gas production, or calculate total gas production from an accurate gas oil ratio, and calculate the gas capture percentage as follows: “The gas capture percentage shall be calculated by summing monthly gas sold plus monthly gas used on lease plus monthly gas processed in a Commission approved beneficial manner, divided by the total monthly volume of associated gas produced by the operator.” NDIC Order No. 24665 and support documents can be viewed under Gas Capture at [https://www.dmr.nd.gov/oilgas/2014Permitting\(2\).asp](https://www.dmr.nd.gov/oilgas/2014Permitting(2).asp) .

The proposed rule conflicts with guidance issued by the NDIC for compliance with NDIC Order No. 24665. Therefore, this requirement is in direct conflict with North Dakota’s ability to administer its oil and gas regulatory program.

The NDIC strongly recommends that the measurement requirement be eliminated from the proposed rule.

**§ 3179.401 State or tribal requests for variances from the requirements of this subpart.** *This proposed section would create a variance procedure, under which the BLM could grant a State or tribe’s request to have a State or tribal regulation apply in place of a provision or provisions of this subpart. The variance request would have to: (1) Identify the specific provisions of the BLM requirements for which the variance is requested; (2) Identify the specific State or tribal regulation that would substitute for the BLM requirements; (3) Explain why the variance is needed; and (4) Demonstrate how the State or tribal regulation would satisfy the purposes of the relevant BLM provisions. The BLM State Director would review a State or tribal variance request. To approve a request, the BLM State Director would have to determine that the State or tribal regulation meets or exceeds the requirements of the provision(s) for which the State or tribe sought the variance, and that the State or tribal regulation is consistent with the terms of the affected Federal or Indian leases and applicable statutes. Paragraph (b) would specify that the decision on a variance request is not subject to administrative appeal under 43 CFR part 4. Paragraph (c) would clarify that a variance granted under this proposed section would not constitute a variance from provisions of regulations, laws, or orders other than proposed subpart 3179. Paragraph (d) would reserve the BLM’s authority to rescind a variance or modify any condition of approval in a variance.*

Discussion of the variance process with BLM personnel has revealed that even if a variance is approved BLM will inspect and enforce the most strict requirements of either the state or tribal rule that meets or exceeds the requirements of the proposed rule. This process could result in direct conflicts with North Dakota’s ability to administer its oil and gas regulatory program.

The potential adverse impacts of the proposed rule on North Dakota's ability to administer its oil and gas regulatory program are many and the State of North Dakota intends to defend its sovereign jurisdiction over oil and gas regulation in any manner necessary.

Sincerely,  
North Dakota Industrial Commission

Jack Dalrymple, Chairman  
Governor

Wayne Stenehjem  
Attorney General

Doug Goehring  
Agriculture Commissioner

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

Mr. Helms discussed a revised resolution naming Industrial Commission hearing examiners. He said this replaces Mr. Chris Harvey who has left the Attorney General's Office with David Garner.

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

**RESOLUTION OF THE  
INDUSTRIAL COMMISSION OF NORTH DAKOTA  
NAMING HEARING EXAMINERS**

**Whereas,** Section 38-08-04.1 of the North Dakota Century Code provides that the Industrial Commission may use hearing examiners under such rules and regulations as the Commission may prescribe; and

**Whereas,** Section 43-02-03-93 of the North Dakota Administrative Code provides that the Commission may by motion designate and appoint qualified individuals to serve as examiners,

**NOW, THEREFORE,** the Industrial Commission rescinds all prior appointments of examiners and designates and appoints the following individuals to serve as the Commission's examiners as it relates to the Commission's responsibilities under Chapter 38-08 of the North Dakota Century Code:

**Hope L. Hogan, Assistant Attorney General**  
**Matt Sagsveen, Assistant Attorney General**  
**David Garner, Assistant Attorney General**  
**Lynn D. Helms, Director, Department of Mineral Resources and**  
**Director, Oil and Gas Division**  
**Bruce Hicks, Assistant Director, Oil and Gas Division**  
**Mark Bohrer, UIC, Treating Plant and Horizontal Drilling Manager, Oil and Gas**  
**Division**  
**Dave Hvinden, Field Supervisor, Oil and Gas Division**  
**Michael Ziesch, EGIS Staff Officer, Department of Mineral Resources**  
**Dave McCusker, Petroleum Engineer, Oil and Gas Division**

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

Mr. Bruce Hicks, Oil and Gas Division Assistant Director, gave an update on the administrative rules process. (A timeline is available in the Commission's files.) He said the comment period for the rules will end at 5:00 p.m. April 25 and is eleven days from the final hearing. He noted that four hearings were held in Bismarck, Dickinson, Williston and Minot from April 11 – 14. He said 48 individuals attended in Bismarck with 14 testifying, in Dickinson approximately the same numbers, Williston had 36 in attendance with 4 testifying and Minot had 25 in attendance with 5 testifying. In total 37 individuals testified and 153 individuals attended the hearings. He indicated that the office has received 7 additional written comments so there are 44 parties that have commented. They are anticipating additional written comments will be submitted for consideration. He noted that most of the comments were regarding the interested party definition – there were 30 comments on that one proposed rule with 28 comments opposing it, one supporting it and one neutral.

Mr. Hicks stated the staff hoped to finalize its responses in approximately one month and then get the revised proposed rules to the Attorney General's Office to allow them approximately three weeks for a legal opinion to be rendered and then hopefully bring the proposed rules back in June for the Commission's consideration. After the Commission takes action on the proposed rules they will need to be filed with Legislative Council and if they are filed before August 1 the rules will become effective on October 1.

In response to a question, Mr. Helms indicated there was interest in the proposed pipeline rules and the perimeter berms have also generated a number of comments because of the financial cost of putting berms on all the locations and salt water handling facilities.

Mr. Helms said they had some very good comments about salt water handling facilities and pipelines to some extent that there is some confusion over definitions and the staff needs to do some technical work to make sure it is clear – technical work – what is a flow line, what is an injection line, commercial salt water disposal, etc.

In response to a question regarding berms, Mr. Helms said they got input that it was too costly, that it was a great idea, that there were places where it was appropriate and places where it wasn't appropriate, that on some locations because of weather conditions it may result in more leakage; the staff got the whole spectrum on the perimeter berms. Mr. Helms indicated that after each of the hearings held in Dickinson, Williston and Minot (the hearings typically lasted one hour) the staff along with Ms. Hogan went to well locations and facility locations and one of the topics discussed was the perimeter berm -- should there be a perimeter berm here, what would it cost, what does it mean for this location. They did this so they could see the practical on the ground impact of what that would mean if it was implemented as written or some possible changes.

Mr. Helms said it was pointed out several times of places where it might be a net negative. There was discussion whether if you have cut and fill – does the cut side of a location count as part of the perimeter berm or if it is incorporated into the secondary containment, does that count as a perimeter berm. The staff covered a lot of variables. He indicated that after reviewing the comments he is anticipating that the Commission will see some modifications from the original proposal on this particular rule.

Commissioner Goehring said the rule regarding interested party is of great interest. He said this impacts private property rights. When most of the land is private and you have a private entity showing up to develop those minerals and those are private minerals, what would give anybody standing to come in and tell you what you are going to do on your own property? If we are talking about state and federal land, that is different but landowners are going to see this as an attack on them.

Mr. Helms said he thought it was very hard for the general public to differentiate between public meetings,

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legislative hearings, judicial hearings and a judicative administrative hearing – this proposed rule is trying to place the proper legal standing on people presenting testimony at a judicative hearing. There is a lot of work that needs to be done in regards to this topic.

There was discussion regarding public versus private lands, relevance rather than standing, what is real and what is perceived, the right to comment, etc.

Mr. Hicks said their intentions are to bring a proposed order to the June Industrial Commission meeting along with a spreadsheet showing all the comments and what are the pertinent issues and what action the staff would recommend the Commission should take. If the Commission agrees we will have an order to sign and if the Commission has some modifications then the order won't be signed.

Being no further Department of Mineral Resources business, Governor Dalrymple adjourned this portion of the meeting at 4:07 p.m. and the Commission took up Outdoor Heritage Fund business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on April 20, 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  
Jessica Pfaff, Agriculture Department  
Members of the Press

Governor Dalrymple called the Outdoor Heritage Fund portion of the Industrial Commission meeting to order at 4:07 p.m. following completion of Department of Mineral Resources business.

Ms. Karlene Fine, Industrial Commission Executive Director, indicated that the Commission had requested she provide information on the usage of the Outdoor Heritage Fund project dollars. She reviewed the following status report:

Outdoor Heritage Fund Program Usage  
As of March 31, 2016

The Industrial Commission has made 90 contract awards totaling \$27,370,624. Of those 90 awards 3 were withdrawn. One contract is in the process of being signed (awarded on March 28, 2016) and one contract is pending as the applicant is uncertain whether they are going forward with the project.

As of March 31, 2016 there was \$6,319,747.69 that had been expended on the projects. (approximately 23% of the awarded dollars)

Of the 87 contracts 30 are completed utilizing \$2,098,652. (33% of the projects) - Reminder that the first award was made January 29, 2014 with contract executions taking place over the next several months. This program has only been funding projects for approximately two years.

Some of the contracts that were awarded in 2015 have had limited activity because of weather or inability to get a contractor to do the work before winter.

There are a few contracts that have not drawn any or very limited funding for various reasons:

- 1) Game and Fish Department Contract 003-040 - Pheasant Habitat Initiative - \$3,000,000 (still working to obtain the federal matching funds)
- 2) Department of Agriculture Contract 004-062 - North Dakota Waterbank Program - \$1,200,000 (finalized the program details and are beginning the outreach to the landowners)
- 3) ND Forest Service Contract 005-074 - ND Statewide Windbreak Renovation Initiative - \$1,800,000 (funding awarded 6/10/2015 - initial funding request should be coming shortly)
- 4) ND Statewide Conservation Districts Contract 006-085 - ND Statewide Conservation Tree Planting Initiative (Phase 2) - \$2,050,000 - this was funding for projects that will be done in 2017 and 2018. They are first using the remainder of the dollars from Phase 1.
- 5) Projects were approved during Grant Round 6 (January 11, 2016) and are just now coming into the construction season. The Grant Round 6 awards totaled \$3,593,093
- 6) Because of the nature of the project they report on an annual basis so are beginning their reporting this year.

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Please note that some of the projects were approved with the funding to be expended over a number of years as the projects are implemented.

Being no further Outdoor Heritage Fund business, Governor Dalrymple adjourned this portion of the meeting at 4:10 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 April 20, 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  
Jessica Pfaff, Agriculture Department  
Members of the Press

Governor Dalrymple called the Administrative portion of the Industrial Commission meeting to order at 4:10 p.m. following completion of Outdoor Heritage Fund business.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented March 28 confidential and non-confidential meeting minutes for the Commission's consideration.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the March 28, 2016 Industrial Commission confidential and non-confidential meeting minutes be approved as presented. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Ms. Fine discussed the transfers from Industrial Commission agencies/programs for the 2015-2017 biennium for the Industrial Commission administrative office operations as follows:

RE: House Bill 1014

House Bill 1014 Section 6 states in part the following:

“The sum of \$930,000...may be transferred from the entities within the control of the state industrial commission or entities directed to make payments to the industrial commission fund for administrative services rendered by the commission. Transfers shall be made during the biennium beginning July 1, 2015, and ending June 30, 2017, upon order of the commission.”

In determining the amount that should be transferred from the various sources, I have based it partially on the ability of the agency to provide funds and partially on the amount of responsibility associated with that entity. For example, in the case of the Student Loan Trust, this office, with the assistance of Bank of North Dakota staff, has the responsibility for the Trust. Thus a higher percentage was given to the Trust.

Two entities that require a portion of the Administrative Office staff time are the Pipeline Authority and the Transmission Authority. Both of these entities do not have their own funding sources but rather receive their funding from the Oil and Gas Research Fund and the Lignite Research Fund. Since I already identify these two funds for a transfer I have not carved out a specific allocation for the Pipeline and Transmission Authorities.

The only entity that I do not charge any portion of the costs of the office is the North Dakota Building Authority.

You may note that there have been no costs allocated to the Department of Mineral Resources. The Department of Mineral Resources accounting staff handles the processing of all payroll, billing and payment services for the Administrative Office. I consider their time and services to be the Department of Mineral Resources' contribution to the Administrative Office. The Department of Mineral Resources staff also provides information technology services for the Administrative Office.



The total appropriation for the Industrial Commission Administrative Office for the 2015-2017 biennium is \$930,000. I am recommending that the level of transfers to the Administrative Office be as follows:

Western Area Water Supply Authority	\$150,000
Bank of North Dakota	\$131,325
Student Loan Trust	\$107,415
State Mill	\$102,672
Housing Finance Agency	\$ 94,767
Outdoor Heritage Fund	\$ 98,394
Lignite Research Fund	\$ 86,211
Oil and Gas Research Fund	\$ 86,211
Renewable Energy Fund	\$ 42,687
Public Finance Authority	<u>\$ 30,318</u>
	\$930,000

As I have done in the past, if I do not utilize the entire amount appropriated each agencies proportionate share is returned to the agency or the amount is carried over and allocated to the agency's proportionate share of costs for the next biennium.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approves the transfers from the agencies/programs for the 2015-2017 biennium for the administrative office operations as presented. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Being no further Administrative business, Governor Dalrymple adjourned the meeting at 4:12 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary