

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on May 23, 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: Jolene Kline, Housing Finance Agency  
Dave Flohr, Housing Finance Agency  
Max Wetz, Housing Finance Agency  
Jennifer Henderson, Housing Finance Agency  
Brent Brannon, Oil and Gas Research Program  
Lynn Helms, Department of Mineral Resources Director  
Jaden Grossman, Assistant Attorney General, Office of the Attorney General  
Ron Ness, Petroleum Council  
Bonnie Storbakken, Governor's Office  
Jessie Pfaff, Agriculture Department  
Jesse Beckers, ND Natural Resources Trust  
Richard Nemec, Natural Gas Intelligence/Shale Daily  
Members of the Press

Governor Dalrymple called the Industrial Commission meeting to order at 1:00 p.m. and the Commission took up Housing Finance Agency business.

Ms. Jolene Kline, Housing Finance Agency Executive Director, presented a summary page with the 2016 AB Home Mortgage Finance Program bond sale information. (A copy of the summary page is available in the Commission files.) Ms. Kline said the Agency issued bonds in late April with Series A as new money in the amount of \$84.5 million and Series B as a refunding in an amount just under \$64.3 million with the bond closing scheduled for the week of May 23. The bond proceeds are expected to finance approximately 550 loans. At the current rate of business these bond proceeds will provide seven to eight months of program activity at about 75 loans per month. The pricing on the bonds was good. The interest rates to the borrowers will range from 2.85% up to 3.25%. The Agency is generally about 50 to 60 basis points under market. Approximately 70% of the Agency's borrowers use the Downpayment Assistance Program -- one of the big features of the Agency's program.

Attorney General Stenehjem introduced Mr. Jaden Grossman--a new member of his staff who is taking over the Housing Finance Agency portfolio upon the retirement of John Fox. Mr. Grossman has been involved in the legal review of the documents for this bond transaction.

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

STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
HOUSING FINANCE PROGRAM BONDS  
HOME MORTGAGE FINANCE PROGRAM  
2016 SERIES A - \$84,535,000  
2016 SERIES B - \$64,295,000

**SUPPLEMENTAL  
GENERAL AUTHORIZATION RESOLUTION**

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

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

WHEREAS, the General Resolution authorizes the issuance and sale of the captioned 2016 Series A Bonds (the "2016 Series A Bonds") and 2016 Series B Bonds (the "2016 Series B Bonds", and together with the 2016 Series A Bonds, the "Bonds") pursuant to the Act, the application of the proceeds of which will provide funding for the captioned Home Mortgage Finance Program (the "Program") contemplated by the Act in furtherance of the Program for the providing of decent, safe, and sanitary housing for persons and families of low or moderate income; and

WHEREAS, the Commission acting as the Agency, pursuant to that 2016 General Authorization Resolution adopted by the Commission on December 16, 2015 (the "General Authorization Resolution"), regarding the authorization of and the negotiation and sale of the Bonds, appointed as its agents the Executive Director, the Director of Homeownership Programs, and the Chief Financial Officer of the Agency (the "Authorized Officers") for the purpose of negotiation of the terms of sale of the Bonds, subject to the limitations set out in the General Authorization Resolution, and to sign such agreements as are required for the issuance of the Bonds on behalf of the Commission after such terms of sale had been negotiated and to sign such certificates and other documents as are necessary and customary to complete the sale of the Bonds and to enter into an agreement for their sale by the Agency and purchase by the Underwriters (as hereinafter defined, and which are so designated by an Authorized Officer); and

WHEREAS, the Authorized Officers did negotiate the sale of the Bonds on April 19, 2016, within the limitations set out in the General Authorization Resolution as to maximum principal amount, final maturity and maximum interest rate; and

WHEREAS, in furtherance of the above stated objectives, the Commission, the Agency and RBC Capital Markets, LLC, Wells Fargo Bank, National Association, Robert W. Baird & Co. Incorporated and Morgan Stanley & Co. LLC, as the purchasers of the Bonds (the "Underwriters") have caused to be prepared and presented to the Commission for adoption after the sale of the Bonds pursuant to the terms of the Purchase Contract described below, but prior to delivery of the Bonds, the following documents in final form (unless otherwise indicated) (collectively, the "Closing Financing Documents"):

- A. 2016 Series A/B Bond Resolution, in substantially final form, attached hereto as Attachment A;
- B. 2016 Series A/B Purchase Contract, dated April 19, 2016 by and between the Commission and the Underwriters, attached hereto as Attachment B;
- C. Preliminary Official Statement with respect to the Bonds, dated April 11, 2016, attached hereto as Attachment C; and
- D. Official Statement, with respect to the Bonds, in substantially final form, dated April 19, 2016, attached hereto as Attachment D.

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

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

NOW BE IT HEREWITH RESOLVED:

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

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

Ms. Kline said she anticipates the Agency will be doing another issue probably in December. The Agency typically does two issues a year.

Ms. Kline presented the following memorandum regarding the Housing Finance Agency Advisory Board's recommendation to approve the Acquisition Cost Limits for the FirstHome Standard, Start, HomeAccess, and DCA Programs per Program Directive 107 to be effective June 1, 2016. She noted that the Agency's maximum acquisition cost loan limits must be within 90% of the FHA limits. She indicated that the Agency's average loan size is closer to \$155,000.

RE: NDHFA Homeownership Acquisition Cost Limits

The North Dakota Housing Finance Agency Advisory Board recommends that the Industrial Commission approve the Acquisition Cost Limits for the FirstHome Standard, Start, HomeAccess, and DCA programs per the attached Program Directive 107, effective June 1, 2016.

The current FirstHome acquisition limits are \$277,683 for Burleigh, Morton, Stark, and Williams Counties and \$258,690 for the rest of the state. There are higher limits available on 2-4 unit existing properties. The Internal Revenue Service released Revenue Procedure 2016-25 that provides for new acquisition cost limits for mortgage revenue bond programs based on the FHA loan limits. The FHA loan limits are adjusted to take into account the differences between average and median home prices and do not differentiate between new and existing properties. These numbers all decreased for 2016.

The IRS determined that nine counties in North Dakota have higher purchase prices than the rest of the state. Billings, Burleigh, McIntosh, McKenzie, Morton, Oliver, Sioux, Stark, and Williams Counties could have limits ranging from \$268,916 in McIntosh County to \$319,880 in Billings County. However, due to income limits of the FirstHome programs most people are not able to afford homes at these price levels. Therefore, to limit the number of different acquisition cost limits staff proposes using the Burleigh/Morton County limit of \$276,506 (decrease of \$1,177) for the Counties of Burleigh, Morton, Stark, and Williams and the IRS all other area limit of \$255,574 (decrease of \$3,116) for the rest of the state.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Housing Finance Agency Advisory Board and approve the Acquisition Cost Limits for the FirstHome Standard, Start, HomeAccess and DCA programs per the following Program Directive 107 to be effective June 1, 2016:**

NORTH DAKOTA HOUSING FINANCE AGENCY  
HOME MORTGAGE FINANCE PROGRAM

PROGRAM DIRECTIVE NO. 107

Area Limits

(Maximum Acquisition Cost)

The following Program Directive will serve as written notice of the Area Limits (as defined in the 1994 Mortgage Purchase Agreement dated as of August 3, 1994) for the Acquisition Cost of a Single Family Residence. These Area Limits are effective for Mortgage Loans in which the Reservation is dated on or after the herein effective date.

<u>Previously Occupied</u>	<u>1 Unit</u>	<u>2 Units</u>	<u>3 Units</u>	<u>4 Units</u>
Burleigh				
Morton				
Stark				
Williams	\$276,506	\$353,966	\$427,842	\$531,750
All Other Counties	\$255,574	\$327,187	\$395,477	\$491,487
<hr/>				
<u>Previously Unoccupied</u>	<u>1 Unit Only</u>			
Burleigh				
Morton				
Stark				
Williams	\$276,506			
All Other Counties	\$255,574			

The Agency reserves the right to modify the Area Limits at any time.

Rehabilitated structures are considered to be previously occupied even though not originally designed for residential use.

Effective date of this Program Directive No. 107: June 1, 2016

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

Ms. Kline presented the following memorandum regarding the Housing Finance Agency Advisory Board's recommendation for approval and adoption of the 2017 Low Income Housing Tax Credit Qualified Allocation Plan as follows:

RE: Low Income Housing Tax Credit (LIHTC) 2017 Qualified Allocation Plan

The NDHFA Advisory Board recommends the Industrial Commission approve the 2017 Low Income Housing Tax Credit Qualified Allocation Plan (attached). (A copy is available in the Commission files.)

Section 42 of the Internal Revenue Code requires that the Agency allocate Low Income Housing Tax Credits in accordance with a Qualified Allocation Plan. A public hearing was held on May 6, 2016. The final draft plan which incorporates staff recommendations taking into consideration public comments received prior to and during the public hearing was considered and approved by the Advisory Board during its May 13<sup>th</sup> meeting.

Changes made in the 2017 Final Draft Qualified Allocation Plan are summarized below.

- The building unit size used to calculate the maximum developer fee was changed from forty to fifty units. (page 2)
- The property inspection method used by compliance monitoring was formalized to use the Uniform Physical Conditions Standards established by HUD. (page 4)
- Language was added to include an acknowledgement that housing must comply with the provision of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) (page 5)

In 2013, HUD implemented stronger regulations under the Violence Against Women Act (VAWA) to protect domestic abuse victims who receive rental assistance through HUD's public housing, Housing Choice Voucher and multifamily project-based Section 8 programs. VAWA 2013 amends the Violence Against Women Act of 1994 and VAWA 2005. VAWA 2005 provided legal protections for victims of domestic violence, dating violence, sexual assault and stalking. Guidance in the 2005 rule requires that housing authorities or management agents exhaust protective measures such as transferring the abuse victim to a different home; barring the abuser from the property; contacting law enforcement to increase police presence; and seeking other legal remedies to reduce or eliminate the threat to the victim before eviction. The 2013 rule made further expansions and broadened the definitions of actual and imminent threat and identified the low-income housing tax credit program under section 42 specifically as a "covered housing program"

- The per unit dollar amount required for annual replacement reserve accounts was increased from \$250 to \$300 per unit for senior projects and from \$300 to \$350 per unit for general occupancy projects. (page 6)  
The increase is more in line with actual replacement costs.

- A threshold item requiring applicants to submit a self-scoring assessment was added. (page 11)
- The median qualified basis per square foot was reduced from \$130.65 to \$121.59 in accordance with the calculation methods identified in the QAP. (page 12)
- An exception to allow permanent supportive housing (PSH) projects owned by non-profit entities to calculate gross rents without consideration of tenant-based rental assistance as allowable in IRS Section 42 regulations was implemented. (page 13) PSH project's cost of operating are significantly higher than those projects targeting general populations. This change will allow for more sustainable operations.
- Decoupled special needs points into two distinctive scoring categories; permanent supportive housing and universal design, (pages 13-15). Previously projects could earn points for either providing supportive services or units targeted for individuals with physical disabilities. Applicants typically chose to target units for individuals with physical disabilities and not supportive services. By separating the scoring criteria, applicants will be incentivized to provide both supportive services as well as setting aside a proportion of units for individuals with physical disabilities.
- Amended Rent Rebate for Homeownership to specifically exclude senior properties from receiving points in the category. (page 16)
- The moratorium on substantial rehabilitation of habitual units was removed (page 17). Stakeholder forums indicated the need to focus on aged properties.

Ms. Kline noted that the most significant change from the prior year's plan is the Agency separating out permanent supportive housing with accessible housing to incentivize applicants to do supportive housing as well as housing for people with physical disabilities. The other more significant change was the lifting of the moratorium on rehab.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Housing Finance Agency Advisory Board and approve the 2017 Low Income Housing Tax Credit Qualified Allocation Plan as presented. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Ms. Kline discussed a hearing officer appointment for the public hearing regarding the Housing Finance Agency's proposed substantial amendment to the Annual Action Plan of the State's Consolidated Plan. She indicated last month the Commission had approved her serving as their public hearing representative at the public hearing held on May 6 on the Housing Trust Fund draft plan. The next step is to have another public hearing for the substantial amendment to the State's Consolidated Plan. She explained that the Commission typically does not get involved in the development of the State's Consolidated Plan. That Plan is developed by the Department of Commerce. The reason the Department of Commerce does it is because they are the recipients of the HUD (HOME and CDBG) money. Because they have delegated the administration of the Housing Trust Fund to the Housing Finance Agency, the Agency has to do the substantial amendment to the Consolidated Plan which will be the allocation plan process for the Housing Trust Fund.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission appoint Jolene Kline as the Commission's representative for the June 29, 2016 public hearing regarding the Housing Finance Agency's proposed substantial amendment to the Annual Action Plan of**

**the State's Consolidated Plan. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Ms. Kline said the Agency made awards of the final Housing Incentive Fund III dollars. The Agency held a March 30 funding round and funded ten projects: Bismarck, Bowman, two in Devils Lake, Dickinson, Fargo, Minot and two in Valley City – some are new projects and three of the ten are buydowns of permanent debt to create more affordability. The buydown projects are in Bowman, Dickinson and Williston; the Agency is going in and ensuring that the rents are going to stay low for the next fifteen years. One of the projects is the Williston State College project funded out of the HIF I Program and it received \$1 million from HIF I because that was the maximum amount the Agency would allow any one project to receive given the Agency was only working with a \$15 million fund at that time. That project has some upper rent units in there so the Agency is buying down debt and bringing those rents down and ensuring the rents are going to stay low. Similarly, that is what the Agency is doing in Bowman and Dickinson.

Ms. Kline said she has been traveling around the State with Bank of North Dakota, Public Finance Authority, Department of Commerce and League of Cities representatives and participated in meetings in Dickinson, Williston, Minot and this afternoon in Bismarck and then will go to Valley City, Jamestown, Grand Forks and Fargo asking for input from city leaders in those and surrounding communities on what their infrastructure and housing needs are going forward. She said there have been some really interesting conversations and the Commission will get a report sometime in July on those meetings. It will help the Agency gauge what the housing issues are out there and that information, in combination with the Statewide Housing Needs Assessment that is still on track to be completed in June, will lead to conversations about where the Agency goes from here.

Being no further Housing Finance Agency business, Governor Dalrymple adjourned this portion of the meeting at 1:13 p.m. and the Commission took up Oil and Gas Research Program business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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Governor's Conference Room  
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Present: Governor Jack Dalrymple, Chairman  
Attorney General Wayne Stenehjem  
Agriculture Commissioner Doug Goehring

Also

Present: Brent Brannan, Oil and Gas Research Program  
Lynn Helms, Department of Mineral Resources Director  
Bruce Hicks, Department of Mineral Resources Oil and Gas Division Assistant Director  
Ed Murphy, Department of Mineral Resources Geological Survey Assistant Director  
Alison Ritter, Department of Mineral Resources Public Information Officer  
Ron Ness, Petroleum Council  
Bonnie Storbakken, Governor's Office  
Jessica Pfaff, Agriculture Department  
Hope Hogan, Assistant Attorney General, Office of the Attorney General  
John Ward, Savage  
Jennifer Cipolletti  
Danette Welsh, ONEOK  
Don Schmid  
Jesse Beckers, ND Natural Resources Trust  
Richard Nemec, Natural Gas Intelligence/Shale Daily  
John Harju, EERC  
Members of the Press

Governor Dalrymple called the Oil and Gas Research Program portion of the Industrial Commission meeting to order at 1:13 p.m. following completion of Housing Finance Agency business.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the Oil and Gas Research Fund financial report as follows: (The entire report is available in the Commission files.)

Oil and Gas Research Fund  
Financial Statement 2015-2017 Biennium  
May 9, 2016 Oil and Gas Research Council Meeting  
July 1, 2015 Balance  
Oil and Gas Research Fund

<i>Uncommitted Balance July 1, 2015</i>	\$ 759,360.59
<i>Carried Over Unused Administration Allocation</i>	\$ 72,009.72
<i>Projected Income from Project Applications &amp; Interest Revenues (2% of State's Share of Oil Tax Revenues)</i>	\$ 20,000.00
<i>Transfer from the Abandoned Well Fund for two studies</i>	\$10,000,000.00
	\$ 2,000,000.00
	\$12,851,370.31
<i>Transfer to Pipeline Authority</i>	\$ (200,400.00)
<i>Administration Commitment*</i>	\$ (522,909.72)
<i>Approved Project Commitments 2015-2017</i>	\$ (890,000.00)
<i>Legislative Mandated Studies</i>	\$ (2,000,000.00)
<i>Carried over Project Commitments for 2015-2017**</i>	\$ (4,796,940.00)
<i>Available Funding</i>	\$ 4,441,120.59



Continuing Appropriation Authority 2015-2017 Biennium

Cash Balance

<i>Revenues through March 31, 2016 (2% State's share of oil taxes)</i>	\$ 8,232,851.96
<i>Revenues from Abandoned Well Fund</i>	\$ 2,000,000.00
<i>Revenues from interest income &amp; grant applications</i>	\$ 3,319.61
<i>Transfer to the Pipeline Authority Fund</i>	\$ (00.00)
<i>Expenditures through March 31, 2016</i>	\$(2,956,427.34)
	\$11,699,581.21
<i>Outstanding Administration Commitment*</i>	\$ (431,878.97)
<i>Outstanding Commitment to Pipeline Authority</i>	\$ (200,400.00)
<i>Outstanding Commitments on Legislative Studies</i>	\$(1,300,000.00)
<i>Outstanding Project Commitments as of March 31, 2016</i>	\$(7,031,707.43)
<i>Balance</i>	\$ 2,735,594.81
Available Funding	\$ 4,419,836.98

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

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

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

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

Mr. Brent Brannan, Oil and Gas Research Program Director, discussed the Oil and Gas Research Council recommendations on the following two Grant Round 38 applications which were submitted during a special grant round:

Mr. Brannan indicated that the first application -- "Expansion of EERC's Gathering Pipeline Leak Detection Demonstration Project" was submitted by the Energy & Environmental Research Center with Jay Almlie serving as the principal investigator. The request is for \$248,559 with the total costs of this expanded work being \$248,559. He said because this was a legislatively directed project there is no match required. Project duration is 15 months. The Council voted seven to zero to fund with one conflict of interest - two technical reviewers recommended funding and one technical reviewer recommended consider funding.

Mr. Brannan indicated the EERC proposes to expand the original scope of the previously awarded and legislatively directed "Produced Fluids Gathering Pipeline Study." The project expansion will accomplish two tasks: 1) create and populate a Web-based database to facilitate matches between commercially available pipeline technology and the needs of liquid gathering pipeline operators in North Dakota and 2) include newly identified industrial partners and leak detection technology in the already-under-way pipeline leak detection system demonstration project.

The goal of this project expansion is to bridge the gap in understanding between capabilities claimed by vendors of pipeline technology and true operational needs of gathering pipeline operators. The results of the proposed work will encourage and facilitate adoption of commercially available and emerging technologies by liquids gathering pipeline operators in North Dakota to attain improvements in leak/spill incidents, volumes, and environmental impacts. The project will also serve to inform policy makers on technical issues related to suitability (or unsuitability) of various technologies to specific application on liquids gathering pipeline designs, thus helping to better understand the claims made by many vendors in this space.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the Oil and Gas Research Council's recommendation to fund the grant application "Expansion of EERC's Gathering Pipeline Leak Detection Demonstration Project" and to authorize the Industrial Commission Executive Director and Secretary to execute an agreement with the Energy and Environmental Research Center to provide a total of Industrial Commission Oil and Gas Research funding in an amount not to exceed \$248,559 noting that no matching funds are required as this is an expansion of a previously approved legislative directed project. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Brannan presented the "New Technologies for Safe and Cost Effective Oil Conditioning in North Dakota" application submitted by Statoil with Darren Schmidt as the principal investigator. They are requesting \$200,000 for a project with total costs of \$400,000. The project duration is 12 months. He said in response to Commission Order No. 25417 Mr. Schmidt with Statoil put together a feasibility study followed by field testing and implementation. Because of this Order there are some additional costs associated with oil production and distribution specifically related to the vapor pressure and heater treaters and the project aims to increase the operational efficiencies, reduce the vapor pressure and chemically treating the vapor at the well head reducing expenses. One technical reviewer recommended funding and two recommended consider funding. He recommends funding the project for \$200,000. The Council voted five to two to fund with no conflicts of interest.

Mr. Brannan provided the following written summary of the project to the Commission:

Description of the Project:

This proposal explores cost effective robust technology solutions to improve safe operations, manage operational costs, and continue compliance with the crude oil conditioning order. This proposal provides a feasibility study to be followed by field testing and implementation. The expected results of the project are improved reliability and safety associated with oil conditioning operation, and specifically focused on the marketability, cost competitiveness, and ultimate revenues achieved from the production of Bakken crude oil in North Dakota. Specifically, the scope of work includes:

- 1) Modeling of surface treatment systems and storage to clearly identify unique operational circumstances that contribute and control Reid Vapor Pressure (RVP) during processing and handling.
- 2) Sonic separation at the wellhead that does not rely on temperature for oil conditioning. The technology can be an alternative or an enhancement to existing heater treater operations.
- 3) Bath chemical treatment to reduce RVP and meet midstream standards. This approach is intended to provide a solution to volumes of oil that would otherwise require a more expensive transportation and processing option.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the Oil and Gas Research Council's recommendation to fund the grant application "New Technologies for Safe and Cost Effective Oil Conditioning in North Dakota" and to authorize the**

**Industrial Commission Executive Director and Secretary to execute an agreement with Statoil to provide a total of Industrial Commission Oil and Gas Research funding in an amount not to exceed \$200,000.**

In response to a question Mr. Helms said in January companies struggled significantly to reach the vapor pressure limits of Order No. 24517 and several batches of oil were rejected and had to be reprocessed. Statoil, being the owner of more than one of the rejected batches, wants to investigate two technologies – one, application of ultrasonic equipment to tanks and separators to get the volatile components out and the other the possibility that one could add a gelling agent to crude oil similar to what used to be done to prepare it as a fracture treatment fluid that also can suppress the vapor pressure. They want to test it this winter to see if they can manage vapor pressure less expensively than they did which was trucks and heat.

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

Mr. Brannan discussed a proposed amendment to the Pilot Project to Remediate Soil Surrounding Legacy Brine Pits project/contract. (A copy is available in the Commission files.) He said at the Council meeting the EERC presented a project update on their Pilot Project. When the EERC went in to further analyze the pilot project area and characterize the soils, they found out that the affected soils had grown in both area and volume. There is a high water table so it is a difficult area to work in. The Council recommended that the project be amended and the scope of work revised.

In response to a question regarding what work has been done so far with the project funding, Mr. Helms said the EERC has done testing and no remediation. They have done shallow soil sampling and when they did the deep soil boring at the Renville County site it was revealed that the site – which ten years ago was characterized to be 3.5 acres and 40 foot in depth has grown to be about 7 acres in size and twice the depth. Because of that information the ability to reclaim with the available funding is diminished--it is much more expensive. On top of that, the ground water that was going to be used in the reclamation process will not work and the EERC would have to bring in a pipeline from rural water. The original plan was to irrigate it, add amendments, use drain tile to remove the salt water that percolated downwards – then they would actually put it into a disposal system which was available right on site. The final shoe that dropped was due to low oil prices the producing well and disposal system had been shut down so that is not available at this point in time. The costs have significantly increased and have made it impossible to do the project at this time. Also, the contamination under the old brine pit is deeper than it was originally characterized so it was going to require a couple of deep sump wells in that pit itself as additional expense.

Mr. Helms indicated that a lot of things were learned from the characterization work but to move forward without a fresh water supply and without water disposal might condemn the future of these kinds of projects. The Council thought it better to take the remaining money and go do the same kind of characterization testing on the brine pit that Mr. Ed Murphy studied in 1985 and see if the same thing has happened there. What would be learned from that would help the State down the road to figure out how to reclaim these Legacy brine pits. That is what the Council is recommending – that the Commission amend the project to have EERC go do this same kind of work at this additional site to see what has happened to it since 1985.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the Oil and Gas Research Council's recommendation to revise the "Pilot Project to Remediate Soil Surrounding Legacy Brine Pits" Scope of Work as presented and to authorize the Industrial Commission Executive Director and Secretary to execute an amendment to Oil and Gas Research Program Contract G-003 approving the revised Scope of Work.**

Governor Dalrymple indicated that he had hoped to have results from a project using drain tiles--was interested in knowing what drain tiles would do under one of these sites. In response to a question, Mr. Helms said this particular project would not include using the drain tiles. When the operator restarts the producing well and the disposal well, perhaps next year, with some funding from the Legislature or from the Research Council, it could be done. That is still the concept that needs to be tested in reclaiming these sites but it is not feasible to do it without a producing well and disposal system being available. He indicated that a disposal system is needed because it is anticipated this site will produce about 1,000 barrels per day of sodium chloride contaminated water from the drain tile and the sump wells and that is far too big a volume to truck to a disposal well. The oil well has to be active to help cover the operating costs of having a disposal well to take that 1,000 barrels per day of contaminated water to be disposed of into the Dakota Formation. If the well is operating and the disposal well is operating, the incremental cost of this project is nominal but all by itself, the project can't support those costs.

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

Ms. Fine reported on the election of new Oil and Gas Research Council Chairman and Vice Chairman and provided information on the current membership of the Oil and Gas Research Council as follows:

Oil and Gas Research Council Membership  
May 9, 2016

Ryan Kopseng, Chairman  
Jeff Kummer, Vice Chairman  
\*Ron Day  
\*Daryl Dukart  
\*Steve Holen  
Steve McNally  
Ron Ness  
Lynn Helms, Ex-officio  
Ed Murphy, Ex-officio  
*\*new members*

Being no further Oil and Gas Research Program business, Governor Dalrymple adjourned this portion of the meeting at 1:29 p.m. and the Commission took up Department of Mineral Resources business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on May 23, 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  
Ed Murphy, Department of Mineral Resources Geological Survey Assistant Director  
Alison Ritter, Department of Mineral Resources Public Information Officer  
Ron Ness, Petroleum Council  
Bonnie Storbakken, Governor's Office  
Jessica Pfaff, Agriculture Department  
Hope Hogan, Assistant Attorney General, Office of the Attorney General  
John Ward, Savage  
Jennifer Cipolletti  
Danette Welsh, ONEOK  
Don Schmid  
Jesse Beckers, ND Natural Resources Trust  
Richard Nemec, Natural Gas Intelligence/Shale Daily  
John Harju, EERC  
Members of the Press

Governor Dalrymple called the Department of Mineral Resources portion of the Industrial Commission meeting to order at 1:29 p.m. following completion of Oil and Gas Research Program business.

Mr. Lynn Helms discussed proposed Order No. 26521 for Case No. 24178 regarding an application from Advanced Disposal, LLC /saltwater disposal. (A copy of the order is available in the Commission files.) He said proposed Order No. 26521 denies Advanced Disposal's application for a salt water disposal well. It is not an easy decision but prior to bringing this order to you, the Commission staff in doing their due diligence on Advanced Disposal Systems discovered numerous serious problems potentially with the company. The Division docketed a hearing and held a hearing to determine how much their bond should be. After looking at the evidence and conducting the hearing the staff dismissed that case and refused to grant a bond to Advanced Disposal Systems. Without a bond, they can't operate a disposal well. The staff is asking the Commission to affirm that by approving Order No. 26521 which denies the application for a permit to operate a disposal well. Basically, there are numerous financial concerns and ownership concerns with the company that just make it too high a risk to bond them and allow them to operate.

**Case 24178: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 26521 issued in Case 24178 denying the application, be approved this 23<sup>rd</sup> day of May, 2016. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Ed Murphy, State Geologist, presented and discussed the Quarterly Geological Survey Report for the period January 1, 2016 - to March 31, 2016. (A copy of the report is available in the Commission files.) He reviewed the Core Library expansion and provided photos of the work that has been completed. He indicated that they are still planning on the project being completed and a dedication being held this fall. He noted the work that has been done in mapping the Inyan Kara Formation. He discussed the work that was done with the Dakota Dinosaur Museum and the City of Dickinson and also with the Barnes County Museum.

Mr. Bruce Hicks, Oil and Gas Division Assistant Director, gave an update on Administrative Rules Revisions Timeline/Volume of Comments and provided a handout (a copy is available in the Commission files) showing the updated timeline for the adoption of final rules. The Division received 490 pages of comments that were written,

89 pages of transcripts so we are just shy of 600 pages of documents to go through. Approximately 50% of the comments received were on the proposed pipeline rules and 25% were on interested parties. There were 125 total commenters and 111 of those were unique; some individuals submitted both oral testimony and written documents. The staff is continuing to work through the comments with the goal of finalizing responses to all comments by June 3.

Mr. Helms noted that on the timetable the staff intends to have responses to comments and any revisions to the proposed rules to the Commission for their June 29 meeting. To have the rules effective October 1, it is critical the Commission act on the proposed rules at their July meeting.

Mr. Helms said on May 12 the EPA Final Methane Emission Standards were released. It does not appear that they have, however, been published in the Federal Register. They are about 800 pages. The Commission previously submitted four different comment documents with regards to those Standards and he is in the process of reviewing the newly released Standards and comparing them to the Commission's comments to determine whether the EPA was responsive to the Commission's comments. He indicated that he has only gotten through part of the document and so far he has not found anything indicating that a change was made in response to the Commission's comments. He will complete his review and update the Commission at their June meeting. The Standards will not become effective until 60 days after publication in the Federal Register so there is some time to intervene with litigation if necessary but the clock is running.

In response to a question regarding if EPA is required to respond specifically to the Commission's comments, Mr. Helms said they are not required to do so. They are required to publish their final Standards and part of the 800 pages includes some summary discussion on comments received in the review process and EPA may state why they are not changing their proposed Standard. The EPA is not required under federal law, like state agencies are required to do under state law, to respond to each comment. It is up to each individual to figure out whether the EPA was responsive to his/her comments.

Mr. Helms noted that the Williston Basin Petroleum Conference starts May 24. He thanked the Commission members for making themselves available to participate in the Conference. He stated that the geology, regulatory and technology side of the Conference, which is what the Department of Mineral Resources focuses on, has a fantastic program this year with the Inyan Kara Formation being a big part of the core workshop and some great geology talks. Technology is focusing on fracturing, re-fracturing and enhanced oil recovery. He said Mr. Hicks is part of a regulatory roundup as well as there is a whole section where federal regulators are going to be on a panel with questions from the audience being asked. The three aspects the Commission is involved in sponsoring and promoting has a great program this year.

Being no further Department of Mineral Resources business, Governor Dalrymple adjourned this portion of the meeting at 1:49 p.m. and the Commission took up Renewable Energy Program business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on May 23, 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: Bonnie Storbakken, Governor's Office  
Jessica Pfaff, Agriculture Department  
John Ward, Savage  
Jennifer Cipolletti  
Don Schmid  
Jesse Beckers, ND Natural Resources Trust  
Members of the Press

Governor Dalrymple called the Renewable Energy Program portion of the Industrial Commission meeting to order at 1:50 p.m. following completion of Department of Mineral Resources business.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the following request:

RE: Additional Renewable Energy Program Grant Round

The Industrial Commission is in receipt of requests from Packet Digital and Red Trail Energy for the establishment of an additional grant round (Round 28). The Renewable Energy Program policies allow for the establishment of additional grant rounds by the Industrial Commission.

Both of these requests have indicated that there are time constraints that have prompted them to request an additional grant round. I have consulted with Andrea Pfennig with the Department of Commerce as to whether she has any objections to having an additional grant round and she has indicated she does not. Therefore, I am recommending the establishment of an additional grant round with a deadline submission date of June 9, 2016.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director/Secretary and approve an additional grant round for the Renewable Energy Program with a submission deadline of June 9, 2016. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Being no further Renewable Energy Program business, Governor Dalrymple adjourned this portion of the meeting at 1:51 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 May 23, 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: Bonnie Storbakken, Governor's Office  
Jessica Pfaff, Agriculture Department  
Jesse Beckers, ND Natural Resources Trust  
Members of the Press

Governor Dalrymple called the Administrative portion of the Industrial Commission meeting to order at 1:51 p.m. following completion of Renewable Energy Program business.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the April 20, 2016 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 Industrial Commission approve the April 20, 2016 confidential and non-confidential minutes as presented. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

In response to a question, Ms. Fine indicated that there were a couple of confidential minutes that she was still working on from prior meetings. However, all the non-confidential minutes for the year are completed.

Being no further Administrative business, Governor Dalrymple adjourned this portion of the meeting at 1:53 p.m. and the Commission took up Bank of North Dakota business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary



Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on May 23, 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  
James Barnhardt, Bank of North Dakota  
Shirley Glass, Bank of North Dakota  
Bonnie Storbakken, Governor's Office  
Jessica Pfaff, Agriculture Department  
Jesse Beckers, ND Natural Resources Trust  
Members of the Press

Governor Dalrymple called the Bank of North Dakota portion of the Industrial Commission meeting to order at 1:53 p.m. following completion of Administrative business.

Mr. Eric Hardmeyer, Bank of North Dakota President, provided and reviewed the following memorandum regarding College Application Week:

Re: College Application Month activities

Bank of North Dakota (BND) has worked closely with North Dakota University System (NDUS) staff members to develop a plan to implement North Dakota College Application Month in October 2016. We are pleased to share the results of this effort with you today.

**What is College Application Month?**

College Application Month is part of a national initiative known as the American College Application Campaign. The American Council on Education started this program in 2005 with a single high school in North Carolina. Today, it reaches more than 250,000 schools in all 50 states. North Dakota was the final state to join the initiative in 2014.

The goal of College Application Month is to increase the number of first-generation and low-income students pursuing a college degree or other higher education credential. Nationally, this effort has been extremely effective in meeting these needs with schools indicating that up to 77 percent of the applicants on these days were in that demographic.

In addition to applying for college, College Application Month also helps students and their parents learn about the FAFSA and begin that process. With changes to the FAFSA guidelines being implemented for the 2017-2018 college year, October is a perfect time of the year to conduct these events.

**Bank of North Dakota's role in College Application Month**

As a pilot program this fall, BND will cover one application fee per student to a North Dakota college or university when the student applies during the school's college application day.

Bank of North Dakota will support College Application Month in these ways:

- Create partnerships with key stakeholders
- Cover one \$35 college application fee per student applying to college
- Recruit volunteers to assist with each school's day from our banking, credit union and economic development contacts
- Provide online resources to help implement a college application day

High school counselors and principals received materials at their school last week describing the program.

Our goal is for 15-20 schools to participate. At this point, five schools have committed. It is projected that we could have up to 2,000 students applying during this time. College Access Challenge Grant and/or Missouri Higher Education Loan Authority (MOHELA) funds are being used to fund the project which we expect will cost approximately \$70,000.

### **BND partnerships**

In addition to working closely with NDUS, BND will leverage its relationships with banks, credit unions, economic developers and Dollars for Scholars to recruit volunteers to assist high school students in completing college application on their school's College Application Day.

Within the next month, we will meet with representatives from Succeed 2020, North Dakota Department of Public Instruction, North Dakota Department of Career and Technical Education, North Dakota Association of Student Financial Aid Administrators, North Dakota School Boards Association and the Dakota Association for College Admission Counseling to make sure they are aware of this effort and include them in activities and promotion.

Mr. Hardmeyer indicated that the written material provided to the Commission stated the goal was to have 15 - 20 schools participate with five schools committed to participate at the time the memorandum was written. He is pleased to report that the Bank already has 30 schools signed up to participate. He indicated that the Bank is willing to cover the application fee costs, estimated to be \$70,000, utilizing funds from the College Access Challenge Grant and/or Missouri Higher Education Loan Authority (MOHELA) funds.

Mr. Hardmeyer stated no action is required by the Commission. The Bank wanted the Commission to be aware of this initiative that they have undertaken. He noted that Shirley Glass is doing extensive work with the schools to get them signed up. They are anticipating doing some news stories about the project closer to the month of October.

In response to a question Ms. Glass, Bank of North Dakota, indicated that the majority of the schools that have signed up so far to participate are smaller schools. One of the high schools in Fargo has signed up along with Williston, Mandan and, hopefully, the schools in Bismarck will participate.

There was some discussion about how they will determine if they are achieving their goal to reach first-generation and low-income students. It was stated that there will be a survey completed which will have some questions that will determine if they are reaching that group of students. They are not, however, targeting those students in the promotion of the program -- all students are welcome to participate and fill out one college application for free with the Bank of North Dakota covering the cost of that application.

Mr. Hardmeyer discussed the ND ABLE Plan Administrative Rules. He said legislation was passed last session to allow the Bank to implement an ABLE Plan which is to provide -- similar to the savings program that the Bank has for 529 -- a savings program for disabled and handicapped individuals. He introduced Mr. James Barnhardt from the Bank who has been working on the development of the administrative rule and developing a plan.

Mr. Barnhardt said the Bank staff has been in contact with a number of handicapped organizations across the State to discuss what the Bank is doing with the administrative rules. The Protection and Advocacy group is comfortable with the Bank moving forward to educate the public and residents of North Dakota as to what their options are going to be. Beginning this week the Bank is going to start communicating with stakeholders and

people that have inquired about the plan and start going down that education route so people are aware of what their options are and what they need to do.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approve the North Dakota Achieving a Better Life Experience (ABLE) Administrative Rules Article 12.5-04 as follows:**

**ARTICLE 12.5-04  
NORTH DAKOTA ACHIEVING A BETTER LIFE EXPERIENCE PLAN**

Chapter  
12.5-04-01                      North Dakota Achieving a Better Life Experience Plan

**CHAPTER 12.5-04-01  
NORTH DAKOTA ACHIEVING A BETTER LIFE EXPERIENCE PLAN**

Section  
12.5-04-01-01 Establishment of the Plan  
12.5-04-01-02 Plan Administration and Management  
12.5-04-01-03 Plan Promotion and Marketing

**12.5-04-01-01. Establishment of the plan.**

1. **Statutory authority and plan establishment.** North Dakota Century Code section 6-09-38.1 requires the Bank of North Dakota to adopt rules to administer, manage, promote, and market the North Dakota achieving a better life experience plan in accordance with Internal Revenue Service standards for qualified state disability expense programs. Bank of North Dakota has adopted the rules of this chapter to establish and implement the North Dakota Achieving a Better Life Experience Plan and to provide for its administration, management, promotion, and marketing.
2. **Plan description and purpose.** This program shall be known as the North Dakota Achieving a Better Life Experience Plan or the North Dakota ABLE plan and is also referred to in these rules as the "plan". The plan is established to inform North Dakota citizens of qualified plans under the Achieving a Better Life Experience Act of 2014 creating tax-free savings accounts for individuals with disabilities under Section 529A of the Internal Revenue Service Code of 1986. The plan may establish its own qualified tax-free savings accounts for individuals with disabilities or may provide information to North Dakota citizens to assist them in identifying other qualified ABLE plans for which they may be eligible.

**History:** Effective [DATE].

**General Authority:** NDCC 6-09-38.1

**Law Implemented:** NDCC 6-09-38.1

**12.5-04-01-02. Plan administration and management.**

The Bank of North Dakota chief executive officer shall appoint a plan director. The plan director shall monitor the Achieving a Better Life Experience (ABLE) Act and related legislation for national legislative changes and policy and rule changes by the Internal Revenue Service, Department of Treasury, and other rulemaking bodies. The administrator shall periodically inform the Bank of North Dakota chief executive officer or executive committee of legislative changes and shifts in policy or rules

that may impact qualified ABLE plans. The plan director shall serve until removed by the chief executive officer.

**History:** Effective [DATE].

**General Authority:** NDCC 6-09-38.1

**Law Implemented:** NDCC -6-09-38.1

### **12.5-04-01-03. Plan promotion and marketing.**

The plan director shall develop and cause to be implemented plan promotion and plan marketing targeted to the citizens of North Dakota. The plan promotion and plan marketing shall be carried out to accomplish the plan purposes as described in North Dakota Administrative Code section 12.5-04-01-01.

**History:** Effective [DATE].

**General Authority:** NDCC 6-09-38.1

**Law Implemented:** NDCC 6-09-.38.1

In response to a question, Mr. Barnhardt stated qualified individuals would be able to establish a tax-free (both federal and state) savings account. Mr. Barnhardt stated that the federal guidelines allow people with disabilities or a person who opens up an account to only be able to save \$14,000 annually in an account. So there are limitations above and beyond what the Bank puts in its rules. The Bank plans to have their rules adhere to the IRS guidance and, hopefully, the IRS and the State Treasury Department will be doing final rules and regulations this summer. There are no national plans that have been implemented at this time.

Mr. Hardmeyer clarified that there is no tax deduction-- the earnings on the savings account will be tax-free similar to the 529 program.

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

Mr. Hardmeyer discussed the Technology Steering Committee Policy. He said this is a new policy to establish a Technology Steering Committee at the Bank. He reviewed the policy pointing out the Committee's duties and how this Committee interacts with other parts of the Bank. It will act as a screening entity and will look at the Bank's overall IT priorities and expenditures.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Bank of North Dakota Advisory Board and approve the Bank of North Dakota Technology Steering Committee Policy as follows:**

**BANK OF NORTH DAKOTA  
OPERATING POLICY  
SERVICE AREA: TECHNOLOGY & OPERATIONS  
POLICY TITLE: TECHNOLOGY STEERING COMMITTEE**

#### **PURPOSE**

This policy establishes and outlines the duties of the Technology Steering Committee.

#### **ELEMENTS**

##### **I. Membership**

- A. The Chief Technology & Operations Officer (CTOO/SVP) of Technology & Operations, or designee (appointed by the CTOO), shall serve as Chairman.

- B. All members shall be appointed by the CTOO/SVP.
- C. Alternate members may be designated by either a member or presiding officer.
- D. The Chairman shall appoint a recording secretary of the Committee.

## II. Meetings

- A. Technology Steering Committee meetings will be held the third Tuesday of each month unless otherwise noted by the Chairman.
- B. When necessary, the Chairman may call a special meeting at any time.
- C. One-half or more of Committee members shall constitute a quorum.
- D. A majority of committee members present must vote favorably to carry a motion.
- E. Meeting minutes will be kept by the recording secretary and be designated non-confidential or confidential.

## III. Duties

- A. Review and approve the technology strategic plan prior to its consideration and approval by Executive Committee.
- B. Review technology priorities to assure achievement of the technology plan and alignment with the Bank's overall strategic plan.
- C. Recommend technology projects to Executive Committee for consideration.
- D. Review technology training needs of staff related to the use of the Bank's business related software.
- E. Review reports on technology projects and IT activities.
- F. Act as the Bank's information security team through review of reports on information security, cyber security, vendor management, and business continuity/disaster recovery.
- G. Make recommendations regarding expenditures for hardware or software purchases to the Bank's Executive Committee in accordance with established procurement processes.
- H. The Chief Executive Officer, or CTOO/SVP of Technology & Operations, may from time to time assign other duties to the Technology Steering Committee for its consideration and action.

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

In response to a question Mr. Hardmeyer indicated that he is a member of the Cyber Security Task Force.

Mr. Hardmeyer presented the non-confidential Bank of North Dakota Advisory Board March 17, 2016 meeting minutes.

Governor Dalrymple closed the meeting at 2:05 p.m. pursuant to North Dakota Century Code 6-09-35 to discuss the items on the agenda under Bank of North Dakota confidential business.

Following the confidential portion of the meeting, the Commission reconvened in non-confidential session at 2:24 p.m.

Mr. Hardmeyer updated the Commission regarding the funding source for the Match Program. He stated that the funding source for the Match Program comes from investments by the State Investment Board. For the last 25 years the State Investment Board has funded it out of their different asset allocation plans. Currently it has come out of the asset allocation plan for the Budget Stabilization Fund. What the State Investment Board has done is earmarked \$200 million out of that fund for the Match Program. When the Bank makes a "Match Program" loan the State Investment Board will purchase a Bank of North Dakota Certificate of Deposit (CD) and the Bank will then use the CD proceeds and fund the loan. Because it is anticipated that the Budget Stabilization Fund balance will be reduced, the Bank has asked the State Investment Board to consider another fund to be the source for the

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May 23, 2016

Match Program loans. This will be an agenda item for the State Investment Board at their next meeting. It is anticipated that State Investment Board management will be recommending that the Board continue the Match Program using the Legacy Fund as the source for the funding. Currently the Legacy Fund has approximately \$4 billion in assets. The asset allocation plan for the Legacy Fund has 35% invested in fixed income, 50% invested in equities and then some real estate and other cash. What the Bank has asked them to consider is using a portion of the 35% fixed income portfolio (they usually buy treasuries and bonds) up to \$200 million and buy BND CD's to fund the Bank's Match Program loans. Mr. Hardmeyer indicated this is an important program for the Bank and for the State's economic development efforts and he is hopeful that the State Investment Board will continue to be supportive of the Match Program.

Being no further Bank of North Dakota business, Governor Dalrymple adjourned this portion of the meeting and the Commission took up Lignite Research, Development and Marketing Program business at 2:28 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on May 23, 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 Bohrer, Lignite Energy Council  
Mike Jones, Lignite Research, Development and Marketing Program  
Tyler Hamman, Lignite Energy Council  
John Harju, EERC  
Bonnie Storbakken, Governor's Office  
Jessica Pfaff, Agriculture Department  
Members of the Press

Governor Dalrymple called the Lignite Research, Development and Marketing Program portion of the Industrial Commission meeting to order at 2:40 p.m. following completion of Bank of North Dakota business and a short break.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the Lignite Research Fund financial report as follows:

Lignite Research Fund (314)  
Financial Statement - Cash Balance  
**2015-2017 Biennium**

	<u>Cash Balance</u>
July 1, 2015 Balance	\$18,375,271.72
\$.02/ton revenue through April 30, 2016	\$ 431,162.61
Coal Trust Fund revenues through April 30, 2016	\$ 1,697,702.78
Coal Conversion Tax Revenues through April 30, 2016	\$ 946,153.40
Interest Income through April 30, 2016	\$ 7,223.99
Repayments & other revenues through April 30, 2016	<u>\$ 117,504.65</u>
Total Revenues	\$21,575,019.15
Small Research/Education Projects & Marketing Expenditures through April 30, 2016	\$ (800,000.00)
Litigation Expenditures through April 30, 2016 (net costs)	\$ (36,526.58)
Demonstration Projects Expenditures through April 30, 2016	\$ (400,895.00)
Non-matching project expenditures through April 30, 2016	\$ (380,000.00)
Administrative Expenditures through April 30, 2016	<u>\$ (227,628.93)</u>
Cash Balance as of April 30, 2016	<b>\$19,729,968.64</b>
Outstanding LV 21 Project Commitment	\$( 3,572,866.00)
Outstanding Non-matching project commitment	\$( 2,620,000.00)
Outstanding contracted Small Research/Education/Marketing/ Demonstration Project commitments	\$( 4,824,568.00)
Estimated administrative expenses for 2015-2017 biennium	\$ (522,371.07)
Estimated Lignite Litigation costs for 2015-2017 biennium	<u>\$( 1,463,473.42)</u>
Balance	<b>\$ 6,726,690.15</b>

Estimated Revenues for 2015-2017 Biennium	
Two-Cent/ton Coal Severance Tax	\$ 1,100,000

Coal Severance Taxes/Coal Development Trust Fund	\$ 4,325,000
5% of General Fund share of Coal Conversion Tax*	\$ 2,000,000
General Fund 2015-2017 One- Time Appropriation	\$ 4,797,500
Interest & Other income	<u>\$ 825,000</u>
	\$13,047,500

	2013-2015 Actual	2015-2017
	<u>Expenditures</u>	<u>Proposed</u>
Administration	\$ 646,339	\$ 750,000
Non-matching Studies	\$1,140,000	\$ 3,000,000
Marketing Project	\$1,240,000	\$ 1,200,000
LV 21 Demonstration Projects	\$ 110,000	\$ 3,572,866
Small Research/Education/Dem	\$2,030,736	\$ 6,597,500
Litigation Costs (net costs)	<u>\$ 531,733</u>	<u>\$ 1,500,000</u>
	\$5,698,808	\$16,620,366

\*This funding source expires July 31, 2018

Ms. Fine indicated that the \$6 million balance number does not include the \$4.8+ million that is available from the General Fund for the current biennium. She concluded her report by stating that should the Commission wish to accept the Council's recommendations there are dollars available to fund the various project applications.

Dr. Mike Jones, Lignite Research and Marketing Program Director and Technical Representative, discussed the Lignite Research Council's recommendations regarding the following Grant Round 80 applications as follows:

**LRC-LXXX-A: "Investigation of Rare Earth Element Extraction from North Dakota Coal-Related Feedstocks"** Submitted by: University of North Dakota Institute for Energy Studies; **Request for \$94,000** (small research); Total Project Costs \$936,847; Principal Investigator: Dr. Steve Benson; Project Duration: 18 months. The University of North Dakota Institute for Energy Studies is teaming up with Barr Engineering and Pacific Northwest National Laboratory to determine the technical and economic feasibility of concentrating rare earth elements (REEs) from the reject streams of a North Dakota lignite drying process.

Dr. Jones indicated that the availability of rare earth elements has become a strategic issue and concern. These rare earth elements are being used in many high-tech devices. Nearly 95% of these elements today come from China. It turns out that if you look at the organics in some of North Dakota's coals you will find these elements. In particular this project is focused on the rejects from the Dry Fining Process--the more dense section of the ash from the coal. This project will focus on looking at a suite of options that might be available to basically produce an ore that could be fed in and used for extraction of those elements at a reasonable cost. DOE had this as one of their priorities and has funded 10 different activities and one of those activities is at the University of North Dakota.

In response to a question, Dr. Jones indicated that the rare earth elements in China are not found in their coals but in some other ores that have fairly high concentrations--noting that when he says high concentrations it is not a large amount.

Mr. Jason Bohrer, Chairman of the Lignite Research Council, indicated that there are limited locations in the United States in California, Nevada and central Idaho but they are located on federal lands where it is almost impossible to open a mine.

The 3 technical reviewers recommended funding and the Lignite Research Council vote was 18 to fund, 0 not to fund and 1 member abstained. Dr. Jones recommended funding with two contingencies -- that the match funding



be received from all parties and that he, as the Technical Advisor, participates in the project's advisory group. He noted that the applicant has already received the DOE funding and will also be receiving matching funds from Great River Energy and North American Coal.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Lignite Research Council's recommendation to fund the grant application "Investigation of Rare Earth Element Extraction from North Dakota Coal-Related Feedstocks" and to authorize the Industrial Commission Executive Director and Secretary to execute an agreement with the North Dakota Institute for Energy Studies to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$94,000 (small research) with the contingencies that matching funds are received from all the parties and that the Technical Advisor participates in the project advisory group. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

In response to a question regarding the timeline, Dr. Jones stated the duration of the project is 18 months and at that point it should be known whether or not it makes economic and technical sense to use the rejects from the Dry-Fining process to produce an ore that could be processed. It would not be a pure product but there are already criteria that is used to determine whether or not it makes sense to refine that ore. If we can get to that ore then we are where we need to be.

LRC-LXXX-B: "**Managing Aerosol Emissions from CO<sub>2</sub> Capture Systems**" Submitted by: Energy & Environmental Research Center (EERC); **Request for \$300,000** (small research); Total Project Costs \$600,000; Principal Investigators: Bruce C. Folkedahl and John P. Kay; Project Duration: 10 months. Dr. Jones stated this project is a multi-client study with the intent of trying to understand the potential impacts of low-rank coal combustion system aerosol formation, abundance, and chemistry in flue gas downstream of particulate and sulfur dioxide control systems; determine their effect on solvent carryover in postcombustion CO<sub>2</sub> capture (PCC) systems; and identify methods to control the formation of aerosols. He indicated that this is a problem for the technology that uses amines in the carbon capture process. He reviewed the issues that have been raised and how it is impacting the Boundary Dam plant. He presented a detailed discussion of the process and the challenges they are facing -- costs and environmental concerns and the research that is needed to deal with these issues. This is one of the priority issues for the Department of Energy and they have indicated they will provide an additional \$300,000 for this project. He is hopeful that through this project strategies will be developed to manage the formation of these aerosols and therefore limit the production or the loss of the amines as they go through that type of system.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Lignite Research Council's recommendation to fund the grant application "Managing Aerosol Emissions from CO<sub>2</sub> Capture Systems" and to authorize the Industrial Commission Executive Director and Secretary to execute an agreement with the Energy & Environmental Research Center to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$300,000 (small research) with the contingencies that matching funds are received from all the parties and that the Technical Advisor participates in the project advisory group. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

LRC-LXXX-C: "**Pathway to Low-Carbon Lignite Utilization – Phase 1B & 2A**"; Submitted by: Energy & Environmental Research Center (EERC); **Request for \$3,500,000**; Total Project Costs \$10,300,000; Principal Investigator: Michael Holmes; Project Duration: 19 months. The objective of this project is to support the increased power need in North Dakota by continued evaluation and development of a low-carbon pathway to lignite utilization for electric power generation. The technology to achieve this objective, termed the Allam Cycle,

is a direct-fired, supercritical CO<sub>2</sub> (sCO<sub>2</sub>) power cycle with the potential for significant efficiency advantages over conventional steam-based Rankine systems. In addition the Allam Cycle also allows for inherent CO<sub>2</sub> separation and pressurization to comply with carbon capture regulations.

Dr. Jones reminded the Commission of the work that has already been done and the funding that has previously been provided for this project. He discussed the issues and questions that need to be resolved and answered prior to going to a pilot demonstration project. He noted that this technology will be implemented on a project in Texas using natural gas as the fuel source. He said he feels very strongly about this project and believes it is one of the best opportunities for the lignite industry to continue and not just to be able to maintain but to actually thrive.

He stated the three technical reviewers recommended funding and the Council vote was 19 yes to fund with 0 no votes. He is also recommending funding with the conditions that the match funding be received from all the parties and that he, as the Technical Advisor, participates in the project's advisory group.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the Lignite Research Council's recommendation to fund the grant application "Pathway to Low-Carbon Lignite Utilization - Phase 1B & 2A" and to authorize the Industrial Commission Executive Director and Secretary to execute an agreement with the Energy & Environmental Research Center to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$3,500,000 (Demonstration /primarily General Fund \$'s) with the contingencies that matching funds are received from all the parties and that the Technical Advisor participates in the project advisory group.**

In response to a question, Ms. Fine stated the reference to General Fund dollars relates to the \$5 million of General Fund dollars (now reduced by the 4.05% allotment) that was appropriated last biennium as a one-time expenditure for this type of project.

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

LRC-LXXX-D: "**Management practices to improve soil and vegetation parameters on reclaimed North Dakota Coal Mine Lands**" Submitted by: Department of Soil Science - School of Natural Resource Sciences (NDSU); **Request for \$578,187** (demonstration); Total Project Costs \$1,156,374; Principal Investigator: Ryan Limb; Project Duration: 5 years. Dr. Jones indicated that NDSU is proposing to partner with BNI Energy, Coteau Properties Company, Coyote Creek Mining Company, and Falkirk Mining Company to evaluate existing soil management practices and implement and evaluate land remediation field trials designed to improve soil properties and native vegetation. The project is broken into three phases spanning five years where they will evaluate management techniques incorporating both mechanical and biological actions to: 1) improve water movement between soil horizon boundaries, 2) decrease both shallow and deep soil compaction, 3) increase root abundance and depth and 4) reduce exotic grass abundance.

One technical reviewer recommending funding and two technical reviewers recommended consider funding. The Lignite Research Council vote was 16 to fund, 2 not to fund and 1 abstain. Dr. Jones recommended funding with two contingencies - that the entire match funding be received/committed and that he, as the Technical Advisor, participates in the project's advisory group.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Lignite Research Council's recommendation to fund the grant application "Management practices to improve soil and vegetation parameters on reclaimed North Dakota Coal Mine Lands" and to authorize the Industrial Commission Executive Director and Secretary to execute an**

**agreement with the Department of Soil Science - School of Natural Resource Sciences at North Dakota State University to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$578,187 (Demonstration) with the contingencies that matching funds are received from all the parties and that the Technical Advisor participates in the project advisory group. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

LRC-LXXX-E: **"Carbon Capture & Utilization Using "VCCS™ Cycle" Technology - Phase I: Mineralization of Acidic Flue Gas CO<sub>2</sub> via Chemical Reaction with Alkaline Lignite Fly Ash + Extraction of Marketable Minerals & Other Commodities from Lignite Fly Ash"** Submitted by: Expansion Energy; **Request for \$45,000** (small research); Total Project Costs \$145,000; Principal Investigator: David Vandor; Project Duration: 16 weeks. Dr. Jones indicated that Expansion Energy LLC ("XE"), with participation and support from Great River Energy, is proposing a Phase I project to design and estimate the capital costs for a modular pilot plant utilizing XE's patented "VCCS™ Cycle" carbon capture & utilization technology, which neutralizes CO<sub>2</sub> from power plant flue gas by chemically reacting it with alkaline lignite coal ash, yielding marketable solid mineral materials, including high-value rare earth elements and metals. The VCCS technology also has the potential to reduce the need for SO<sub>2</sub> and particulate emissions control systems at lignite-fired power plants.

Dr. Jones indicated that the three technical reviewers recommending funding and the Council voted 17 to fund and 2 not to fund. He recommended funding with the two conditions -- match funding received from all parties and that he, as the Technical Advisor, participate in the project's advisory group.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Lignite Research Council's recommendation to fund the grant application "Carbon Capture & Utilization Using "VCCS™ Cycle" Technology- Phase I: Mineralization of Acidic Flue Gas CO<sub>2</sub> via Chemical Reaction with Alkaline Lignite Fly Ash + Extraction of Marketable Minerals & Other Commodities from Lignite Fly Ash" and to authorize the Industrial Commission Executive Director and Secretary to execute an agreement with the Expansion Energy to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$45,000 (small research) with the contingencies that matching funds are received from all the parties and that the Technical Advisor participates in the project advisory group. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

LRC-LXX-F: **"Capture and Capture/Sequestration of Carbon Dioxide - The CEC/MTU Clearite Carbon Dioxide Capture/CO<sub>2</sub> Production Process"** Submitted by: Carbontec Energy Corporation/Michigan Technological University; **Request for \$48,000** (small research); Total Project Costs \$96,000; Principal Investigator: John Simmons; Project Duration: 12 months. Dr. Jones indicated that the investigators are developing a patented technology that captures CO<sub>2</sub> from flue gas using a solution of alkaline material and then regenerates the material with heat and a catalyst resulting in a stream of CO<sub>2</sub> suitable for use in enhanced oil recovery. He stated that one technical reviewer recommended funding and two technical reviewers recommended consider funding. The Council vote was 11 to fund and 7 not to fund with 1 member abstaining. Dr. Jones recommended funding with the two conditions -- that all match funding has been received and that he, as the Technical Advisor, participates in the project's advisory group. At the time of the meeting Mr. Simmons had one company providing match funding and then last Friday another company providing match funding. He is still looking for one more entity to provide funding.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the Lignite Research Council's recommendation to fund the grant application "Capture and Capture/Sequestration of Carbon Dioxide - The CEC/MTU Clearite Carbon Dioxide Capture/CO<sub>2</sub> Production Process" and to authorize the Industrial Commission Executive Director and**

**Secretary to execute an agreement with Carbontec Energy Corporation to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$48,000 (small research) with the contingencies that matching funds are received from all the parties and that the Technical Advisor participates in the project advisory group. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Ms. Fine provided the following memorandum regarding requests for waivers of Lignite Research Program Policies 43-03-06-03 and 43-03-06-04 for two of the applications:

RE: Grant Round 80 Waiver Requests

The North Dakota Administrative Code provides:

***43-03-06-03. Use for governmental purposes.*** *The grantee may copyright and publish material developed with commission funding. The state of North Dakota and its consultants, independent contractors, and suppliers, to the extent such are providing services to the state, shall have an irrevocable royalty-free right to practice under any patents, patent applications, or other new technology developed under the commission's programs. The intent of this section is to enable state agencies to purchase or use, or both, new technology products or processes for governmental purposes without having to pay the imputed development costs of the products or processes twice; first in the research and development state under commission funding and then later in the purchase of the processes or products. The state may not use this provision to enter into the private marketplace through direct manufacture or production of goods and services. The commission may waive the state's royalty-free right if any other governmental entity, state, federal, or foreign, provides matching funds and imposes conditions that do or may conflict with the right provided for by this section. A waiver may be given only if the following are met:*

- 1. The grantee has requested from the other funding source a waiver of its requirements that conflict or may conflict with this section;*
- 2. The other funding source provides at least twenty percent of the project's funding; and*
- 3. It is unlikely the state would ever seek to use the right given the state under this section.*

The Industrial Commission received two requests for waivers in Grant Round 80. The LRC-LXXX-C "Pathway to Low-Carbon Lignite Utilization - Phase 1B & 2A" applicants and the LRC-LXXX-F - "Capture and Capture/Sequestration of Carbon Dioxide - The CEC/MTU Clearite Carbon Dioxide Capture /CO<sub>2</sub> Production" applicants requested that the Industrial Commission waive North Dakota's royalty-free right to practice under any patents, patent applications, or other new technology developed under the project. The applicants have provided information regarding points 1 - 3 (underscored) and have met the waiver requirements. **Because they have met the requirements outlined in the policy and we do not foresee any new technology that would be developed under these two applications that would be utilized by a state agency we recommend that these requests for waivers be granted.**

***43-03-06-04. Patent rights - Manufacturing in North Dakota.*** *Applicants may retain the principal worldwide patent rights to any invention made with financial support under this program, except the patent holder agrees directly, or through licensing of patents, to assure that any manufacturing thereof shall substantially occur in North Dakota. Similarly, use of any new technology or other technical information derived in part from funding under this program requires that any manufacturing thereof shall substantially occur in North Dakota. For the purposes of this section, the words "substantial" or "substantially" shall mean not that the primary manufacturing must occur in North Dakota, but rather that more than incidental manufacturing must occur in North Dakota. The grantee or licensee or assignee, as determined by the commission, must reimburse the entire grant amount received through the commission should such licensees or assignees relocate or be established out of the state and not continue substantial manufacturing in North Dakota. The commission may choose not to enforce the "substantial manufacturing" requirement of this section if there is no person or entity in North Dakota capable of fulfilling the requirement and it is unlikely that in the near future a person or entity would be capable of satisfying the requirement.*

The LRC-LXXX-C "Pathway to Low-Carbon Lignite Utilization - Phase 1B & 2A" applicants requested that the Industrial Commission waive North Dakota's substantial manufacturing of new technology or systems requirement. This project involves a feasibility study and design of a new power system that would be beneficial to the use of lignite and the lignite

industry. There will be no commercial manufacturing that will occur as part of this project. However, the applicant has stated that if an additional phase of research and development occurs beyond this feasibility study to further the potential for application of this technology, the applicants cannot commit on behalf of the technology provider (8 Rivers) that any manufacturing of equipment will be completed in North Dakota. Because this work is important to the lignite industry and if successful would have a significant positive impact on the State of North Dakota **it is our recommendation that the Commission grant the applicant's request for a waiver of the substantial manufacturing requirement.**

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director and Secretary and the Lignite Research Program Technical Advisor and approve the requests for waivers of Lignite Research Program Policies 43-03-06-03 and 43-03-06-04 for grant applications "Pathway to Low-Carbon Lignite Utilization - Phase 1B & 2A" and "Capture and Capture/Sequestration of Carbon Dioxide - The CEC/MTU Clearite Carbon Dioxide Capture/CO<sub>2</sub> Production Process". On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Ms. Fine provided the following memorandum with her recommendation regarding an amendment to Contract FY15-LXXVII-193 - Validation of the Multielement Sorbent Trap (MEST) Method for measurement of HCI and Metals:

RE: Contract LXXVII-193 Amendment

In July, 2014 the Industrial Commission authorized the funding in the amount of \$245,000 of an \$860,000 project titled "Validation of the Multi-element Sorbent Trap (MEST) Method for Measurement of HCI and Metals" with the condition that the applicant obtain match funding as outlined in the proposal. The purpose of the project was stated as follows:

The Energy & Environmental Research Center (EERC), through the Center for Air Toxic Metals® (CATM®), has developed a multi-element sorbent trap (MEST) sampling method that can be utilized for trace metal and halogen sampling. As a potential alternative to EPA M29 and M26/26A, the EERC developed the MEST method with two separate sampling applications: one for metals (MEST-M) and one for halogens (MEST-H), in particular HC1.

The goals of the proposed project are as follows:

1. Validate a simple, low-cost MEST-H method for measurement of HC1 by collecting specific data that can be used to support determination and acceptance of MEST-H as an alternative method to M26 (and M26a).
2. Address questions and provide data to EPA as necessary to gain acceptance of the MEST method for measurement of HC1 as an alternative method to M26 and (M26a). The goal is to have EPA recognize the MEST-H method as an alternative method that can be used in place of M26 (and M26a).
3. Continue to develop, test and evaluate the MEST-M method for measurement of metals. Recently, a new trap material was identified that has background metals concentrations that are an order of magnitude lower than previously tested materials.

The application indicated that \$615,000 would be sought from other parties. Since the Commission funding was awarded, the applicant has been unsuccessful in obtaining the \$615,000 of matching funds. The applicant is proposing that the total project be reduced from \$860,000 to \$680,000 with the Industrial Commission funding remaining at \$245,000 and match funding of \$435,000 be committed to the completion of the following modified scope of work:

- There will be no development of the MEST method for measurement of metals in the flue gas.
- Based on recommendations by the Electric Power Research Institute (EPRI), the validation of the MEST method will be limited to systems with dry stacks (unscrubbed), the rationale being that most systems using a wet scrubber to control SO<sub>2</sub> emissions will use SO<sub>2</sub> measurement as a surrogate for the HCI measurement and have no need for a new HCI measurement method.
- Based on suggestions from EPA, the bench-scale ruggedness testing will be expanded to include measurements using a Fourier transform infrared (FT-IR) analyzer.

- EPA also feels pilot-scale M301 validation testing will not provide sufficient data for acceptance as an alternative method.

In order to meet the goals of the project, the following will still be performed:

- Conduct ruggedness testing to identify potential interference to the MEST-H method. Include the use of FT-IR measurement for this testing.
- Conduct spiking and recovery tests.
- Perform analysis on sample storage time.
- Submit a comprehensive data set to EPA.
- Provide a report that summarizes the test results.

Mike Jones has reviewed the revised scope of work and agrees with the priorities that have been identified in moving this work forward. He believes the work to be completed is of value to the preservation and enhancement of the North Dakota lignite industry. Based on Mike's recommendation **I am requesting authority to amend Contract FY15-LXXVII-193 to reflect the revised scope of work and to reduce the total project costs from \$860,000 to \$680,000.**

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director and approve an amendment revising the Scope of Work to Contract FY15-LXXVII-193 - Validation of the Multielement Sorbent Trap (MEST) Method for Measurement of HCI and Metals. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Being no further Lignite Research, Development and Marketing Program business, Governor Dalrymple adjourned this portion of the meeting and the Commission took up Outdoor Heritage Fund business at 3:12 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on May 23, 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: Jim Melchior, Outdoor Heritage Fund Advisory Board  
Bonnie Storbakken, Governor's Office  
Jessica Pfaff, Agriculture Department  
John Ward, Savage  
Jesse Beckers, ND Natural Resources Trust  
Jennifer Cipolletti  
Members of the Press

Governor Dalrymple called the Outdoor Heritage Fund portion of the Industrial Commission meeting to order at 3:12 p.m. following completion of Lignite Research, Development and Marketing Program business.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the Outdoor Heritage Fund (OHF) financial report and the portion of the report reflecting cash balances is as follows: (The full report is available in the Commission files.)

Outdoor Heritage Fund (294)  
Financial Statement - Cash Balance  
**2013-2015 Biennium**

	<u>Cash Balance</u>
July 1, 2013 Balance	\$ 0.00
Interest Revenue through June 30, 2015	\$ 8,181.72
Revenues through June 30, 2015	\$18,641,972.92
Grant Expenditures through June 30, 2015	\$(2,386,247.96)
Administrative Expenditures through June 30, 2015	\$ ( 90,034.88)
	<b>\$16,173,871.80</b>

Outdoor Heritage Fund (294)  
Financial Report - Cash Balance  
**2015-2017 Biennium**  
May 23, 2016 Industrial Commission Meeting

	<u>Cash Balance</u>
July 1, 2015 Balance	\$16,173,871.80
Interest Revenue through April 30, 2016	\$ 6,404.98
Revenues through May 20, 2016	\$ 8,052,897.60
Grant Expenditures through April 30, 2016	\$ (3,978,046.76)
Administrative Expenditures through April 30, 2016	\$ (4,286.48)
	<b>\$20,250,841.14</b>
Outstanding Administrative Expenses	\$ (145,713.52)
Outstanding Project Commitments as of April 30, 2016	<u>\$(20,373,502.11)</u>
Balance	<b>\$ ( 268,374.49)</b>

**54-17.8-02 North Dakota Outdoor Heritage Fund – Continuing appropriation**

*There is created a North Dakota Outdoor Heritage Fund that is governed by the Commission. Any money deposited in the Fund is appropriated on a continuing basis to the Commission for the purposes of this chapter. Interest earned by the Fund must be credited to the Fund. The Commission shall keep accurate records of all financial transactions performed under this chapter.*

**57-51-15. Outdoor Heritage Fund - Deposits.**

*First the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the State Treasurer who shall: ...*

*(f) Credit eight percent of the amount available under this subsection to the North Dakota Outdoor Heritage Fund, but not in an amount exceeding twenty million dollars in a state fiscal year and not in an amount exceeding forty million dollars per biennium; ...*

Ms. Fine noted that the financial report had been done in a different format at the request of the OHF Advisory Board Chairman so it was more understandable in regards to the revenues received versus the commitments that had been made. She provided information regarding the forecast of revenues for the remainder of the biennium. Currently the revenues are running a little ahead of the revised January/February forecast. She stated that the State Treasurer's Office had a representative, Ryan Skor, at the OHF Advisory Board meeting who discussed how the law is interpreted regarding the disbursement of the oil production revenues.

Ms. Fine said the Board wanted to be cautious and did not want to be in a situation where the Board had recommended awards and there was not sufficient funding to make the payments. The financial report shows that the Fund as it relates to cash has a balance of over \$20 million as of April 30, 2016. She noted that with the anticipated revenues for the remainder of the biennium, there is also funding available to fund the projects that the Commission will be considering at the meeting.

Mr. Jim Melchior presented the Outdoor Heritage Fund Advisory Board's Grant Round 7 recommendations in the total amount of \$1,126,750. He said the Board is trying to end the biennium in a positive manner and not grant more money than the Fund received in the biennium. The Board voted to set a limit on the amount of the grants for this round at \$1.5 million recognizing there are two more grant rounds left in the biennium. This grant round started out with 31 applications requesting approximately \$8.3 million for projects with a total cost of approximately \$12.9 million with the average match of all the applications combined was 36%. The Board is recommending that five projects be awarded funding totaling \$1,126,750 for Grant Round 7. He reviewed the applications as follows:

- **GR7-03 - Ryder's Point Recreation Area;** Submitted by Williams County Water Resource District; OHF Funding Request - \$30,500; Total Project Cost - \$127,987.50; **Board Recommendation: \$30,500 with no contingencies**; Duration: 2 months; Matching Funding of 77%. Meets Directives A, C & D. This project is for the development of the Ryder's Point Recreation Area including shoreline access to Missouri River. (A 15-year public access agreement has been executed with a private landowner.) Includes development of a vehicle access trail with turnaround areas, a segment of boundary fence, public access signage and boundary markers, and on-site debris removal. (A copy of the application and the summary of the technical questions and responses are available in the Commission files.) The Vote to Fund was 10-1 (funding ranged from \$20,000 to \$30,500) and the Funding Amount Vote was 11-0 to Fund.
- **GR7-06 - Woodland Trail Phase 2;** Submitted by Minot Park District Foundation; OHF Funding Revised Funding Request: \$116,250; Total Project Cost - \$305,000; **Board Recommendation: \$116,250 with no contingencies**; Duration: 12 months. Meets Directives D and A. The original funding request was for \$228,000 but at the Board meeting they reduced their request to \$116,250. This funding will complete Phase 2 of the Centennial Park trail project including trail development and purchase and installation of an EZ Trail Dock system. Signage, stream bank erosion control, engineering and administrative and legal costs. (A copy of the application and the summary of the technical questions and responses are available in the Commission files.) The Vote to Fund was 10-1 (funding ranged from \$78,000 to \$116,250) and the Funding Amount Vote was 11-0 to Fund. He noted that the Commission



had awarded \$305,000 for the first phase of this project and they had returned \$128,245 of that amount. Their request for phase 2 was actually less than what they returned back to the Fund from their Phase 1 grant.

- GR7-07 - **O-M-G Grassland Improvement Project**; Submitted by Morton County, Grant County and Oliver County Soil Conservation Districts; OHF Funding Request: \$900,000; Total Project Cost - \$1,500,000; **Board Recommendation: \$900,000 with two conditions -- SCD will schedule tours of the projects and will identify landowners' names and contact information and make that information available for public access requests**; Matching funds of 40%. Meets Directives B and C; Duration: 4 years. The purpose of the project is to provide technical and financial assistance for the implementation of best practices for livestock water systems, cross-fencing, grassland plantings and grazing plans on 16,000 grassland acres including rotational grazing including 108,000 feet of fence, 165,660 feet of pipeline, 12 wells or rural water hookups, 71 water tanks, 18 water pumping plants, 10 electrical/power hookups, and 1,000 acres of grass seeding. (A copy of the application and the summary of the technical questions and responses are available in the Commission files.)The Vote to Fund was 9 - 2 (Funding ranged from \$350,000 to \$900,000) and the Funding Amount Vote was 11 - 0.
- GR7-19 - **Mt. Carmel Dam Recreational Area**; Submitted by Cavalier County Water Resource Board; OHF Funding Request: \$88,188.66; Total Project Cost - \$171,201.62; **Board Recommendation: \$20,000 to be used for playground equipment not to exceed \$10,000 and tree plantings**; Duration: 6 - 12 months. Meets Directives A, B, C & D. The purpose of the project is the installation of boat docks, fishing pier, trees, boat ramp (removal of old ramp), playground equipment, shade shelter, benches with sand and labor. Vote to Fund: 7 - 4 (funding levels \$4,000 to \$50,000) Funding Amount Vote: 6 - 5
- GR7-24 - **Madison Nature Conservation Classroom, Preparing Today the Landowners and Managers of Tomorrow**; Submitted by Legacy Children's Foundation; OHF Revised Funding Request: \$175,850; Revised Total Project Cost - \$267,283; **Board Recommendation: \$60,000 with stipulation that the OHF funding cannot be used for cement except for sidewalks**; Meets Directives D and B; Project Duration: 24 months (5 years maintenance is part of the in-kind contribution). The purpose of the project is to build a Conservation Classroom and Trail next to Madison Elementary School including: construction of 4 instructional kiosks, 4 sculptured seating components, signage, planting of 80 trees of 15 varieties, plants and seeds for a pollinator garden, Xeriscape, native grass, and a Farmer's Field. OHF funding to be used for the costs of installing benches (\$4,000), kiosk signage and installation (\$12,850) for the learning centers where the plantings will be done, plants and materials (\$3,000), curriculum training (\$1,000) and sidewalks (\$39,150). Vote to Fund: 6 - 5 - (ranging from \$33,435 - \$175,850); Funding Amount Vote: 7 - 4

In response to a question regarding the close vote, Mr. Melchior said there were some concerns about the project meeting the directives. The primary directive was D which some of the Board members thought it met it and some actually thought there was some farming component to it in the form of research. The Board itself was impressed with the amount of local participation in the project. The Board thought this maybe a good chance for urban students to learn about conservation practices and the importance of those practices. This project was similar to a pollinator garden project that the Board also recommended and the Commission approved.

Commissioner Goehring said he hopes in the future the Board is very cautious about how they move forward on some of these projects. He was concerned that the Legislature in the future may further restrict the type of projects that can be considered. Attorney General said he echoes what Commission Goehring said. Mr. Melchior stated he agrees and will encourage the Board to keep that in mind when voting on the projects.

In regards to the O-M-G Grassland Improvement project, it was indicated that this is a good project--we need to keep thinking of these as demonstration projects and that is their real value. You will be able to have a number of people in those three counties looking at these best management practices and, hopefully, inspire other people to move forward with implementing some of these practices.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Outdoor Heritage Fund Advisory Board's recommendations and approves the funding of the following five projects in the total amount of \$1,126,750 and authorizes the Industrial Commission Executive Director and Secretary to enter into contracts with the applicants as noted below:**

- 1. "Ryder's Point Recreation Area" - Williams County Water Resource District - \$30,500**
- 2. "Woodland Trail Phase 2" - Minot Park District Foundation - \$116,250**
- 3. "O-M-G Grassland Improvement Project" - Morton County, Grant County and Oliver County Soil Conservation Districts - \$900,000 with the contingency that the Soil Conservation Districts will schedule tours of the projects and will identify landowners' names and contact information and make that information available for public access requests**
- 4. "Mt. Carmel Dam Recreational Area" - Cavalier County Water Resource Board - \$20,000 to be used only for playground equipment (not to exceed \$10,000) and tree planting**
- 5. "Madison Nature Conservation Classroom, Preparing Today the Landowners and Managers of Tomorrow" - Fargo Park District on behalf of the Legacy Children's Foundation - \$60,000 with the stipulation that the OHF funding cannot be used for any cement work except for a sidewalk**

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

Mr. Melchior said with these approvals, the Board will have, based on the current forecast, about \$5.3 million left for the remainder of the biennium. Grant Round 8 application deadline is November 1 and Grant Round 9 application deadline is May 1 of next year right before the end of the biennium.

The Commission members thanked Mr. Melchior for accepting the Chairmanship of the Advisory Board and thanked all the Board members for their good work.

Being no further Outdoor Heritage Fund business, Governor Dalrymple adjourned this portion of the meeting and the Commission took up Western Area Water Supply Authority business at 3:40 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on May 23, 2016 beginning at 1:00 p.m.  
Governor's Conference Room  
State Capitol

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

Also

Present: Jaret Wirtz, WAWSA (By Speakerphone)  
Joel Erickson, Bank of North Dakota  
Bonnie Storbakken, Governor's Office  
Jessica Pfaff, Agriculture Department  
John Ward, Savage  
Jennifer Cipolletti  
Members of the Press

Governor Dalrymple called the Western Area Water Supply Authority portion of the Industrial Commission meeting to order at 3:41 p.m. following completion of Outdoor Heritage Fund business.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the Western Area Water Supply Authority April financial report and debt reduction report as follows: (A full copy of the attachment is available in the Commission files.)

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

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

Page 1 prepared by the Bank of North Dakota, reflects debt service payments through the month of April, 2016. In April 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 April 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 April is highlighted in yellow. Net income for the month of April was \$183,632.56 before making their principal payment. No baseline sales payments were paid and those deferred costs are reflected on the line item titled Deferred Expense Asset. On Page 2 you see that the revenues in April were down at \$808,541. (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 April 30, 2016. As noted on the Balance Sheet the Accounts Receivables are \$1,961,438.39 which is included in the assets of \$3,632,860.50. Note: The assets 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 also be available to respond to questions regarding the sales during the month of April.

Ms. Fine stated there were no baseline sales made to the member entities this month. All those agreements were signed with the last one being signed by Williston. Since January 1, 2016 no baseline payments have been expended. The payments are showing up as a deferred expense on the balance sheet - right now there is \$1.6 million of deferred expense for the baseline payments to the member entities. There was discussion on when baseline payments to the member entities would begin again and when the deferred baseline payments would be paid.

In response to a question regarding it being fair to say that the April expenses were actually down, Mr. Wirtz said yes because the less water you sell there are less expenses to be reimbursed.

In response to a question regarding the net income for the month, Mr. Wirtz said yes that is the net income as the only expense you will see generally each month is the cost of water expense. The costs for the operations of the system are included in the water rate. The revenues continue to go down because when there is less production there is less water being needed so the monthly demand drops as the production drops.

In response to a question regarding what he sees in the next couple of months, Mr. Wirtz said what he is hearing is that there will be limited fracturing. He anticipates the sales numbers to stay in the \$800,000 range unless the oil price does something major but he didn't think they would see any significant change.

In response to a question regarding the \$800,000 level, Mr. Wirtz said at that level they will be able to maintain for now but in his opinion they still are not covering all their costs – the principal, interest and baseline payments. At least it is some revenue to cover a portion of those expenses.

In response to a question regarding when the volume water rate approval expires, Ms. Fine said on May 31.

Being no further Western Area Water Supply Authority business or Industrial Commission business, Governor Dalrymple adjourned the Commission meeting at 3:52 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary