

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on June 29, 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
Deputy Commissioner Rebecca Ternes, ND Insurance Department
Jeff Bitz, ND Insurance Department
Pamela Link, Laborers
Kevin Pramis, Laborers
Members of the Press

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

Mr. Jeff Bitz, North Dakota Insurance Department, presented the Insurance Commissioner's recommendation regarding bids for the Excess Loss Reinsurance and Equipment Breakdown Coverage for the State Fire and Tornado Fund. (A copy of the Commissioner's recommendations is available in the Commission files.) Mr. Bitz stated that the Fund provides insurance to 1,151 policy holders. The property values have just been updated and are now at \$13.1 billion. The Fund currently has excess loss reinsurance over \$1 million up to \$225 million. The current reinsurance program has been in place for three years and expires on July 31, 2016. The current rate per \$100 of coverage is 0.0245 and is with Lexington Insurance Company who has been the Fund's reinsurer since 2003.

Mr. Bitz provided some history on the use of the excess reinsurance policy - in the last three years there has been only one loss in excess of \$1,000,000 - Minard Hall on the NDSU campus in the amount of \$515,000. Prior to that claim the Fund received an excess loss payment of \$7.8 million in reinsurance recoveries as a result of the Northwood tornado in August of 2007.

Mr. Bitz reviewed the process they had used in getting the quotes. The Fund's broker approached 17 markets and the Fund received five really good proposals. (Lexington with 2 options; Travelers one option and Hartford two options.) All the quotes were based on values reported at the time of the bid specifications which was \$12.6 billion. He reviewed the quotes in the five proposals and noted that all the proposals guaranteed a three year rate guarantee with minimal conditions.

He stated it was the Insurance Commissioner's recommendation that

the Commission accept Lexington's offer of the higher \$250,000,000 limit for an additional \$50,000 in premium totaling \$2,456,000. This would be prudent since the Fund's total insured values increased by \$1.6 million in the past three years and will increase by at least an additional \$250 million in completed new construction within the next year.

Mr. Bitz stated that Lexington's coverage proposal is identical to the Fund's current reinsurance program. It protects the Fund should it experience any number of catastrophic losses, by providing an attachment (retention) level of anything over \$1 million up to \$250 million. The premium of \$2,456,000 translates to a rate of 0.0192 per \$100 of value. This represents a 22% savings compared to the premium the Fund paid in the previous three years - that's \$675,633 in savings and includes better protection for the Fund's policy holders. He noted that the terrorism coverage charge - for both domestic and foreign - of \$144,900 is included in the rate and protects all the Fund's policy holders in the event of a terrorist act.

Mr. Bitz stated that the Lexington option includes \$500,000 (excess \$250,000 limit the Fund provides) in excess expense coverage for the Bank of North Dakota, all State universities and colleges and the State Capitol building - those are extra expenses that a policy holder could incur in addition to reconstruction costs such as having to

relocate their facility and other incidentals. In addition, there would be an additional \$250,000 up to \$500,000 for code updates – if a building had to be substantially reconstructed and they would have to reconstruct it to new building codes. The building is appraised based upon its current status so there is an addition of \$500,000 to bring those buildings – that part of the building that was damaged by a loss -- up to the current building codes in addition to the limit of coverage for that particular building.

In addition, the Lexington option includes \$50 million in business interruption coverage for the University of North Dakota (UND) as secondary coverage within the primary layer of \$250 million as well as \$5 million of contingent business interruption coverage for UND at the Ralph Engelstad Arena and the Alerus Center.

In response to a question regarding how a university would prove a business interruption loss, Mr. Bitz reviewed the information that would be required.

In response to a question Mr. Bitz discussed the current condition of the insurance market. The market is well capitalized in the reinsurance marketplace –new players have come in like Hartford. Because there is so much capital in the marketplace they have seen a drop in the costs and that is why the Fund received quotes with a 22% decline in the premium from the current plan with more property being insured. With \$13.1 billion of property being covered the Fund will be paying less in premium than what the Fund is currently paying under its current program. The Fund's loss ratio from the standpoint of claims has been increasing but the Fund has not had any reinsurance claims except for the one claim of \$515,000. That is one of the reasons why you see the market aggressively bid on the Fund's request for proposals because it is considered a good risk. North Dakota is at the very end of tornado alley. We do have wind and hail but the losses we are experiencing from those occurrences on the aggregate are at \$350,000 in losses. The market recognizes this and they see this as a good market or a good risk.

In response to a question regarding if we get a year or two into this proposal and have no losses, is there the ability to further adjust the State's premium down even further, Mr. Bitz said it is our option. Lexington will guarantee the rate for three years, we can go in after one year – they guarantee it as long as our losses are below 45 percent.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendations of the North Dakota Insurance Commissioner and do the following:

For the Excess Loss Reinsurance Coverage on property provided by the State Fire and Tornado Fund approve the option offered by Lexington Insurance Company which will provide an attachment (retention) level of over \$1 million up to \$250 million for a premium of \$2,456,000, guaranteed for three years if the loss ratio for one year does not exceed 45% of premium

and

For excess loss reinsurance for equipment breakdown coverage accept the proposal from Travelers Boiler Re at a blended rate of .00415 per one hundred dollar of value, guaranteed for three years unless cumulative loss ratio exceeds 50%.

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

Being no further Administrative business at this time, Governor Dalrymple adjourned this portion of the meeting at 1:11 p.m. and the Commission took up State Mill business.

Governor Dalrymple called the Administrative portion of the Industrial Commission meeting back to order at 4:07 p.m. following completion of **confidential** Administrative business.

Ms. Fine discussed her recommendation regarding salary increases for agency directors. (A copy of her recommendation is available in the Commission files.)

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the Industrial Commission Executive Director's recommendation and approve the following annual salary increases effective July 1, 2016:

	<u>Recommended Increase</u>	<u>Current Annual Salary</u>	<u>New Annual Salary</u>
DeAnn Ament	\$ 2,052 (2% performance)	\$102,589	\$104,641
Jolene Kline	\$ 2,812 (2% performance)	\$140,608	\$143,420
Lynn Helms	\$ 4,540 (2% performance)	\$226,985	\$231,525
Vance Taylor	\$ 4,821 (2% performance)	\$241,035	\$245,856*
Eric Hardmeyer	\$ 6,575 (2% performance)	\$328,741	\$335,316

and further authorize a salary increase of 2% (\$1,985) for Karlene Fine, Industrial Commission Executive Director and Secretary establishing the annual salary at \$101,228.

In response to a question regarding if more allotments were required would the agencies have sufficient dollars to provide the salary increases, Ms. Fine said all the agencies are special funds except for the Department of Mineral Resources. The administrative office revenues come from the Industrial Commission agencies and programs so it is considered to be a special fund agency and is not subject to the allotments except for the General Fund appropriation for the Lignite Research Program. Of the Industrial Commission agencies it is only the Department of Mineral Resources that is subject to the allotments.

Governor Dalrymple indicated that he has informally advised executive branch agencies that even though the Legislature originally had a range of 2% to 4% he is recommending the agencies not do more than 2% at this time and consider a postponement of the salary increases scheduled for July 1 to a later date.

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

Ms. Fine presented confidential and non-confidential Industrial Commission May 23, 2016 meeting minutes.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the May 23, 2016 Industrial Commission confidential and non-confidential meeting minutes be approved as presented. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Dalrymple inquired about the status of getting a deputy hired. He indicated that the Human Resources and Management Services office is available to help with that process. They did a nice job in helping with the hiring of the Water Commission State Engineer. Ms. Fine said the first step she needs to complete is getting the Executive Director and the Deputy Executive Director positions changed from classified to non-classified. That request has to go before the State Personnel Board. She is working on that request as time permits. That Board only meets when there is a request for them to consider. It is important to know whether the positions are classified or non-classified before beginning the recruitment process.

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

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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

Also

Present: Bonnie Storbakken, Governor's Office
Jessica Pfaff, Agriculture Department
Vance Taylor, State Mill
Ed Barchenger, State Mill
Members of the Press

Governor Dalrymple called the State Mill portion of the Industrial Commission meeting to order at 1:12 p.m. following Administrative business.

Mr. Vance Taylor, State Mill President and General Manager, presented a funding request for an Enhanced High Speed Rail/Truck Receiving System as follows: (Pictures are available in the Commission files.)

Capital Project for Consideration

June 29, 2016

Enhanced High Speed Rail/Truck Receiving System

\$2,900,000

This project enhances the High Speed Rail/Truck Receiving System project previously approved by the Industrial Commission on August 26, 2015 to allow for the additional throughput necessary to service the Mill's 8 milling units. Truck waiting time and rail demurrage will be reduced, plant traffic patterns will be improved.

To meet BNSF engineering requirements to unload shuttle trains the design of the High Speed Rail/Truck Receiving System has been modified to include:

- The relocation of 1,100 feet of existing BNSF track.
- Relocation of the unloading pit to a tight location between existing BNSF track and NDM elevator bins requiring costly shoring to construct and rerouting of storm drainage lines.
- Reconfiguration of the unloading conveyors to replace 2 belt conveyors.
- Relocation of a large Minnkota Power electrical transmission line pole.
- A NDM/BNSF property swap to allow for the new configuration.
- Upgraded concrete crossings over BNSF track at 3 locations.

Additional benefits of the redesigned system:

- Replacing the two existing belt conveyors will result in a much cleaner, safer operating environment in this section of the elevator.
- The new pit location improves plant traffic patterns.
- The property swap provides more NDM owned area for future wheat storage.
- Storm drainage will be improved to prevent basement flooding during heavy rains.

Project cost and payback

- Original project cost	\$6,400,000	
- Enhanced project additional cost		\$2,900,000
Total		\$9,300,000

Estimated Annual Payback

- Reduced demurrage expense	\$1,100,000	
- Increased truck unloading	\$507,600	
- DET rate savings **additional		\$1,200,000
Total		\$2,807,600
Payback Period	3.98 Years	3.31 Years

Mr. Taylor said Mill management is still very excited about this project and the additional benefits the Mill will see in their operations. He stated this is Phase 1 of their two-phase project when the Mill will be able to receive shuttles - this project is going to be very important for the Mill in the future. He recommended approval.

In response to questions regarding the time it takes for trucks to unload their grain, Mr. Taylor said it can take the better part of a day. Currently the unload time is approximately 12,000 bushels per hour. The present scale has a fairly low capacity compared to what you see a shuttle unloading at elevators. The new pit will be at 40,000 bushels per hour. Mill management expects this system to just about double the speed of truck unloading from start to finish. There will still be some waiting – lines in the morning but they expect the total waiting time to go down by about half.

In response to a question regarding where the Mill is doing their sampling, Mr. Taylor said it is close to the elevator right in front of the two unloading pits and the Mill has two stations with hydraulic lift probes to sample the trucks. They bring the sample in, check the trucks and they pull forward. He indicated that part of this new unloading plan is to install a ticketing system where the truck driver will get a ticket and when the grain is inspected take the ticket to the grain unloader which will speed up the whole process of getting the paper work done.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the State Mill be authorized to amend the Capital Projects for FY 2016 budget and authorize the expenditure of \$2,900,000 for enhancements on the High Speed Rail/Truck Receiving System bringing the total amount of the project to \$9,300,000. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Karlene Fine discussed a request for authorization to make the year-end transfers of State Mill Profits as follows:

RE: State Mill transfers

North Dakota Century Code § 54-18-19 and 54-18-21 state the following:

Transfer of North Dakota mill and elevator profits to general fund. The industrial commission shall transfer to the state general fund fifty percent of the annual earnings and undivided profits of the North Dakota mill and elevator association after any transfers to other state agricultural-related programs. The moneys must be transferred on an annual basis in the amounts and at the times requested by the director of the office of management and budget.

Annual transfer. Within thirty days after the conclusion of each fiscal year, the industrial commission shall transfer five percent of the net income earned by the state mill and elevator association during that fiscal year to the agricultural products utilization fund.

Mill management is planning to close their books on July 22 and is proposing to make the transfers on July 25 which is prior to your July 26 Industrial Commission meeting. Pam has indicated that OMB will be closing

the State's financial reporting system for fiscal year 2016 early the week of July 25. Therefore, we are requesting that the Industrial Commission authorize at their June 29 meeting the transfer of 50% of the Mill FY 2016 profits to the General Fund and the 5% of net income to the Agricultural Products Utilization Fund utilizing unaudited numbers on July 25 with Mill management reporting the amount of the transfers to the Commission at their July 26 meeting.

We would propose the following action by the Commission:

It was moved by ___ and seconded by ___ that the State Mill is authorized to transfer five percent of the net income earned by the Mill for fiscal year 2016 to the Agricultural Products Utilization Fund (APUF) and transfer to the General Fund 50% of the annual earnings and undivided profits of the Mill after any transfers to the other state agricultural-related programs as per the request of the Office of Management and Budget Director noting that the transfers will be based on unaudited year-end results and reserving the right to adjust the transfer numbers once the year-end results have been audited. Further that Mill management reports the amount of the transfers to the Commission at their July 26 meeting.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the State Mill is authorized to transfer five percent of the net income earned by the Mill for fiscal year 2016 to the Agricultural Products Utilization Fund (APUF) and transfer to the General Fund 50% of the annual earnings and undivided profits of the Mill after any transfers to other state agricultural-related programs as per the request of the Office of Management and Budget Director noting that the transfers will be based on unaudited year-end results and reserving the right to adjust the transfer numbers once the year-end results have been audited. Further that Mill management reports the amount of the transfers to the Commission at their July 26 meeting. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Taylor handed out more pictures showing the expansion on the G-Mill. (Pictures are available in the Commission files.) He said they are looking forward to the Commission attending the ribbon cutting ceremony on September 26.

Being no further State Mill business, Governor Dalrymple adjourned this portion of the meeting at 1:26 p.m. and the Commission took up Public Finance Agency business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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

Also

Present: Bonnie Storbakken, Governor's Office
Jessica Pfaff, Agriculture Department
DeAnn Ament, Public Finance Authority
Kylee Merkel, Public Finance Authority
Barb Aasen, Eide Bailly
Members of the Press

Governor Dalrymple called the Public Finance Authority portion of the Industrial Commission meeting to order at 1:26 p.m. following completion of State Mill business.

Ms. DeAnn Ament, Executive Director of the Public Finance Authority introduced Barb Aasen of Eide Bailly to present the North Dakota Public Finance Authority 2015 Audit. (A copy of the audit is available in the Commission files.) Ms. Aasen said their firm issued an unmodified report. Under the internal control findings over financial reporting – their firm identified no material weaknesses or significant deficiencies. They also noted no noncompliance that is material to the financial statements. Under the federal awards portion of the audit there were no material weaknesses and no significant deficiencies noted in the internal control over the major programs and they issued an unmodified report on compliance. Overall their firm did not have any findings that were required to be disclosed. She noted that they had tested the capitalization grants for Drinking Water Revolving Funds.

Ms. Aasen reviewed the Balance Sheet which states that total assets are about \$943 million with last year being \$739 million--an increase of just over \$204 million. She also reviewed the Statement of Revenues. This included an extraordinary item for a loan modification at \$1.1 million. The footnote states that in 2013 a municipal security was reported as a loss of \$2.2 million and this year the property was sold and there was a gain of \$1.1 million reported. This is a very conservative way to handle that loan – writing it all off in 2013 and if any proceeds were received it was received as revenue.

Ms. Aasen discussed one other footnote for municipal securities. The Authority had municipal securities in oil impacted regions of North Dakota which experienced declines in economic conditions during 2015 and into 2016 with the low oil prices. Approximately \$240 million of the municipal securities outstanding as of the end of the year are in that area – at this time there are too many unknown factors to give an estimate of financial impact if any. She wanted to make sure to point out that is the amount that the Public Finance Authority has in the oil impacted region of the state.

Ms. DeAnn Ament presented the North Dakota Public Finance Authority 2015 Annual Report. (A copy of the Annual Report is available in the Commission files.) She highlighted the following parts of the Report:

- Under the Capital Financing Program in 2015 \$65.8 million of bonds were issued with the proceeds going to fund loans to the cities of Minot, Forman, Rugby, Zap and Watford City.
- State Revolving Fund Program has been rated “AAA” and S&P this morning reaffirmed the “AAA” rating for the SRF programs. Under this program for 2015 the Authority hit a couple milestones – under the Clean Water Program, the Authority had the largest amount of loan draws in any one year with about \$112 million which historically would be \$10 to \$20 million so it was a great year for that program and the Drinking Water Program had \$22 million in draws in 2015.
- The Authority issued its largest bond issue at \$119 million for new money for the Clean Water Program plus providing the match for the federal funds that are available for these programs.
- The Statement of Net Position is at \$943 million and getting close to one billion in assets.

The Commission commended Ms. Ament for the work that was done in 2015 and noted the increased activity for the Public Finance Authority--the Authority has been discovered--well done.

Ms. Ament discussed the State Revolving Loan Fund 2016 Series A bond resolution. She said the Authority issued bonds in 2008 and those bonds are currently a great refunding candidate. The proposed resolution is for up to \$32 million although it is anticipated the bond issue will be closer to \$16 million. By adopting the resolution with a higher number gives the Authority the flexibility, should any of the other maturities provide significant savings, to refund those maturities as well. Right now the calculation is a 14% savings of the refunded bonds.

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

SERIES RESOLUTION FOR UP TO
\$32,000,000
NORTH DAKOTA PUBLIC FINANCE AUTHORITY
STATE REVOLVING FUND PROGRAM BONDS

WHEREAS, the North Dakota Public Finance Authority (the "Authority") is duly constituted as an instrumentality of the State of North Dakota exercising public and governmental functions under the operation, management and control of the Industrial Commission of North Dakota (the "Industrial Commission"), pursuant to Chapter 6-09.4, North Dakota Century Code (the "Act");

WHEREAS, pursuant to the Act, the Authority is authorized to issue bonds and to make loans to political subdivisions of the State of North Dakota and certain other entities through the purchase of municipal securities and other obligations;

WHEREAS, the Legislative Assembly of North Dakota has established a revolving loan fund (the "Clean Water State Revolving Fund" or "Clean Water SRF") pursuant to Chapter 61-28.2, North Dakota Century Code (the "Clean Water SRF Act") to be maintained and operated by the North Dakota Department of Health (the "Department") to provide for loans for the design, construction and rehabilitation of wastewater treatment facilities and certain other activities in accordance with Title VI of the Clean Water Act (the "Clean Water Program");

WHEREAS, the Legislative Assembly of North Dakota has established a revolving loan fund (the "Drinking Water State Revolving Fund" or "Drinking Water SRF") pursuant to Chapter 61-28.1, North Dakota Century Code (the "Drinking Water SRF Act") to be maintained and operated by the Department to provide for loans for expenditures on public water systems and certain other activities in accordance with the Safe Drinking Water Act (the "Drinking Water Program");

WHEREAS, the Authority has previously issued and there are outstanding under the Drinking Water SRF and Clean Water SRF the State Revolving Fund Program Bonds, Series 1996A, Series 1998A, Series 2005A, Series 2008A, Series 2011A, Series 2012A, Series 2012B and Series 2015A (together, the "Outstanding Bonds");

WHEREAS, the Outstanding Bonds are secured by an Amended and Restated Master Trust Indenture dated as of July 1, 2011, as amended (the "Master Trust Indenture"), as provided therein;

WHEREAS, the Master Trust Indenture authorizes the issuance of bonds in one or more series pursuant to a Series Resolution authorizing each series;

WHEREAS, the Industrial Commission has determined that, subject to the conditions described herein, it is necessary and expedient that the Authority issue at this time a series of tax-exempt bonds to be designated “North Dakota Public Finance Authority State Revolving Fund Program Refunding Bonds, Series 2016A ” (the “Series 2016A Bonds”) to provide funds to refund the Series 2008A Bonds which mature on or after October 1, 2019 (the “Refunded Bonds”), issued under the Clean Water Program and Drinking Water Program to provide financing for loans made or to be made to various political subdivisions of the State of North Dakota and other eligible borrowers whose applications may be approved from time to time (together the “Borrowers”) through the purchase of debt obligations issued by such Borrowers (the “Municipal Securities”); and

WHEREAS, the Series 2016A Bonds are sometimes referred to herein as the “Bonds”; and

WHEREAS, there have been presented to this Commission, or are on file in the office of the Executive Director of the Authority, copies of the following documents: (i) the Master Trust Indenture; (ii) the form of Escrow Agreement between the Authority and the Trustee relating to the refunding of the Refunded Bonds; and (iii) Undertaking to Provide Continuing Disclosure (the “Continuing Disclosure Undertaking”) to be executed by the Executive Director.

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

ARTICLE I Authority and Definitions

Section 1.01. Series Resolution. This Series Resolution is adopted in accordance with the provisions of Sections 2.01 and 2.03 of the Master Trust Indenture and pursuant to the authority contained in the Act, the Clean Water SRF Act and the Drinking Water SRF Act. It is hereby determined pursuant to the Act that the reason for the issuance of the Series 2016A Bonds and the purpose thereof is to refund the Refunded Bonds in order to achieve interest cost savings.

Section 1.02. Definitions. All terms defined in Article I of the Master Trust Indenture or in the Act shall have the same meanings, respectively, in this Series Resolution and with respect to the Series 2016A Bonds as such terms are given in said Article I of the Master Trust Indenture or the Act.

ARTICLE II Authorization of Series 2016A Bonds

Section 2.01. Authorization of Series 2016A Bonds. Pursuant to the Master Trust Indenture, a Series of State Revolving Fund Program Bonds to be designated as the “Series 2016A Bonds” is hereby created and authorized to be issued in such aggregate principal amount as the Executive Director may determine, but not to exceed \$32,000,000.

Section 2.02. Purposes. The Series 2016A Bonds are being issued to provide funds to refund the Refunded Bonds and to pay costs of issuance.

Section 2.03. Date, Payment Dates and Series 2016A Maturities. The Series 2016A Bonds shall be dated as of the date of delivery, or such other date as the Executive Director may determine, except that Series 2016A Bonds issued on or subsequent to the first interest payment date shall be dated as of the most recent date to which interest has been duly paid or provided for.

The Series 2016A Bonds shall bear interest payable semiannually on April 1 and October 1 in each year, commencing October 1, 2016.

The Series 2016A Bonds shall mature on October 1 in each of the years and in the principal amounts as the Executive Director may determine, provided that the final maturity shall not be later than October 1, 2028.

Section 2.04. Sinking Fund Installments. The Series 2016A Bonds maturing on any date or dates (the "Term Bonds") may be subject to mandatory redemption prior to their stated maturity by payment of Sinking Fund Installments, upon notice as provided in Article III of the Master Trust Indenture, on October 1 in each of the years and amounts as follows, in each case at a redemption price of 100% of the principal amount of such Term Bonds or portions thereof to be so redeemed, together with accrued interest to the redemption date on such mandatory redemption dates and in such amounts as the Executive Director may determine.

Section 2.05. Optional Redemption. The Series 2016A Bonds identified by the Executive Director shall be subject to redemption and prior payment at the option of the Authority on October 1 of the year designated by the Executive Director and on any date thereafter in whole or in part in such amounts from such maturities as the Authority may determine and by lot within a maturity at the redemption prices determined by the Executive Director together with accrued interest to the redemption date.

Section 2.06. Interest Rates. The Series 2016A Bonds shall bear interest at the rates per annum determined by the Executive Director, but not to exceed a true interest cost of 4.00%.

Section 2.07. Denominations, Numbers and Letters. Each Series 2016A Bond shall be in an integral multiple of \$5,000 and shall be numbered separately from R-1 consecutively upwards in order of issuance.

Section 2.08. Sale of Bonds; Acceptance of Offer. The Series 2016A Bonds shall be sold on the basis of competitive bids. Upon receipt of an offer for the purchase of Series 2016A Bonds which she determines to be acceptable, the Executive Director is authorized to execute a bond purchase agreement with the successful bidder.

Section 2.09. Official Statement. The Executive Director shall prepare a Preliminary Official Statement of the Authority in respect to the Series 2016A Bonds, in substantially the form of the draft Preliminary Official Statement on file in the office of the Executive Director, and a final Official Statement shall be distributed with such changes, omissions, insertions and revisions as the Executive Director shall deem advisable in order to make such Official Statement a complete and accurate disclosure of all material facts to prospective purchasers of the Series 2016A Bonds.

Section 2.10. Escrow Agreement. The form of Escrow Agreement is approved and shall be executed by the Executive Director in substantially the form on file with all such changes as the Executive Director may approve, which approval shall be conclusively evidenced by the execution thereof.

Section 2.11. Letter of Representations. The form of Blanket Letter of Representation heretofore executed by the Authority to Depository Trust Company is hereby confirmed and said Blanket Letter of Representation shall be applicable to the Series 2016A Bonds.

Section 2.12. Continuing Disclosure. The form of Continuing Disclosure Undertaking in substantially the form on file is approved and shall be executed by the Executive Director in substantially the form on file with all such changes as the Executive Director may approve, which approval shall be conclusively evidenced by the execution thereof. The Continuing Disclosure Undertaking shall constitute a contractual obligation of the Authority as provided therein.

Section 2.13. Mandatory Redemption. The Series 2016A Bonds shall be subject to mandatory redemption to the extent that the Executive Director determines such a provision to be necessary to comply with the provisions of Section 149(f) of the Internal Revenue Code.

ARTICLE III
Use of Proceeds of Bonds; Allocations

Section 3.01. Allocations. Pursuant to Section 4.01 of the Master Trust Indenture, the Commission specifies that the Clean Water Portions and the Drinking Water Portions of each scheduled payment of principal and interest on each maturity of the Series 2016A Bonds shall be as determined by the Executive Director to reflect (i) that none of the Refunded Bonds were an advance refunding of the Series 1998A Bonds (the portion of the Series 2008A Bonds issued for such purpose having maturities no later than October 1, 2017), (ii) that the Refunded Bonds issued for the Clean Water Program loans are allocated to the Clean Water Portion as provided in the Master Trust Indenture, and (iii) that the Refunded Bonds issued for Drinking Water Program loans are allocated to the Drinking Water Portion as provided in the Master Trust Indenture. Within each of the Drinking Water Portions and Clean Water Portions of principal and interest payments on the Series 2016A Bonds, the Executive Director shall determine the State Match Portion and Leveraged Portion as provided in the Master Trust Indenture. The final percentages, based on the allocations applicable to the Refunded Bonds and federal regulations, shall be certified by the Executive Director to the Trustee, subject to modification pursuant to an Allocation Order under the Master Trust Indenture.

Section 3.02. Application of Proceeds. The proceeds of the Series 2016A Bonds shall initially be deposited in the Funds and Accounts established under the Master Trust Indenture as follows:

- (a) A portion of the accrued interest, if any, on the Series 2016A Bonds shall be deposited in the Leveraged Bond Accounts of the Drinking Water Bond Fund and Clean Water Bond Fund, and any remainder of the accrued interest on the Series 2016A Bonds shall be deposited as determined by the Executive Director. The amounts shall be determined by the Executive Director.
- (b) Amounts determined by the Executive Director shall be deposited in the Clean Water Administration Fund and Drinking Water Administration Fund for payment of the Costs of Issuance of the Series 2016A Bonds and other authorized purposes as allocated by the Executive Director.
- (c) The remaining proceeds of the Series 2016A Bonds shall be deposited in the Escrow Fund as provided by the Escrow Agreement or as otherwise determined by the Executive Director.
- (d) The Executive Director may on behalf of the Authority issue such instructions to the Trustee as she may deem necessary or appropriate to adjust the balances on deposit in the Funds and Accounts under the Master Trust Indenture to reflect the proper loan sources and other accounting matters consistent with the Master Trust Indenture and federal regulations and to determine the appropriate amounts in each of the Funds and Accounts at the time of delivery of the Series 2016A Bonds. All such instructions shall be reported to the Commission.

It is hereby determined that, because a reserve fund is not reasonably required for the Series 2016A Bonds under Section 148 of the Internal Revenue Code, investment of additional deposits to the Reserve Funds under the Master Trust Indenture would be restricted as to yield, the Series 2016A Bonds shall not be Covered Bonds under the Master Trust Indenture and no deposits shall be made to the Clean Water Reserve Fund or Drinking Water Reserve Fund. The procedures for requesting funds from the Legislature under Sections 5.06 and 6.06 of the Master Trust Indenture do not apply to the Series 2016A Bonds.

ARTICLE IV
Form, Execution and Other Details of Bonds

Section 4.01. Form of Bond. The Series 2016A Bonds, the Registrar's Authentication Certificate, and the form of assignment shall be in substantially the form set forth in Exhibit A to the Master Trust Indenture, with all such insertions as may be consistent with this Series Resolution.

Section 4.02. Execution and Delivery. The Series 2016A Bonds shall be executed and delivered as provided in the Master Trust Indenture.

Section 4.03. Uses of Securities Depository; Book-Entry Only System. The provisions of this Section shall take precedence over the provisions of the Master Trust Indenture to the extent they are inconsistent therewith.

(a) The Depository Trust Company ("DTC") has agreed to act as securities depository for the Series 2016A Bonds, and to provide a Book-Entry Only System for registering the ownership interests of the financial institutions for which it holds the Series 2016A Bonds (the "DTC Participants"), and for distributing to such DTC Participants such amount of the principal and interest payments on the Series 2016A Bonds as they are entitled to receive, for redistribution to the beneficial owners of the Series 2016A Bonds as reflected in their records (the "Beneficial Owners").

(b) Initially, and so long as DTC or another qualified entity continues to act as securities depository, the Series 2016A Bonds shall be issued in typewritten form, one for each maturity in a principal amount equal to the aggregate principal amount of each maturity, shall be registered in the name of the securities depository or its nominee, and shall be subject to the provisions of this Section. While DTC is acting as the securities depository, the Series 2016A Bonds shall be registered in the name of DTC's nominee, CEDE & CO; provided that upon delivery by DTC to the Authority and the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of CEDE & CO., the words "CEDE & CO." in this Resolution shall refer to such new nominee of DTC.

With respect to Series 2016A Bonds registered in the name of a securities depository or its nominee, the Authority and the Trustee shall have no responsibility or obligation to any DTC Participant or other person with respect to the following: (1) the accuracy of the records of any securities depository or its nominee with respect to any ownership interest in the Series 2016A Bonds, (ii) the delivery to any DTC Participant or any other person, other than DTC, of any notice with respect to the Series 2016A Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than DTC, of any amount with respect to the principal of or interest on the Series 2016A Bonds. The Trustee shall pay all principal of and interest on the Series 2016A Bonds only to or upon the order of DTC, and all such payments shall be valid and effective to fully satisfy and discharge the Authority's obligations with respect to the principal and interest on the Series 2016A Bonds to the extent of the sum or sums so paid. So long as the Book-Entry Only System described in this Section is in effect, no person other than DTC shall receive an authenticated Series 2016A Bond.

(c) Upon receipt by the Authority and the Trustee of written notice from the securities depository to the effect that it is unable or unwilling to discharge its responsibilities under the Book-Entry Only System, the Trustee shall issue, transfer and exchange Series 2016A Bonds of the initial series as requested by the securities depository in appropriate amounts, and whenever the securities depository requests the Authority and the Trustee to do so, the Authority and the Trustee shall cooperate with the securities depository in taking appropriate action after reasonable notice (i) to arrange for a substitute depository willing and able, upon reasonable and customary terms, to maintain custody of the Series 2016A Bonds, or (ii) to make available Series 2016A Bonds registered in whatever name or names the Beneficial Owner registering ownership, transferring or exchanging such Series 2016A Bonds shall designate, in accordance with clause (f) or clause (g) below, whichever is applicable.

(d) In the event the Authority determines that it is in the best interests of the Beneficial Owners that they be able to obtain printed Series 2016A Bonds, the Authority may so notify the securities depository and the Trustee, whereupon the securities depository shall notify the Beneficial Owners of the availability through the securities depository of such printed Series 2016A Bonds. In such event, the Authority shall cause to be prepared and the Trustee shall issue, transfer and exchange printed Series 2016A Bonds, fully executed and authenticated, as requested by the securities depository in appropriate amounts and, whenever the securities depository requests, the Authority and the Trustee shall cooperate with the securities depository in taking appropriate action after reasonable notice to make available printed Series 2016A Bonds registered on the Bond Register in whatever name or names the Beneficial Owners entitled to receive Series 2016A Bonds shall designate, in accordance with clause (f) or clause (g) below, whichever is applicable.

(e) Notwithstanding any other provisions of this Resolution to the contrary, so long as any Series 2016A Bond is registered in the name of a securities depository or its nominee, all payments of principal and interest on the Series 2016A Bond and all notices with respect to the Series 2016A Bond shall be made and given, respectively, to the securities depository as provided in the Blanket Representation Letter given to it by the Authority.

(f) In the event that the Book-Entry Only System established pursuant to this Section is discontinued, except as provided in clause (g), the Series 2016A Bonds shall be issued through the securities depository to the Beneficial Owners.

(g) In the event of termination of the Book-Entry Only System, the Authority shall have the right to terminate, and shall take all steps necessary to terminate, all arrangements with the securities depository described herein, and thereafter shall issue, register ownership of, transfer and exchange all Series 2016A Bonds as provided in Article II hereof. Upon receipt by the securities depository of notice from the Authority, the securities depository shall take all actions necessary to assist the Authority and the Trustee in terminating all arrangements for the issuance of documents evidencing ownership interests in the Series 2016A Bonds through the securities depository. Nothing herein shall affect the securities depository's rights under clause (e) above.

ARTICLE V Special Covenants

The Commission and the Authority covenant and agree with the persons who at any time are Holders and Owners of the Series 2016A Bonds that so long as any Series 2016A Bonds remain outstanding and unpaid:

Section 5.01. Observe Master Trust Indenture, Series Resolution and Loan Agreement. The Commission and the Authority will faithfully keep and observe all the terms, provisions and covenants contained in the Master Trust Indenture, this Series Resolution and the Loan Agreements.

Section 5.02. Maintenance of Tax-Exempt Status. Neither the Commission nor the Authority shall take, or permit the Political Subdivision to take, any action that would cause the Series 2016A Bonds to be "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended. The Commission and the Authority shall comply with all the rebate requirements imposed under Section 148(f) of the Internal Revenue Code of 1986, as amended, and regulations thereunder, which are necessary to preserve the tax exempt status of the Series 2016A Bonds, including (if applicable) the requirement to make periodic calculations of the amount subject to rebate thereunder and the requirement to make all required rebates to the United States. The Authority agrees to use any moneys on deposit in any Fund or Account maintained under the Master Trust Indenture to pay any such rebate (or penalty in lieu thereof) when due to the extent permitted by the Master Trust Indenture. In addition, the Authority shall make no investment of funds or take or permit the Political Subdivision to take any action that would cause the Series 2016A Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations thereunder. The Executive

Director is hereby authorized to make on behalf of the Authority any elections under the provisions of Section 148 of the Internal Revenue Code of 1986 and regulations thereunder as she may deem appropriate. All terms used in this Section 5.02 shall have the meanings provided in the Internal Revenue Code of 1986, as amended, and regulations thereunder. The Executive Director shall execute any certificates as may be necessary or appropriate to establish the tax exempt status of the Series 2016A Bonds.

ARTICLE VI
Miscellaneous

Section 6.01. Amendments. This Series Resolution may be amended as provided in the Master Trust Indenture.

Section 6.02. Determinations. All determinations of the Executive Director required or permitted to be made hereunder shall be in writing, and the Executive Director shall file a copy thereof with the Trustee and the Secretary of the Industrial Commission.

Section 6.03. Effective Date. This Series Resolution is effective immediately.

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

Ms. Ament discussed the State Revolving Loan Fund Clean Water loan application from the City of LaMoure in the amount of \$1,425,000. She said this is for sanitary sewer replacement and improvements. It is a \$5.3 million project with SRF providing \$1.425 million and the Corps of Engineers will provide \$3.8 million. The City will issue revenue bonds and based on the user rates and current net operating revenues the Public Finance Authority Advisory Committee recommended approval of the loan.

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

RESOLUTION APPROVING
LOAN FROM CLEAN WATER STATE REVOLVING FUND

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

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

WHEREAS, the City of LaMoure (the "Political Subdivision") has requested a loan in the amount of \$1,425,000 from the Program to finance sanitary sewer improvements; and

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

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

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

1. The Loan is hereby approved, as recommended by the Advisory Committee.

2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.

3. The Executive Director is authorized to fund the Loan from funds on hand in the Clean Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.

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

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

Ms. Ament discussed the State Revolving Loan Fund Drinking Water loan application from the City of Hebron in the amount of \$2,288,000. She said this would replace Hebron's water pipe with PVC and some fire hydrants and valves. The City will issue improvement bonds payable with special assessments and based on that information the Public Finance Authority Advisory Committee recommended approval. She noted that the City of Hebron had also applied and received approval from the Public Finance Authority Advisory Committee for a Clean Water \$682,000 loan. Combining these two loans with county and local funds of \$1,170,000 the total project size is \$4,140,000.

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

RESOLUTION APPROVING
LOAN FROM DRINKING WATER STATE REVOLVING FUND

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

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

WHEREAS, the City of Hebron (the "Political Subdivision") has requested a loan in the amount of \$2,288,000 from the Program to finance replacement of water mains, hydrants and valves; and

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

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

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

1. The Loan is hereby approved, as recommended by the Advisory Committee.

2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.

3. The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.

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

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

Ms. Ament discussed the State Revolving Loan Fund Drinking Water loan application from the City of Jamestown in the amount of \$1,333,000 to replace water mains, hydrants and valves. She said it will be a twenty year loan secured with improvement bonds payable from special assessments. The Public Finance Authority Advisory Committee recommended approval.

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

RESOLUTION APPROVING
LOAN FROM DRINKING WATER STATE REVOLVING FUND

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

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

WHEREAS, the City of Jamestown (the "Political Subdivision") has requested a loan in the amount of \$1,333,000 from the Program to finance replacement of water mains, hydrants and valves; and

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

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

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

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

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

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

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

Ms. Ament presented a memorandum on the Public Finance Authority Advisory Committee SRF Clean and Drinking Water Loan approvals for the entities as follows:

Re: Robinson, Drinking Water State Revolving Fund
McLean Sheridan Rural Water District, Drinking Water State Revolving Fund
Arnegard, Clean Water State Revolving Fund
Hebron, Clean Water State Revolving Fund
Washburn, Clean Water State Revolving Fund
Maxbass, Drinking Water State Revolving Fund

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

The committee reviewed an application from the City of Robinson requesting a \$24,500 increase to their previously approved loan in the amount of \$105,500 (total \$130,000) under the Drinking Water State Revolving Fund (DW SRF) Program to finance removal of the existing well house and install an underground well structure. Total construction costs of this project are \$205,000 and \$75,000 will be provided through the CDGB. This project qualifies for up to \$97,500 of loan forgiveness; the net amount of the loan will be \$32,500 when fully funded. The requested loan term is 20 years. The City will issue revenue bonds payable with user fees.

The committee reviewed an application from McLean Sheridan Rural Water District (District) requesting an increase of \$150,000 to the \$1,200,000 (total \$1,350,000) loan under the DW SRF Program to finance expansion of service to the Brush Lake/Blue Lake area. The entire project will cost \$2,777,000, with \$1,427,000 being provided by a MR&I grant. The requested term for the DW SRF loan is 30 years. The District will issue revenue bonds payable with user fees.

The committee reviewed an application from the City of Arnegard requesting a \$380,000 loan under the Clean Water State Revolving Fund (CW SRF) Program to finance construction of a new three cell lagoon system. Total construction costs are estimated at \$3,434,077 with \$1,000,000 from a ND Impact Grant, \$578,820 provided by a McKenzie County grant and \$1,475,257 from City funds on hand. The requested term for the CW SRF loan is 20 years. The City of Arnegard will issue revenue bonds payable from sewer user fees.

The committee reviewed an application from the City of Hebron requesting a \$682,000 loan under the CW SRF Program to finance sanitary sewer pipe, 9 manholes, PVC pipe and service to 70 existing connections

as well as storm sewer replacement with concrete pipe, eight catch basins and two manholes. Total construction costs are estimated at \$4,140,000 with Drinking Water State Revolving Fund providing \$2,288,000, Morton County Road Funding of \$900,000 and local funds of \$270,000. The requested term for the CW SRF loan is 20 years. The City will issue improvement bonds payable with special assessments. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City levy a general deficiency tax in the event that the revenues from the collection of special assessments are not sufficient to pay the debt service on the improvement bonds.

The committee reviewed an application from the City of Washburn requesting a \$900,000 loan under the CW SRF Program loan to finance storm sewer and wastewater improvements. Total construction costs are estimated at \$2,849,372 with \$878,000 financed through the Drinking Water State Revolving Fund and \$1,071,372 financed through a local bond issue. The requested term for the CW SRF loan is 20 years. The City of Washburn will issue improvement bonds payable with special assessments. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City levy a general deficiency tax in the event that the revenues from the collection of special assessments are not sufficient to pay the debt service on the improvement bonds.

The committee reviewed an application from the City of Maxbass requesting a \$373,000 loan under the DW SRF Program to finance the replacement of the aging wells and well house. In addition, they will construct a reservoir and pump station as well as connect to All Seasons Rural Water District. Total construction costs are estimated at \$500,000 with \$127,000 from Surge Funding provided by the ND Legislature in 2015. This project qualifies for up to \$224,000 of loan forgiveness; the net amount of the loan will be \$149,000 when fully funded. The requested term for the DW SRF loan is 30 years. The City of Maxbass will issue revenue bonds payable with water user fees.

The Public Finance Authority's Advisory Committee approved the McLean Sheridan Rural Water District and Robinson loans at their May 12, 2016 meeting and the other loans were approved at the June 24, 2016 meeting.

Ms. Ament pointed out that on a couple of the projects the SRF program is there for repair and replacement of the sewer and water lines. However, the entities also want to do the roads when they are making those repairs. Under the program regulations the entities can borrow for only a portion of the costs of the roads through the SRF. The Public Finance Authority has the Capital Financing Program available but that would be at market rates. At those rates the entities cannot do the replacement of the roads. She noted that is one gap that she is seeing that is not covered with low rates by either the Public Finance Authority or the Infrastructure Revolving Loan Fund.

She indicated that she has been participating in the community meetings organized by the Bank of North Dakota and is always looking for solutions to meet the needs of the communities within the Authority's parameters.

Being no further Public Finance Authority business, Governor Dalrymple adjourned this portion of the meeting at 1:43 p.m. and the Commission took up Lignite Research, Development and Marketing Program business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on June 29, 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
Tyler Hamman, Lignite Energy Council
Lynn Helms, DMR
Bruce Hicks, DMR – Oil and Gas Division
Alison Ritter, DMR – Oil and Gas Division
Kevin Connors, DMR – Oil and Gas Division
Matt Sagsveen, Attorney General's Office
John Morrison, Crowley Fleck
Alexis Brinkman Baxley, ND Petroleum Council
Kari Cutting, ND Petroleum Council
Troy Coons, Northwest Landowners Association
Jan Swenson, Badlands Conservation Alliance
Lawrence Bender, Fredrickson & Bryon
Justin Kringstad, Pipeline Authority
Bill Kalanek, XTO Energy
Lacee Anderson, Ames Savage
Ellen Chaffee
Zac Smith
Members of the Press

Governor Dalrymple called the Lignite Research, Development and Marketing Program portion of the Industrial Commission meeting to order at 1:43 p.m. following completion of Public Finance Authority business.

Attorney General Stenehjem reported the following on the Eighth Circuit Court of Appeals decision: (A copy of the decision is available in the Commission files.)

- After the State of North Dakota sued Minnesota back in 2011, following Minnesota's passage of the Next Generation Energy Act, the Minnesota Federal District Court agreed with North Dakota's contention that the requirement in Minnesota law that electricity generated in North Dakota and imported and consumed in Minnesota must meet Minnesota's Carbon Emission Standards, violated the Commerce Clause of the United States Constitution and issued an injunction against the enforcement of that law.
- The State of Minnesota appealed that ruling to the Eighth Circuit Court and a panel of three judges heard the case and issued their opinion on June 15. The three judges decided to continue the injunction on a permanent basis but the three judges did so for three different reasons. The result is the same, the injunction remains in place.
 - a) The first judge agreed with the District Court that the Minnesota law violates the Commerce Clause of the U.S. Constitution,
 - b) The second judge disagreed with the Commerce Clause analysis but held that the statute in Minnesota is preempted by the Federal Power Act, and
 - c) The third judge said it is preempted by both the Federal Power Act and the Clean Air Act.

Attorney General Stenehjem stated it is now up to the State of Minnesota of how they want to proceed. They have three options

- 1) Appeal to the U.S. Supreme Court directly;
- 2) To ask, because three judges made the ruling, the entire Eighth Circuit Court of Appeals to rehear the case which is not frequently done;

- 3) To simply abide by the ruling. This would be North Dakota's preference.

At this point it is his understanding the approach that Minnesota will be taking is to ask for a rehearing in front of the entire panel of the Eighth Circuit. He doesn't believe their prospects are very good but given that there were three different rulings it is certainly a possibility that request could be granted. North Dakota has a very good case – the Federal Power Act, Clean Air Act plus the Commerce Clause in the U.S. Constitution and all along North Dakota has been winning on those points.

The Attorney General also noted that the State of Minnesota continues to owe the State of North Dakota now well in excess of one million dollars in attorney's fees and North Dakota will be pursuing that to make sure that Minnesota pays North Dakota what they owe us and those fees are mounting.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, discussed the Industrial Commission's Technical Representative and her recommendation regarding a waiver request from the Energy and Environmental Research Center regarding Contract FY16-LXXIX-197 - Pathway to Low-Carbon Lignite Utilization project as follows:

RE: Waiver Requests

Last month when considering Grant Round 80 applications you granted two waivers in regards to North Dakota Administrative Code 43-03-06-03. That portion of 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 EERC in a letter dated May 27, 2016 (attached) has requested that the same waiver that was made last month on Phase 1B and Phase 2 also be granted on Phase 1A which is being funded under Contract No. FY16-LXXIX-197 "Pathway to Low-carbon Lignite Utilization" for any improvements to 8 Rivers Capital's existing Allam Cycle intellectual property only for applications utilizing natural gas. Because we do not foresee any new technology that would be developed under Contract No. FY16-LXXIX-197 that would be utilized by a state agency we recommend that this request for a waiver be granted.

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 request for a waiver of Lignite Research Program Policy 43-03-06-03 for work being done under Contract FY16-LXXIX-197 “Pathway to Low-Carbon Lignite Utilization” as it relates to any improvements to 8 Rivers Capital’s existing Allam Cycle intellectual property for applications utilizing natural gas. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Lignite Research, Development and Marketing Program business, Governor Dalrymple adjourned this portion of the meeting at 1:50 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 June 29, 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
Lynn Helms, DMR
Bruce Hicks, DMR – Oil and Gas Division
Alison Ritter, DMR – Oil and Gas Division
Kevin Connors, DMR – Oil and Gas Division
Matt Sagsveen, Attorney General's Office
John Morrison, Crowley Fleck
Alexis Brinkman Baxley, ND Petroleum Council
Kari Cutting, ND Petroleum Council
Troy Coons, Northwest Landowners Association
Jan Swenson, Badlands Conservation Alliance
Lawrence Bender, Fredrickson & Bryon
Justin Kringstad, Pipeline Authority
Bill Kalanek, XTO Energy
Lacey Anderson, Ames Savage
Ellen Chaffee
Zac Smith
Members of the Press

Governor Dalrymple called the Department of Mineral Resources portion of the Industrial Commission meeting to order at 1:50 p.m. following completion of Lignite Research, Development and Marketing Program business.

Mr. Lynn Helms, Department of Mineral Resources Director, presented proposed Order 27519 for Case 22057. (A copy of Order 27519 is available in the Commission files.) He said this is the complaint case involving Black Hills Trucking. The Commission previously issued Order 23682 requiring substantial civil penalties and that order that has been appealed to the District Court of Williams County, Northwest Judicial District. The Commission has received an application from Black Hills Trucking under North Dakota Century Code Section 38-08-14 requesting that the Commission suspend Order 23682 during the time period that it is on appeal and require no supersedeas bond under that section of statute. Mr. Helms indicated that the staff has evaluated the application and is recommending a proposed order which does in fact suspend Order 23682 during the time the issue is on appeal but the proposed order does require a \$45,000 supersedeas bond. He had a reclamation supervisor look at the three illegal dumping incidents, the amount of road involved and look at some historical costs for cleaning up similar illegal dumping incidents. The Oil and Gas Division's reclamation department believes there is potential that the illegally dumped fluids could impact soil and have to be cleaned up and the cost could be as much as \$45,000. Proposed Order 27519 requires the posting of a \$45,000 supersedeas bond and suspends Order 23682 during the time it is on appeal.

Case 22057: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 27519 issued in Case 22057 be approved this 29th day of June, 2016. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Lynn Helms presented and discussed proposed Order 27349 for Case 24957 which relates to the adoption of new rules and amendments to the "General Rules and Regulations for the Conservation of Crude Oil and Natural Gas" codified as Article 43-02 North Dakota Administrative Code. (A copy of Order 27349 is available in the Commission files.) He said if the proposed order is approved today the potential effective date would be October

1, 2016. There are still a couple of steps that have to happen with these rules – one, an Attorney General’s review and also a review by the Administrative Rules Committee of the Legislature. Based on the Administrative Rules Committee’s schedule the earliest possible effective date would be October 1. He noted that the Oil and Gas Division held four hearings on this matter in Bismarck, Dickinson, Williston and Minot. The hearing officers received 468 unique comments from 111 various interested organizations or individuals. He highlighted the following points:

- The #1 issue commented on was the definition of interested party. Those comments ran 86 against to 2 in favor. Overwhelmingly, the comments of the public were that it was not a good idea and should not become part of the Industrial Commission rules. It has been removed from the proposed rules.
- These proposed rules include an entirely new section regarding pipelines. There were 26 individuals or organizations that submitted 163 unique comments. One big issue was definitions. There was a lack of clarity as to exactly what pipelines would and would not be required to get bonding and would or would not be covered by this new set of rules. In order to facilitate better understanding of that, the staff has inserted into the revised proposed rules definitions for flow lines and injection pipelines and an exemption of underground pipelines involved in an enhanced oil recovery operation owned by the enhanced oil recovery operator. He noted that House Bill 1358 which directed the Commission to adopt these rules didn’t explicitly exclude those pipelines but defined underground gathering pipeline in a way that left those out. Underground gathering pipelines are meant to be the somewhat larger pipelines that transfer crude oil or salt water from a production facility to a point of sale or to a point of disposal. In that case flow lines, injection pipelines which are involved in enhanced oil recovery and the type of lines that transfer supply water around and inside an enhanced oil recovery unit are not included. In order to provide clarity and take away one of the big concerns about these pipeline rules, definitions have been added to the revised proposed rules.

There were a number of comments about whether these proposed rules stayed within the intent of HB 1358. The staff carefully went back through this section of rules and made sure that any rule that is being proposed was part of HB 1358 or was part of the preexisting rules that came out of HB 1333 from the 2013 Legislature. After that review there were quite a few revisions to this section of the rules. For example, any proposed rule needed to be explicitly expressed in N.D.C.C. 38-08-27 (HB 1358) or it needed to be directed as an item of study by EERC and needed to be something that EERC recommended that the Commission adopt as a rule. A good example is there was concern about using the term leak detection – leak detection is not in 38-08-27 but it is in the Legislature’s directive to EERC and it is in multiple places within the EERC study. The staff was very careful about making sure that everything that is now in these rules fits one of those categories.

He indicated that there were numerous technical comments. One example is the way the staff had originally written the rule that required an operator to horizontally drill under an environmentally sensitive area. Industry said we would like the option of avoiding those areas. It is a great idea so the staff wrote that flexibility in to the revised rules. If the operator directionally drills under an environmentally sensitive area they have to give the Commission that directional drilling plan. The staff is not going to define it for them because there are not any national or published standards or best practices that the staff could find at this point for that but if the operator prefers to reroute the pipeline and avoid that area, all the better. That is the kind of technical things addressed in these revised proposed rules.

- The third major area of concern was with the perimeter berms. There were 12 individuals or organizations that submitted 40 unique sets of comments. He indicated the staff carefully looked at all the comments and concerns. One concern was the impact on storm water and snow melt. The rules were revised to decrease the required height of the berms. Another concern was that a standard berm is being required for every location in North Dakota. That was not revised. A standard berm is required for

every location in North Dakota existing or future. However there is now the option in the rule to make application for a modification of that requirement on a site by site basis. For example, maybe the berm will only be required around two sides, not all four sides or maybe the operator has done something in the construction of the site that is equally protective of the environment like sloping it to a pond that will accumulate any spilled fluids. That flexibility is now built into that rule.

There was some concern about cost benefit for perimeter berms. Within the modifications there is the option of demonstrating that the daily fluid moving through a facility is so small that a spill would not get off a site. That was built into a modification of that rule as well.

Mr. Helms said one of the concerns by industry was cost of these perimeter berms and as we went from a twelve inch to a six inch requirement the staff checked with construction people and found out that to build an impermeable berm the clay has to be put down in six inch lifts and compacted. If a six inch perimeter berm is adequate, which we believe it is because a six inch berm around a two acre site will hold 8,000 barrels, then it can be laid down in a single lift, properly compacted, constructed and maintained fairly easily.

Mr. Helms indicated that those are the areas that the Commission received the vast majority of comments and they have been addressed in the consideration of comments and in the action that is behind the proposed order and the revised rules the Commission has in front of them. He noted that Mr. Connors and Mr. Hicks have put in thousands of hours getting these rules to this point and are prepared to answer detailed questions.

In response to a question regarding the SPCC (Spill Prevention Control and Countermeasure) rule that is already in effect nationwide and how that rule correlates with the diking and construction issues of perimeter berms in the proposed rules, Mr. Helms said the SPCC rule is an EPA requirement that came out of the Oil Pollution Act. It relates to any facility that has over 2,500 gallons of oil stored on a site and requires that the operator have a secondary containment in case the vessel should leak. These proposed rules dovetail nicely with that because one of the modifications that an operator can get is if they have SPCC style adequate secondary containment that now surrounds – not just the tankage but all of the production vessels that could leak, say a recycle pond or a separator or heater treater that could leak on the site, then the perimeter berm could either be downsized or perhaps even eliminated. These rules are not duplicating the SPCC rule. We are not piling on additional or over and above requirements. That is one of the potential modifications that could be pointed out or requested by an operator.

The Commission and Mr. Helms discussed the time frame for getting the rules enacted and whether it is possible to allow more time for the Commission to review the revised proposed rules. Mr. Helms said if the Commission approves the rule changes today, then the rules would be presented to the Administrative Rules Committee for their September meeting and would become final October 1. If the Commission waits until the July 26 meeting to act on the rules, then we will miss the Administrative Rules time cycle and the rules would take effect January 1. He noted that even a delay of a week would make it tough to make the October 1 effective date. Before going to the Administrative Rules Committee the Attorney General's Office must do their legality review. There was discussion of what would happen if the Commission decided to make a change in the rules in the next few weeks. Mr. Helms said essentially there are two dates -- October 1 or January 1. Any significant change would have to go back through the Attorney General's process and would miss the Administrative Rules Committee cycle for October 1. He noted that the Administrative Rules Committee only meets once a quarter.

There was discussion about the importance of having the rules effective October 1 which would allow for construction to take place this year. Mr. Helms stated typically in North Dakota October is premium time to build things like pipelines, dikes, and locations. Because the harvest is largely over or well in progress the industry has the opportunity to build things without having to pay an additional cost in terms of crop damages, etc. Generally we see a big surge in oil field construction in the October/November timeframe.

In response to a question, Mr. Helms indicated that if the rules had an effective date of January 1 he did not know if operators would proceed with constructing dikes this year if there was the possibility that the Administrative Rules Committee might suspend or remand the rule back to the Commission.

In response to a question, Mr. Helms said the issue of the length of time allowed for operators to execute the new requirements had been extensively discussed and was one of the comments they had received. It had been suggested that the effective date be postponed. The staff looked at the time between the Commission's approval and the effective date of the rules and it is always at least 90 days. If the Commission adopted the rules operators would have at least 90 days to meet the requirements of the rules and to get ready for the effective date of the rule. He did note, however, that it matters what time of year that 90 days happens. If the effective date happens in the dead of winter, then there isn't an opportunity to get the construction done. That was one reason the staff wanted to push real hard to get to an October 1 effective date.

In response to a question regarding what the most contentious issues that remain with the amendments that have been suggested, Mr. Helms said it is retroactivity of berms and pipelines. There is concern about pipeline construction rules being applied retroactively. He believes that the inclusion of the definition of what newly constructed means answers that concern. The fact that now there is going to be a requirement to build these perimeter berms on everything in North Dakota is probably the most contentious thing – retroactive application.

In addressing the issue of newly constructed, Mr. Helms stated newly constructed means following the effective date of these rules. It literally means newly constructed after the effective date of the rules. It is interesting because if you are in the middle of a pipeline installation project and rules become effective at midnight – it would literally apply to the pipeline built after that time and not the pipeline built before that. It is probably more problematic or of concern to people if they are tying into an existing pipeline with a new piece of pipeline. The new rules would apply only to the new pipeline.

In response to a question regarding if there is anything in the pipeline rules that an operator is not doing now that they will need to do under the proposed rules, Mr. Connors said in terms of construction practices they should be doing everything they are supposed to. Mr. Helms said there are several technical changes like burial depth--there is now a requirement that if the pipeline crosses a section line it has to be six feet deep instead of the current three feet. Some of the technical things like that were of concern to the industry in terms of retroactive applications.

It was noted that the effective date of the rule is when it takes effect and that should be a very clear day on the calendar. Governor Dalrymple said he would rather see a rule accepted and have the effective date delayed than have people feel they have to fight the rule just because of the effective date.

Commission Goehring stated that he was concerned about having clarity, certainty and common sense in the revised proposed rules.

The Commission and staff discussed the timing for construction of the perimeter dikes on new sites and previously constructed well sites. Mr. Hicks indicated that there are approximately 4,000 sites where the operators will have to go back and construct a perimeter dike on an existing well site. Mr. Helms said they have built flexibility into the revised proposed rules. The Commission discussed including a modification to the revised proposed rules that would allow an extension of time for the construction of the perimeter berms. They listed some reasons why a modification may be needed; availability of material for the berms; availability of construction crews; weather conditions; soil conditions; road restrictions; etc. They also discussed whether there should be a definitive time period for the extension--perhaps six months although if the effective date of the rules would be January 1 in essence the first three months of the year would not be a good time for construction and concluded it would be better to allow flexibility as determined by the Director. They concluded that giving flexibility to the Director was the better choice rather than a definitive time period.

In response to a question regarding if that was something proposed in the comments, Mr. Hicks said mainly the comments were that they didn't want the perimeter dikes at all.

The Commission and staff discussed some possible wording for the modification to the revised proposed rules and where the language needed to be included. It was suggested that wherever the revised proposed rules says "the director may consider a modification of these requirements ..." insert after "may consider" the words "an extension of time to implement these requirements if conditions prevent timely construction or". Mr. Helms said he did not think the modification destroys the effectiveness of the rule, it just means that there could be a three to nine month delay in getting these berms built. It was indicated that this is only happening one time in history and then it is done.

In response to a question regarding bonds and enhanced oil recovery, Mr. Helms said enhanced oil recovery units already have to purchase a separate and additional bond to cover the things that they do but there will undoubtedly be third party pipeline operators that have to go get a bond or bonds.

In response to a question, Mr. Kevin Connors, Oil and Gas Division, said the bonding rule for underground gathering pipelines for crude oil and produced water pipelines is consistent with how the Oil and Gas Division does bonding for oil and gas wells. The Commission limits how many oil and gas wells can be on a blanket bond based on whether or not there are wells that are not properly abandoned or the site has not been reclaimed. The proposed pipeline bonding requirements under these revised proposed rules are consistent with how the Commission does oil and gas wells. In summary an aggregate amount of exposure triggers the bond requirement.

Mr. Helms said if the operator reaches that limit of instances of noncompliance then that bond is full and they can't build anymore pipeline and add it to that bond. They have to obtain another bond or correct those noncompliance issues – go back and fix them so they can add pipe to that bond. That model has worked really well in the oil and gas well world. Other states are using modifications of North Dakota's model to fix their bonding problems with inactive and abandoned wells. The State of North Dakota adopted these rules long enough ago that it hasn't created a problem of orphan wells in North Dakota.

Case 24957: It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order 27349 issued in Case 24957 be approved this 29th day of June, 2016 as presented to the Commission with the modifications to the rules allowing the Director to grant extensions if conditions prevent timely construction of the berm requirements and noting that the rules are still subject to legal review by the Attorney General's Office and approval by the Administrative Rules Committee. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Attorney General Stenehjem stated the Commission does not want to be unreasonable and require anything that is just not possible because the law does not require anything to be done that's impossible. We want to be careful about that. As these rules are implemented he certainly hopes that when Mr. Helms is looking at these exemptions that he will keep the Commission posted on what kinds of exemptions he is authorizing.

Mr. Helms said one of Mr. Hicks's assignments for the next year is to have his staff put together written policies on all of these types of things that are in the rules – modifications and waivers so that we are doing reasonable things and we are also doing it consistently across 32 field inspectors. Obviously, they have to have latitude to make some individual judgements but at least they will be guided by a written policy. There will be something in writing that field inspectors as well as industry and the general public can look at. If there are questions about how a modification is being implemented there will be a written policy.

Governor Dalrymple agreed and mentioned in particular leak detection because that is such a rapidly moving target right now in terms of industry standards. The EERC is still working on it for the Commission. He asked that the staff update the Commission on the leak detection policy so it knows what the policy is from time to time and exactly what is being enforced out in the field. He suspects that policy will need to change pretty frequently over the next year or two as better technologies become more prevalent. Please do not forget that the Commission wants to track that.

Mr. Helms discussed proposed orders for the following cases heard on October 21, 2015 and May 19 and 20, 2016: (Copies of the orders are available in the Commission files.)

Case 24500, Order 26866 - review of temporary abandoned status – He said this matter came to the Commission under the new statute that allows a landowner to ask for a review by the Commission of a well that has been temporarily abandoned for seven years or more. This is a request from some surface owners near Medora on a well that has been in temporary abandoned status for fifteen years. The company asked they be given time to secure some leases and come up with a plan for a proper horizontal reentry of the well. The company was given seven months to do so and was unable to secure the leases and did not file a plan for how they were going to isolate the Tyler Pool. Mr. Helms stated that it was the staff recommendation that the Commission approve proposed Order 26866 which revokes the temporary abandoned status and requires that operator plug the Cameron #1-20 well.

Case 24500: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 26866 issued in Case 24500 be approved this 29th day of June, 2016. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 25018, Order 27421 - review of shut in status or allow temporary abandoned status – Mr. Helms said this is a case where the Commission reviewed the viability of an enhanced oil recovery unit in 2012. At the time the operator indicated they were going to conduct operations in the entire unit that would justify the enhanced oil recovery unit staying in place. One of the requirements of that order was if any well in that unit went into abandoned status, which meant it did not produce in paying quantities for a year or more, they would immediately plug the well. The operator did not do that. The Oil and Gas Division staff discovered this and notified the operator and the case was put on the docket. The operator indicated that if they are required to plug these wells that would constitute waste. It was noted that one well will not be economic to do anything with until oil exceeds \$69.00 per barrel and the other well would have to be at \$120.00 per barrel – both are in abandoned status and have been for a significant period of time. One of the things stated in proposed Order 27421 is that plugging an abandoned well is not waste. Proposed Order 27421 denies their application to leave the wells shut in or temporarily abandoned and requires the operator plug the wells immediately.

Case 25018: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 27421 issued in Case 25018 be approved this 29th day of June, 2016. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 25026, Order 27429 - injection of fluids in an injectivity test and establishment of spacing unit – Mr. Helms stated that this is a Hess Corporation application to allow for an enhanced oil recovery test in the Bakken Formation in a spacing unit. Hess Corporation has three horizontal wells in the spacing unit and is the operator of all the surrounding spacing units. They drilled six stratigraphic test wells, vertical wells, in the unit to do micro seismic and geo-mechanics. They want the opportunity to convert one well at a time, up to three wells, to injection of various mixtures of hydrocarbon fluids from their gas plant. They have had lab tests done and believe they have some ideas that can make enhanced oil recovery work in the Bakken. The staff thinks this is an appropriate

application. There are requirements in the proposed order for monitoring and the end of the life of the project and the requirements regarding the information the operator is going to have to report etc. It is a great project and he is really happy to see people working on enhanced oil recovery for the Bakken. There is potential for seven to ten billion barrels of oil if someone unlocks the right process to do this. The staff recommends approval of the order.

Case 25026: It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order 27429 issued in Case 25026 be approved this 29th day of June, 2016. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

The Commission indicated that they were pleased to see this kind of work being done in the Bakken.

Case 25027, Order 27430 - enhanced recovery operation – He said this deals with two existing Lodgepole units in Dickinson and are connected by an aquifer. The original unit proposal listed three options for water flooding the units – in particular the West Dickinson Lodgepole Unit. One was to drill a new injection well, the second was to convert an existing well to injection and the third was to use water injection in the Dickinson Lodgepole unit to support production in West Dickinson Lodgepole Unit. They converted a well which has now failed mechanically and had to be plugged. It is not economic to re-drill the injection well so they are asking the Commission to approve the third option which is allow the operator to pay Dickinson Lodgepole Unit for injecting water to support the waterflood of the West Dickinson Lodgepole Unit. Working interests are very similar between the two units. They have the same operator and it make sense to the Oil and Gas Division at this point in the life of these units to grant this application.

Case 25027: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 27430 issued in Case 25027 be approved this 29th day of June, 2016.

In response to a question regarding if this is limited to sharing in the expenses or does it involve sharing in the minerals, Mr. Helms said there will not be any oil moved from one unit to the other. Just the expense of injection and pressure support that comes from that is the only sharing that would result from the implementation of the order.

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

Case 25057, Order 27460 - bond requirement for certain type of geophysical exploration – Mr. Helms stated this case involves a gentleman from a company called Great Plains Energy Inc. out of Lincoln, Nebraska. This individual has a patent pending on a new seismic geophysical process that uses small 18 gram charges of black powder buried only 32 inches. The applicant has asked for relief from the Commission's bonding requirements – typical bond for this would be \$50,000. The applicant wants to run a test of the technology out in Stark County. The Oil and Gas Division staff believes it is appropriate to grant the requested relief and have the company post a \$5,000 bond. This would be for work, at the most, of eight holes 32 inches deep with 18 grams of black powder in each one. The potential impact is very small and \$5,000 bond should be adequate. He indicated that the proposed order grants the relief requested.

Case 25057: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 27460 issued in Case 25057 be approved this 29th day of June, 2016.

In response to a question regarding what the normal amount of a charge is, Mr. Helms said a normal charge is set somewhere between 60 and 150 feet deep and is five to ten pounds of dynamite.

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

Mr. Bruce Hicks, Oil and Gas Division Assistant Director, presented the Oil and Gas Division Quarterly Report (January, February and March, 2016). (A copy is available in the Commission files.)

- Permits received down about a third from what the Division had a year ago at 227;
- Rig count was 41 during the first quarter - it is at 30 today;
- Producing well count went down
- Waiting on completions wells stayed steady at 950
- Prices were low; currently the price is double what it was in the first quarter
- Inspections and enforcement - we are exceeding our goals (50,000+ inspections took place the first quarter)
- Gas capture is at 90% and even higher today at 91%. Volume of gas flared is also reduced significantly

In response to a question, Mr. Helms stated that 90% was the 2020 goal. The idea of flaring reductions with established goals, managing the gas flaring and having gas capture plans was invented in North Dakota. The Commission should be proud of what has been accomplished – reducing flaring from 36 percent to 90 percent. Mr. Hicks noted that when new well completions come on, the rigs start coming back and the State starts getting multiple wells on a well pad there will probably be increases for periods of time but with the new gas plants now being built they will handle a lot of the gas overflow. Mr. Helms said there has been another new gas plant announced – he didn't know the capacity but it is northwest of Tioga so there are now three plants that will come on line before the end of the year.

Mr. Hicks said they added one complaint to the report – the Gadeco case – the company has had numerous reporting violations and the Division has requested an OAH hearing.

Attorney General Stenehjem reported on the United States District Court for the District of Wyoming's decision regarding the Bureau of Land Management's (BLM) issuance of regulations applying to hydraulic fracturing on federal and Indian lands. (A copy of the decision is available in the Commission files.) He stated North Dakota adopted its own sensible fracturing regulations which work. BLM decided they would impose a regulatory scheme for fracturing that was not necessarily consistent with North Dakota's regulations. The BLM regulations also required involvement with the federal government to get a permit to drill which is a week or month or longer process. Once those rules were enacted, Mr. Helms, himself and others went to Wyoming and asked the judge to halt the implementation of the rule. After the hearing the Judge issued a temporary stay of the rules and then last week issued a rule granting North Dakota's request for a permanent injunction against the rule. The Attorney General indicated that it was very important that the Judge outlined for everyone what the roles for the different branches of government are and he said "...the constitutional role of this Court is to interpret the applicable statutory enactments and determine whether Congress has delegated to the Department of Interior legal authority to regulate hydraulic fracturing – it has not." The Judge made it clear it was the role of the Congress to pass laws and it is the role of the executive branch of government to enforce the laws Congress passed. That is good news for North Dakota. He noted that North Dakota's legal representation did an excellent job and also Mr. Helms was there to testify and had a map the Judge kept looking at which showed that even though a spacing unit might have just a little tiny portion of federal land within the spacing unit the result is that the entire spacing unit would have to be subject to the federal government fracturing rules – that seemed to impress the Judge. The ruling was clear and crisp. He thought the federal government might appeal the Judge's decision. If they do, North Dakota has a strong case.

Mr. Helms reported on litigation and his recommendations for action on two of the matters. (A copy of the litigation matters is available in the Commission files.) He said this is a new report and it contains 13 areas of litigation. He reviewed the report:

- #1 is a lawsuit brought by a group of environmental organizations led by the Environmental Integrity Project suing the EPA over RCRA Rules that would apply to the oil and gas industry. He discussed this with outside legal counsel and the Attorney General's Office has concurred that North Dakota should intervene. That motion should be filed before the end of the week. Because we found out these parties and EPA are opposed to North Dakota's motion to intervene it will also involve a motion to dismiss along with it. He wanted to keep the Commission aware of it going on – we don't want a "sue and settle" in that situation.
- #2 is the methane control rules which were finalized June 3 by the EPA. He indicated that the Commission had submitted extensive comments on these rules, all of which were ignored. He indicated that North Dakota has until August 2 to file a Petition for Review. This is an item that would require Commission action – it would expend money from the Oil and Gas Division budget on outside counsel to get this filed which would delay imposition of the final rules and give North Dakota another opportunity to try to get EPA to make these rules consistent with North Dakota's gas capture rules and regulations.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission request the Attorney General to file Petition for Review in regards to the EPA final Rules and Control Technique Guidelines for the Oil and Natural Gas Industry.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission direct Department of Mineral Resources Director, Lynn Helms, to prepare draft comments on the EPA Information Collection Effort for Oil and Gas Facilities for the Commission's consideration at their July meeting which could then be submitted prior to the August 2, 2016 deadline.

Mr. Helms said he has been invited by Congress to the House Energy and Commerce Committee to testify next Wednesday, July 6 on EPA rules and actions since 2009 and their impact on states like North Dakota. He plans to go and he will stick with the comments the Commission has submitted on the various rules as they came out and how EPA responded to those comments. The Commission indicated that it was good that he was making that appearance.

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

- #3 - This item relates to the motion the Commission just made related to EPA Information Collection Requests for the Oil and Natural Gas Industry. He will bring the Commission draft comments at their next meeting so they can be filed by August 2.
- #4 - The Attorney General briefed the Commission on the hydraulic fracturing regulations.
- #5 - Revisions to Onshore Order 3 - waiting for BLM to publish the final rules.
- #6 - Advanced Disposal appealed the Commission's Order to district court. The Commission's Order denied their application for a salt water disposal well and a bond.
- #7 - Black Hills Trucking appealed the Commission's Order and the Commission today acted on their application for a suspension of the Order while the case was being litigated.
- #8 - BIA new final rules to update the process for obtaining rights of way. No action now.
- #9 - Revisions to Onshore Order 4 - waiting for BLM to publish the final rules.
- #10 - Revisions to Onshore Order 5 - waiting for BLM to publish the final rules.
- #11 - BLM venting and flaring rules - waiting for BLM to publish the final rules.
- #12 - All of the states came up with Sage Grouse management plans then BLM came in with a nationwide one size fits all management plan on top of this. The Commission has been asked by those who have litigated this with the BLM to intervene. The staff is investigating whether we think that is appropriate. He will be making a recommendation to the Commission. The sage grouse area is a small part of North

Dakota but it will completely block a CO₂ line from coming in to bring CO₂ to Cedar Hills and perhaps interfere substantially with tertiary recovery in the big horizontal Red River Field. It is possible he will recommend that North Dakota intervene in this litigation but he needs more time to look at whether it is just an industry/BLM issue or if it's a State/BLM issue – does it really interfere with the Commission's ability to get tertiary recovery and those kind of things implemented in the state.

- #13 - Environmental Driven Solutions (EDS) was appealed to district court which ruled in favor of EDS and the Commission but that has been appealed to the Supreme Court.

Mr. Helms concluded that litigation takes up a significant amount of staff time but it is well worth it. As the Commission heard from Attorney General Stenehjem on the two cases – we do these cases right, we do them when it matters and we do them in ways we can win.

Governor Dalrymple said Sage Grouse in southwest North Dakota have been moving for some reason into South Dakota and Wyoming. Game and Fish has asked him to request from those states 14 male Sage Grouse to be imported into North Dakota to bolster North Dakota's population of Sage Grouse – both states have indicated a willingness to work with us.

Being no further Department of Mineral Resources business, Governor Dalrymple adjourned this portion of the meeting at 3:08 p.m. and the Commission took up Western Area Water Supply Authority business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on June 29, 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
Jaret Wirtz, WAWSA
Troy Coons, Northwest Landowners Association
Pamela Link, Laborers
Kevin Pramis, Laborers
Lacey Anderson, Ames Savage
Members of the Press

Governor Dalrymple called the Western Area Water Supply Authority portion of the Industrial Commission meeting to order at 3:08 p.m. following completion of Department of Mineral Resources business.

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

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

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

Page 1 prepared by the Bank of North Dakota, reflects debt service payments through the month of May, 2016. In May 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 May 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 May is highlighted in yellow. Net income for the month of May was \$142,073.47 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 May went down to \$765,894.75. (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 May 31, 2016. As noted on the Balance Sheet the Accounts Receivables are \$1,668,266.01 which is included in the assets of \$3,792,608.70 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 May.

Mr. Wirtz briefly commented on the limited drilling and production activity during the month of May which resulted in lower demand for water at the depots. He noted that with the recent increase in the oil price there have been some companies discussing the potential for fracking later in the year--requesting information about the availability of water and requesting bids. He indicated that in June the revenues should be closer to \$800,000.

The Governor asked that Mr. Wirtz provide an update to the Commission at a later date on the WAWS plans for the upcoming legislative session and what they see for the increased need for water when oil prices improve.

Ms. Fine discussed a request for reimbursement of capital expenditures as follows:

RE: Capital Industrial Expenditures

The Western Area Water Supply Authority Board of Directors has requested reimbursement from the WAWS Industrial Account for expenditures in the total amount of \$6,420.75 related to the designing of the Hess Industrial Bulk Connection which will be used primarily for maintenance water.

Ms. Fine said yesterday that board acted and added another \$694.00 so she is recommending approval for a total of \$7,114.75.

Mr. Wirtz said Hess currently is a customer of WAWS and had asked WAWS to figure out the best and easiest way to get water into their oil fields on the north side of the river. The WAWS staff worked with its engineering team to design the routes to those locations to make sure there is adequate flow and to provide the costs and prices for Hess. Should Hess determine that they want to utilize the WAWS connections Hess would be responsible for the construction costs of the pipelines. He indicated that WAWS doing this work does not guarantee that Hess will be buying water from WAWS through these proposed connections but it gives Hess the numbers that they need in order to make a decision.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission grant the request of the Western Area Water Supply Authority (WAWS) Board of Directors and reimburse WAWS for \$7,114.75 in design costs for the Hess Industrial Bulk Connection. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Western Area Water Supply Authority business, Governor Dalrymple adjourned this portion of the meeting at 3:16 p.m. and the Commission took a short break prior to taking 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 June 29, 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
Joel Erickson, Bank of North Dakota
Tim Porter, Bank of North Dakota
Todd Steinwand, Bank of North Dakota
Jim Leier, Bank of North Dakota
Kelvin Hulett, Bank of North Dakota
Members of the Press

Governor Dalrymple called the Bank of North Dakota portion of the Industrial Commission meeting to order at 3:23 p.m. following completion of Western Area Water Supply Authority business and a short break.

Mr. Tim Porter, Senior Vice President, presented and discussed the College SAVE audit - December 31, 2015 that had been performed by Thomas & Thomas LLP. (A copy of the audit is available in the Commission files.) The independent auditors report states they gave an unmodified opinion. Mr. Porter noted that Ascensus continues to be the Plan manager. He noted the following points:

- There was about \$4 million in growth in the plan--from \$384.7 million to \$388.6 million.
- Contributions exceed withdrawals by \$6.9 million.
- Contributions increased by \$2.3 million and withdrawals decreased \$1.4 million.
- Administrative fees for the program were \$3.1 million and the Bank of North Dakota gets a portion of that fee as Trustee for the Plan.
- Contributions for North Dakota were up by \$2 million from \$17.6 to \$19.6 million. Total North Dakota accounts increased by 2,700 accounts. College SAVE 529 Matching Grant Program increased by about 600 recipients; Children FIRST Grant Program increased by 800 recipients and North Dakota net assets increased by about \$15 million.

Mr. Porter noted the changes that had been made to the College SAVE 529 Matching Grant Program and the Children FIRST Grant Program. He also reviewed the Statements of Fiduciary Net Position and Statements of Changes in Fiduciary Net Position.

Mr. Porter presented the non-confidential Bank of North Dakota Advisory Board April 21-22, 2016 meeting minutes.

Governor Dalrymple closed the meeting at 3:28 p.m. pursuant to North Dakota Century Code 6-09-35 to discuss the items on the agenda under Bank of North Dakota confidential business.

Following the confidential portion of the meeting, the Commission reconvened in non-confidential session at 3:50 p.m. and it was noted that during the confidential portion of the meeting it had been moved and seconded that the Bank of North Dakota be authorized to participate in two loans identified as Attachments 24 and 25. In non-confidential session, on a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Steinwand reported Joel Erickson will be relocating to Fargo; the Bank is opening an office there and will be renting space from the NDSU Research and Technology Center. This is very similar to what Kim Kautzman is doing on UND's campus in Grand Forks. He noted that Chad Johnson has left the Bank and taken a position with First Western. First Western is opening a branch office in Bismarck. The Bank has hired two new bankers,

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Mitch Nelson originally from Bottineau and Craig Hanson. He reviewed their qualifications. He is pleased with being able to hire these highly qualified individuals.

Mr. Steinwand briefly commented on the six community forums that the Bank of North Dakota had held in conjunction with the Department of Commerce, Housing Finance Agency, Public Finance Authority, League of Cities and Association of Counties. He said the meetings were well attended by local developers, legislators, and city leaders who talked about what is going on in their communities, how infrastructure needs are being met, and what the local leaders see for the future. He stated the participating agencies/associations will meet together and prepare a report which will be provided to the Commission in the near future.

The meeting concluded with a general discussion about the real estate market throughout the state--where the Bank needs to restructure loans; level of real estate activity, etc.

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

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary