

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on September 27, 2016 beginning at 9:00 a.m.
Governor's Conference Room
State Capitol

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

Also

Present: Jaret Wirtz, WAWSA
Joel Erickson, Bank of North Dakota
Craig Hanson, Bank of North Dakota
Andrea Travnicek, Governor's Office
Bonnie Storbakken, Governor's Office
Jessica Pfaff, Agriculture Department
Lacey Anderson, Savage/Odney

Governor Dalrymple called the Industrial Commission meeting to order at 9:00 a.m. and the Commission took up Western Area Water Supply Authority business.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, provided the Commission with a copy of the Western Area Water Supply Authority July financial report and Debt Reduction Report. (A copy of the report is available in the Commission files.) The cover memo on the report states:

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

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

Page 1 prepared by the Bank of North Dakota, reflects debt service payments through the month of August, 2016. In August 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 August revenues and expenses and net income. On page 2 you will see the capital improvement disbursements (highlighted in orange) that you previously approved. The one principal payment made in August is highlighted in yellow. Net income for the month of August was **\$570,307.14** before making their principal payment. *This level of income will trigger an additional principal payment in September or October depending on cash flows on the \$50 million BND loan.* 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 August went up to \$1,478,245.27. I am pleased to note that this is the highest it has been since the Fall of 2015. (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 August 31, 2016. As noted on the Balance Sheet the Accounts Receivables are \$2,812,816.66 which is included in the assets of \$6,026,789.23 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 August.

In response to a question regarding why this month was so good, Mr. Wirtz said the competitive price of \$.60 that the Commission approved earlier in the year helped WAWS sell additional water. All the fracture jobs WAWS has been involved in are a result of the lower price. A fracture job on a 4-well pad can result in water sales of close to one million barrels. He anticipated having a few more jobs in the next couple of months. He was hopeful of having a couple of months with sales in the \$1.2 to \$1.8 million range.

In response to a question, Mr. Wirtz indicated that part of the demand for WAWS water is that the fracking is taking place in McKenzie and Williams Counties and for these temporary jobs the operators can lay a flat line above ground from one of WAWS infrastructures to the well site--sometimes as much as 7 miles. He commented that one of the reasons why they haven't been able to get some of the large frack jobs in the Williston area is that their pipelines aren't big enough to provide the volume needed for the frack job and to meet all the demands for domestic use. Domestic use must be met first.

Ms. Fine discussed a request for reimbursement of capital expenditures from the WAWS Board for \$3,996.50 involving some design work for the Hess Industrial Bulk Connection and the Continental-Marshall TWP Service Connection.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission grant the request of the Western Area Water Supply Authority (WAWS) Board of Directors and reimburse WAWS for \$3,996.50 in design costs for the Hess Industrial Bulk Connection and the Continental-Marshall TWP Service Connection. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Wirtz discussed industrial contract pricing. He reminded the Commission of the volume commitment pricing that was put in place earlier in the year for three-months that allowed for a \$.60 price per barrel if the operator purchased over 1,000,000 barrels of water in a year. He has had numerous requests from oil and midstream companies for some kind of long term pricing for water primarily to meet the need for maintenance water. Companies are looking to put in infrastructure not only for produced water but for fresh water. If a company is building millions of dollars of infrastructure and, in some cases, coming miles to get to the WAWS pipelines, they would like to see something longer than a one year contract. There is no security for them to buy from WAWS because after the first year WAWS could raise the price after the company has made that investment in infrastructure. WAWS is not offering to pay for the building of any of that infrastructure. The only thing WAWS can offer is to give them some kind of long term price discount with a take-or-pay component in it.

Mr. Wirtz reviewed the following concept that he would like the Commission to consider:

The Western Area Water Supply Authority may establish a rate of \$.60 per barrel based on volume commitments with the following terms:

- 1) Contract must be for 5 years;
- 2) Purchaser must commit to pay (a take or pay) 25% of the volume of the yearly average of water purchases with the minimum amount being \$50,000 a year.

He indicated that this would be something that he believes operators would be interested in for their maintenance water because it has a yearly average component to it. It also guarantees that WAWS would get a payment even if no water was purchased. He has been asked about making the contract for ten years but right now he believes five years is the right number. He distributed a handout. (The handout is available in the Commission files.) He stated that WAWS needs some kind of tool to be able to negotiate for the maintenance water contracts. There are a lot of wells now and more to come that will need maintenance water and that market does not have the highs and lows like the frack water demand. Studies have been done by EERC regarding maintenance water demands, and if WAWS can just get a small portion of that market it will be very helpful to WAWS in repaying its debt. It won't work for every company but it could provide guaranteed revenue for WAWS for a number of years. The WAWS system is way better designed for maintenance water as it is a slow moderate demand and not the spikes of water demand for frack jobs. WAWS can handle that more moderate demand on its pipelines. WAWS doesn't have the capacity to meet all the maintenance needs out there but if they can be competitive in their pricing they

would be able to serve some of the oil fields.

Mr. Wirtz and the Commission members discussed how this pricing concept would work -- if \$.60 was the right number--Mr. Wirtz thought that it was; would this make a difference when the private sector is often willing to pay for the permanent infrastructure--Mr. Wirtz hoped that it would--might depend on the location; will companies agree to the "take or pay" with a \$50,000 per year minimum--Mr. Wirtz indicated that when WAWS was first formed they offered "take or pay" contracts and companies were interested because there was a large demand for water; did the concept also need a guaranteed minimum amount purchased over five-years--Mr. Wirtz said he would look at it but he thought the required minimum payment would generate a minimum amount of water purchased; was the rolling average too complicated and too hard to manage--Mr. Wirtz said he didn't think so; should this concept be offered for a period of time to see if it works and then reconsidered--Mr. Wirtz said he would recommend at a minimum a six-month trial period although he really needs to be able to offer something longer term to be competitive; how would the domestic needs be assured--Mr. Wirtz stated that the contract would indicate that domestic water needs take precedent; and the water demands for maintenance water versus fracturing--Mr. Wirtz stated that the maintenance water is a slow steady demand every day for 365 days per year and fracturing is much higher but for a shorter period of time.

The Commission directed that Mr. Wirtz come to the next meeting with some more details about his concept and the terms that would be included in the contracts. The Commission indicated they were supportive of the concept but needed to see more details. Mr. Wirtz stated that he would do that and noted that there is some time sensitivity because companies are hoping to put some infrastructure in yet this fall.

In response to a question regarding how WAWS is coming on domestic hookups, Mr. Wirtz said in McKenzie County this year WAWS has hooked up around 250 to 300 homes; region wide another 300 to 400 on the north side of the river. WAWS will be laying 700 miles of pipe this year for rural distribution.

In response to a question regarding who is paying for the rural hookups, Mr. Wirtz said there is \$20 million on the domestic side that the rural people are paying and the cities are paying back to help repay the loans. That is in addition to anything in the future that WAWS will need to have if grant funding comes from the Water Commission because the Water Commission requires a match. If there are loans to provide the match that will be coming from the domestic side of WAWS. It was stressed the importance of getting water to the rural communities and rural residents

Being no further Western Area Water Supply Authority business, Governor Dalrymple adjourned this portion of the meeting at 9:38 a.m. and the Commission took up Student Loan Trust business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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Tim Porter, Bank of North Dakota
Todd Steinwand, Bank of North Dakota
Joel Erickson, Bank of North Dakota
Craig Hanson, Bank of North Dakota
Bonnie Storbakken, Governor's Office
Jessie Pfaff, Agriculture Department
Members of the press

Governor Dalrymple called the Student Loan Trust portion of the Industrial Commission meeting to order at 9:38 a.m. following completion of Western Area Water Supply Authority business.

Mr. Eric Hardmeyer, Bank of North Dakota President, presented a memorandum outlining a request from the Bank of North Dakota for a transfer from the Student Loan Trust to the North Dakota Guarantee Agency. (A copy of the memorandum and attachments are available in the Commission files.) Karlene Fine, Industrial Commission Executive Director and Secretary, provided a draft resolution which would authorize the transfer.

Mr. Hardmeyer stated that this \$10 million transfer would support the Dakota Education Loan (DEAL) programs. He stated that the Bank had made two similar requests in the last five or six years -- both to bolster the reserves for the DEAL programs. He noted that \$5 million of the \$10 million request is to fund DEAL reserves. The current DEAL allowance provides protection for claims relating to defaults, death/disability, and bankruptcy. As the portfolio grows (currently the Bank has over a billion dollars in student loans with the DEAL One program being very popular), particularly the DEAL One portfolio with higher loan amounts (some loans are as high as \$500,000), the risk of a significant loss due to death and disability increases. The Bank has researched the option of a blanket insurance policy to cover this risk but found the costs prohibitive. Additional reserves are required in order to self-insure against this risk.

Mr. Hardmeyer indicated that the other \$5 million being requested is for in-state loan fees currently being covered by the Bank of North Dakota. BND covers the loan fees for all ND residents and any borrowers attending a ND university. In 2015, due in large part to the DEAL One Program, BND paid over \$6.6 million in loan fees for these students. Through 9 months of the 2016 fiscal year, BND has paid over \$3.6 million in loan fees. A contribution from the Student Loan Trust would allow BND to take a holiday from these fees. BND has picked up the loan fee for the student so the student gets into the program for no fees and a low interest rate. He reviewed the operating statement for the North Dakota Guarantee Agency along with a five year forecast looking at what this \$10 million transfer would do for the Agency. He stated that there is sufficient money within the Student Trust (\$26.5 million) to make this transfer and he recommended approval of the transfer.

Mr. Hardmeyer reviewed the programs that the Bank, acting on behalf of the North Dakota Guarantee Agency, has been funding with proceeds from the College Access Challenge Grant. This \$1.5 million annual federal grant has been in place since 2011 but has been terminated by the Department of Education in August 2016. The programs include the following:

RUReadyND(Bridges): This program is used for career exploration, education planning and test preparation tools at almost every middle school and high school in North Dakota. Total \$250,000

Dual Credit: This program pays for up to two dual credit courses per year for students that are on free or reduced price lunch and allows these students to get a jump start on their college education Total \$250,000.

College Application Month: This program covers one college application fee for students applying to ND colleges. It was originally estimated that 2,000 students would take advantage of this program, however, the estimated demand is now 4,000 students impacting 50% of high school seniors. Total \$140,000

Crash Course: This educational event is for students and parents and is held in ten different rural communities. Topics cover financial aid, job opportunities, RUReady education, scholarships, and college planning. Total \$60,000.

HEROS - Higher Education Resource Organization for Students - Is a group of school officials that work together to solve Native American student needs/issues - Total \$1,000.

ND Indian Youth Leadership Academy - A summer week-long event hosting over 100 native youth, grades 7 - 12 from throughout the state. The concept is to design, develop, and implement a wide range of leadership programs, opportunities that will advance one's spiritual, intellectual, emotional and physical attributes. Total \$20,000.

Mr. Hardmeyer indicated that the costs for these programs for five years will be \$3.6 million. He stated that when the Bank transferred the duties of the federal program back to the U.S. Department of Education, the Guarantee Agency received a one-time windfall from the operating fund of \$3.6 million. The Agency intends to use that \$3.6 million to continue to fund these programs for the next five years. In discussions with educators throughout the state and various stakeholders it was stated that these programs provide a significant value to educators, counselors, parents and students in North Dakota schools.

Mr. Hardmeyer said the last time the Bank requested a transfer he was asked the question of how much the Bank needed from the Trust if it were to go away and he had indicated \$10 million. The Bank believes this is the appropriate time to make the request for the additional funding.

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

RESOLUTION APPROVING TRANSFER OF FUNDS
TO STATE GUARANTEE PROGRAM PURSUANT TO
SECOND GENERAL BOND RESOLUTION

RECITALS

WHEREAS, the Industrial Commission of North Dakota (the "Industrial Commission" or "Commission") on June 19, 1996, authorized and approved a Second General Bond Resolution (the "1996 General Bond Resolution"); and

WHEREAS, the 1996 General Bond Resolution created certain funds and accounts, including the Revenue Fund in Section 5.2 and in Section 5.4 set forth the use and disbursements of the Revenue Fund Moneys; and

WHEREAS, the Industrial Commission on June 24, 1998 adopted the Third Supplemental Resolution to the State of North Dakota Student Loan Revenue Bonds Second General Bond Resolution which amended Section 5.4(A) (1) (viii) of the Second General Bond Resolution. This amendment set forth in part that balances in the Revenue Fund may be applied by the Commission for the purpose of funding a Guarantee Agency's Guarantee Program if a Guarantee Agency commences operations in the State under certain conditions; and

WHEREAS, the Guarantee Agency has commenced operations in this state and a request has been made to transfer funds from the Revenue Fund of the 1996 General Bond Resolution in the amount \$10,000,000 with \$5,000,000 to be used to eliminate the need for the payment of loan fees by in-state students receiving a DEAL loan and \$5,000,000 to provide additional reserves for the DEAL program.

NOW, THEREFORE, be it resolved by the Industrial Commission of North Dakota:

1. That all conditions required for the transfer of funds from the Revenue Fund of the 1996 General Bond Resolution, and particularly Section 5.4 thereof, have been satisfied to permit a transfer of a portion of the Revenue Fund balance to the Guarantee Agency's Guarantee Program.
2. That the amount of \$10,000,000.00 is hereby authorized and approved to be transferred from the Revenue Fund to the Guaranty Agency's Guarantee Program. The Authorized Officer and the Trustee are authorized to take any and all actions necessary to effectuate the transfer authorized by this Resolution.
3. That any moneys transferred to the Guarantee Agency may be transferred back to the Revenue Fund to the extent such funds are no longer needed by the Guarantee Agency to fund the Guarantee Program.
4. That this Resolution is effective immediately.

In response to a question regarding the transfer, Mr. Hardmeyer stated that the bond indenture allows for the transfers to the North Dakota Guarantee Agency and that these dollars will be used for the benefit of North Dakota students or students attending North Dakota universities. If the Bank of North Dakota was not picking up the costs of the loan fees, the students would have to pay those fees.

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

Being no further Student Loan Trust business, Governor Dalrymple adjourned this portion of the meeting at 9:50 a.m. and the Commission took up Bank of North Dakota business.

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Karlene Fine, Executive Director and Secretary

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Jessie Pfaff, Agriculture Department
Members of the Press

Governor Dalrymple called the Bank of North Dakota portion of the Industrial Commission meeting to order at 9:51 a.m. following completion of Student Loan Trust business.

Mr. Eric Hardmeyer, Bank of North Dakota President, presented a resolution authorizing BND to obtain advances from and to pledge assets to a Federal Reserve Bank. This authorizes certain individuals in the Bank to conduct transactions that involve the Federal Reserve including borrowing money, discount, rediscount or sell – it is the standard resolution that the Federal Reserve requires from the Bank and the proposed resolution updates the titles of those individuals that are eligible to do that.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the following resolution and further authorize the Industrial Commission Executive Director and Secretary to certify this action by signing the Form of Authorizing Resolutions for Borrowers required by the Federal Reserve Bank:

1. RESOLVED, that the Bank of North Dakota ("Borrower") is authorized to request advance(s) from, incur indebtedness, including overdrafts, to and pledge and grant a security interest in the Borrower's property, whether now owned or hereafter acquired, to a Federal Reserve Bank.
2. RESOLVED, that the persons with the following titles:

President/CEO
SVP/Accounting & Treasury
SVP/Business Development
SVP/Technology & Operations
Treasurer

and each of their successors in office, any one of whom is authorized to:

- (1) Take each of the actions listed in paragraphs (a)-(e) immediately below and (2) send the names, titles, and signatures of individuals authorized to take such actions in the name and on behalf of the Borrower:¹

- (a) to borrow money from a Federal Reserve Bank on the terms and security that such Federal Reserve Bank requires;

¹ If certain persons are authorized to undertake only some of these activities, e.g., to borrow, but not to pledge on behalf of the Borrower, this resolution should be split to so specifically identify who is authorized to undertake which activity(y)(ies).

- (b) to discount, rediscount, or sell (with or without the Borrower's agreement to repurchase) and, for any of those purposes, to endorse and assign notes, drafts, bills of exchange, acceptances, other bills receivable, evidences of indebtedness, and securities, now or hereafter acquired by the Borrower;
 - (c) to make, execute, and deliver any application, note, agreement, certificate, power of attorney, and any other document that any Federal Reserve Bank requires in connection with any transaction authorized by this resolution;
 - (d) to grant, assign, pledge, and transfer to any Federal Reserve Bank security interests in any or all property of the Borrower, whether now owned or hereafter acquired, and to endorse, assign, deliver, deposit, and/or pledge any of such property to any Federal Reserve Bank as collateral to secure payment or performance of any obligation of the Borrower to a Federal Reserve Bank; and
 - (e) to do any and all other acts and things that may be necessary or incidental to any transaction authorized by the relevant resolution, or that may be designed or intended to carry out the purpose of such resolution.
3. RESOLVED, that a Federal Reserve Bank making an extension of credit to the Borrower is appointed as the Borrower's attorney-in-fact for it and in its place and stead, to endorse, assign, transfer and sell, set over and deliver collateral pledged to such Federal Reserve Bank, and to take any other action deemed necessary or advisable by the Federal Reserve Bank to exercise its rights with respect to any advance or indebtedness owed by the Borrower, in its capacity as secured party, including but not limited to accepting and endorsing payments on loans, preparing and/or filing of any documents necessary to perfect, protect, preserve, or release the interest of the Federal Reserve Bank or the Borrower in such collateral, or compromising disputes or handling insurance issues related to such collateral. The power of attorney is coupled with an interest and as such is irrevocable, and full power of substitution is granted to the assignee or holder. The Borrower ratifies any and all action authorized herein and taken by any such Federal Reserve Bank as the Borrower's attorney-in-fact. The rights, powers, and authority of the attorney-in-fact to perform any and all act(s) whatsoever necessary remains in full force and effect and binds the Borrower, its legal representatives, successors, and assigns until all indebtedness of the Borrower to any such Federal Reserve Bank has been fully satisfied and discharged.
4. RESOLVED, that we approve and consent to be bound by the provisions of the Federal Reserve Bank of Minneapolis's Operating Circular No 10, effective October 15, 2006, as amended and supplemented from time to time thereafter ("OC-10").
5. RESOLVED, that the Borrower is authorized and approved to use any record (as such term is used in OC-10) to endorse or pledge to a Reserve Bank the notes and other obligations offered as collateral to secure payment or performance of any obligations of the Borrower to a Reserve Bank. The record will have the full force and effect of a manual endorsement.
6. RESOLVED, that these resolutions and the powers and authorizations granted or confirmed by them continue in effect until written notice of revocation is received by each Reserve Bank that has relied or is relying on such resolutions and the Borrower shall continue to be bound with respect to any outstanding obligations and pledges to any Reserve Bank at the time the notice of revocation is received by such Reserve Bank.
7. RESOLVED, that a duly certified copy of these resolutions be furnished to each Reserve Bank to which the Borrower applies for an advance or has an account.

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

Mr. Hardmeyer presented the non-confidential Bank of North Dakota Advisory Board July 21, 2016 meeting minutes.

Mr. Hardmeyer updated the Commission on the plans for College Application Month. He said there is a news release going out today regarding College Application Month which is part of a national initiative known as the American College Application Campaign started in 2005. Last year the University System did this on their own as a pilot and had four schools that signed up. At this point the Bank has over 80 high schools that have signed up for this covering over 4,000 students or about 50% of the students. BND will pick up the application fee of \$35.00 for each student that applies to a North Dakota school. This is going to be a significant part of the ongoing Guarantee Agency work. The Agency and Bank have engaged a number of bankers, economic developers and college people to help with this program. The Bank believes this is a pretty significant program for North Dakotans.

Mr. Hardmeyer said earlier this month, September 2, S&P reaffirmed BND's credit rating. S&P goes through a semi-annual process with the Bank and their formal rating came out and left the Bank's rating as is with a stable outlook. They took the Bank through a series of questions and stress testing and were comfortable leaving the Bank's rating where it is at. This is positive news.

Governor Dalrymple closed the meeting at 9:57 a.m. pursuant to North Dakota Century Code 6-09-35 to discuss the items on the agenda under Bank of North Dakota confidential business.

Following the confidential portion of the meeting, the Commission reconvened in non-confidential session at 10:08 a.m. and it was noted that during the confidential portion of the meeting, it had been moved and seconded that the Bank of North Dakota be authorized to participate in one loan identified as Attachment 9. In non-confidential session, on a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Bank of North Dakota business, Governor Dalrymple adjourned this portion of the meeting at 10:08 a.m. and the Commission took up Department of Mineral Resources business.

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Also

Present: Lynn Helms, DMR
Bruce Hicks, DMR – Oil and Gas Division
Alison Ritter, DMR – Oil and Gas Division
Hope Hogan, Attorney General's Office
Alexis Brinkman Baxley, ND Petroleum Council
Lisa Lone Fight, MHA
Harriet Goodiron, MHA
Robert Fimbres, MHA
Rylan Baker, MHA
Aron Abbey, MHA
JoAnn Marsh
Andrea Travnicek, Governor's Office
Bonnie Storbakken, Governor's Office
Jessica Pfaff, Agriculture Department
Members of the Press

Governor Dalrymple called the Department of Mineral Resources portion of the Industrial Commission meeting to order at 10:08 a.m. following completion of Bank of North Dakota business.

Mr. Lynn Helms, Department of Mineral Resources Director, requested a motion to hold a statewide setback hearing on October 21, 2016. He briefed the Commission on the work that had been done by the Energy and Environmental Research Center as part of the Bakken Production Optimization Program on the issue of setback rules. He provided the Commission with a handout on the results of a Bakken-Three Forks Simulation Exercise that was conducted by a consortium of companies earlier in the year. (A copy of the EERC Bakken-Three Forks Simulation Exercise Results is available in the Commission files.) After seeing these results several of the companies have asked the Commission to look at reducing the heel and toe setbacks of wells--that is the distance from the ends of the spacing unit. This work indicates that an additional 200 million more barrels of oil could be recovered over the total life of the Bakken if there was a reduction in the setbacks based on the assumptions that between 45,000 to 55,000 wells are yet to be drilled and an additional 14,000 barrels of oil per well would be recovered. It is the staff recommendation that the Commission authorize a statewide setback hearing. This will give the staff and Commission an opportunity to hear from everyone on this potential change. He noted that there are some entities that have some concerns about making a change. This will allow everybody a chance to state their position and then the staff can make a recommendation to the Commission at a future meeting. Mr. Helms indicated that if the Commission would approve this recommendation they will be specific about the kinds of evidence to be presented so it is clear to the public that this hearing is not about a setback distance from someone's home or from an environmentally sensitive area--this is not a hearing about surface setbacks. It is a hearing about wellbore setbacks in the formation inside a spacing unit.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission direct that a hearing be held on October 21, 2016 to consider amending the current Bakken, Bakken/Three Forks, Sanish, and/or Three Forks Pool field rules to eliminate or reduce the setbacks currently established for the heel and toe of horizontal wells in ND, and such other relief as is appropriate.

The Commission and Mr. Helms discussed several items regarding the setback rules:

- Originally wells had 500 foot setbacks and that was reduced to 200 feet.

- This would be looking at a potential increase in recovery versus protecting correlative rights--need to make sure a well is not so close to the adjoining spacing unit that the fracture goes into the neighbor's minerals or drains the adjoining spacing unit.
- This would only relate to the heel and toe. Industry feels the 500 foot setback along the parallel sides of a wellbore is settled science and does not need to be considered at this time. Section line wells are the tool that is used to resolve the drainage in those areas.

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

Mr. Helms presented orders for the following cases heard on July 27 and August 24, 2016. (Copies of the orders are available in the Commission files.)

Case 23376, Order 27656 Mr. Helms said this is an application to permit a treating plant. He provided the Commission with an exhibit from the hearing that showed the potential location of the treating plant and a list of the violations of Health Department waste transfer facility regulations. (The handout is available in the Commission files.) He said the proposed treating plant location is right along Highway 22 north of the City of Killdeer. The applicant is requesting that their waste transfer facility be converted to a waste treating plant. This facility was permitted in 2012 as a waste transfer facility by the ND Health Department and by January 2014 the operator was in chronic violation of their permit and the regulations of the Health Department.

Mr. Helms indicated that the proposed Order 27656 includes in the findings all of the back and forth between the applicant and the Health Department in an attempt to correct all of the violations. Some of the violations have been completely corrected and some of the violations are in the process of being corrected. There has been an administrative consent agreement, there were extensions to try to resolve the issues in the consent agreement, there were temporary permit periods, all of that has expired now and the operator, Renewable Resources, is seeking a permit from the Commission to convert this facility to a waste treatment plant. He indicated there is also a concern that this site is located immediately on top of the Killdeer aquifer. The studies done in this area show that the Killdeer aquifer flows towards the City of Killdeer and their water supply, the water table is at 20 to 25 feet and it is very vulnerable. The recommended proposed order denies the permit application which means this facility will have to be closed and cleaned up.

In response to a question, Mr. Helms said this is not an appropriate site. If the Commission were to issue a permit for this facility the operator would be in violation of the Commission's rules from day one because it is located on top of an aquifer and they have more waste stored at this location than is allowed under the Commission rules. They have a waste storage building that does not have a leak detection system under the floor. The whole location would have to be lined with a manmade impermeable liner, diked and a berm constructed around the facility. To try to modify this facility to meet the Commission's permit requirements would potentially cost more than just to move it. The operator has another facility where they are in compliance with the Health Department regulations and the waste that is at this site could be moved to the other facility.

There was discussion on the timing of the closure of the facility--Mr. Helms indicated that the Health Department currently has given the operator a deadline of October 1 to have the facility cleaned up. The Health Department has already directed the operator to stop receiving waste. This facility needs to be completely shut down and all of the waste moved to the other facility. The Health Department will have to work with them on the closure and abandonment process. It was indicated that there are \$800,000 in bonds on the facility.

Mr. Helms said ultimately this proposed order will result in the closure of this facility, the movement and treatment of this waste at a facility that is in compliance with Health Department regulations and it will eliminate this risk to the Killdeer aquifer.

Case 23376: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 27656 issued in Case 23376, denying the application for the construction of a treating plant to be located in the NENW of Section 32, T. 146N., R. 95W., Dunn County, ND, be approved this 27th day of September, 2016. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

The Commission asked to be updated next month on what happens at the facility.

Case 24500, Order 27607 - (reconsideration) temporarily abandoned status – Mr. Helms provided the Commission with some of the exhibits from the hearing on this case. (Copies of the exhibits are available in the Commission files.) Mr. Helms reviewed some of the exhibits from the hearing -- the front page of a mineral lease, a plan for reentry of a temporary abandoned well and recompletion as a horizontal well and a summary of the economics of the well.

Mr. Helms indicated that this case was before the Commission as a result of the surface owner petitioning the Commission to look at the temporary abandoned (TA) status of the #1-20 Cameron well – it has been temporarily abandoned for fifteen years. At that hearing, Williston Exploration was not able to show the Commission that they had a mineral lease or the right to actually develop this well and they were not able to provide a reentry plan or an analysis of the economics for the well. The Commission then issued Order 26866 taking the well off temporary abandoned status and directing that the well be plugged. The operator petitioned for reconsideration and came to a hearing and provided exhibits that showed they do have a mineral lease which they got November of last year and they do have a plan for reentering the well. In the meantime, they have conducted this exact plan on a Tyler well in the Norwegian Creek Field so they can perform this mechanically and they showed us that economically they can reenter this well and produce it.

Mr. Helms stated the proposed order would place this well back on temporary abandoned status. What that means is a year from now it would be looked at administratively to see whether the operator actually performed the work. If they didn't, the Oil and Gas Division might bring it up on its own motion to revoke the TA status or administratively revoke it. Adoption of the proposed order would give the operator a year to get their drilling rig together and bring it in and make it into a producing well. Mr. Hicks noted that this operator had only had this property for four years. The Commission indicated that it was important that there is follow through on this well.

Case 24500: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 27607 issued in Case 24500 reconsidering the Commission's prior action and granting temporary abandoned status of the Williston Exploration, LLC #1-20 Cameron well located in the NESW of Section 20, T. 139 N., R. 102 W., Dance Creek Field, Billings County, ND be approved this 27th day of September, 2016. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Helms said he would make a note before addressing the temporary abandoned status a year from now to advise the Commission on what has happened with this well.

Case 25222, Order 27641 - amendments to field rules for Elm Tree-Bakken Pool – Mr. Helms provided the Commission with an exhibit from the hearing--a map depicting the two overlapping spacing units where the operator wants to drill some section line wells and their drilling plan. (A copy of the handout is available in the Commission files.) The problem the staff has with this request is that the Commission has carefully considered the science of section line wells and has determined over time that to be a section line well, a well needs to drain

roughly equal amounts of oil from the adjacent spacing units – both adjacent spacing units and in order to accomplish that it needs to be within 250 feet of the section line. Continental is proposing to drill these wells 330 feet from the section line which is 80 feet further out and their stated reason for that is they want to precisely equally space all the wells across the spacing units.

Mr. Helms stated that the Commission had previously denied these section line wells and told Continental to come back for exception location wells because the science showed that 95% or more of the oil from these wells would be produced from the spacing unit they were in. The BLM said no, they will not permit these wells as exception location wells so that left Continental with the inability to drill the wells the way they want. The Oil and Gas Division staff believes the BLM is incorrect in their analysis of this and he is asking the Commission to deny this application to expand the section line corridor. By taking this action the Commission will be protecting the correlative rights of the adjoining spacing unit.

In response to question, Mr. Helms said BLM believes that any well drilled within 500 feet of a section line--they think the corridor should be 1,000 feet wide--should be considered a section line well. They are not looking at the issue of correlative rights--they are focusing on their own mineral rights. This is a classic case of the BLM using their permitting authority to force their opinion on private surface lands and minerals.

Mr. Helms said the operator is stuck here because they want to do the right thing and BLM is not permitting it. The operator does have the option of moving these wells into the more narrow corridor and adjusting all the offset wells to get the efficient drainage that they need.

Case 25222: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 27641 issued in Case 25222, denying the applicant's request to amend the field rules for the Elm Tree-Bakken Pool, McKenzie County, ND be approved this 27th day of September, 2016. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Helms indicated that Case 23087 should be discussed in open session. Governor Dalrymple amended the agenda and placed Case 23087 in open session.

Mr. Helms discussed proposed Order 27596 issued in Case 23087 which is a default order. He stated that Black Gold Energy Resources is the owner of two wells in Stark County and they have gone into bankruptcy. The two wells have been confiscated by the Industrial Commission and the Oil and Gas Division has already contracted to plug and reclaim the wells. There is no opposition to that by the bankruptcy attorney or Black Gold Energy Resources. They were in violation so there was an administrative complaint action against them for \$337,500. The staff is requesting, at the direction of Administrative Law Judge, Patrick Ward, a default order so a judgement can be entered and any money that might show up through the bankruptcy could be used to offset the cost of plugging and reclaiming these wells which is about \$300,000. The surety company has already forfeited two \$50,000 bonds. That \$100,000 will offset only a portion of the costs resulting in the Commission spending about \$200,000 out of the Abandoned Well Plugging and Site Restoration Fund to finish the work. This default order will allow the Attorney General's Office to enter an order for judgment in the district court and that will become part of the bankruptcy proceedings and any money that would turn up anywhere could be used to offset plugging costs. The other thing about the default order is under the Abandoned Well Plugging and Site Restoration Fund the Commission is authorized to pursue working interest owners so if there are other working interest owners in these wells who have not paid their fair share of the plugging and reclamation costs, we would pursue them through this court order. It clears up all this paperwork and allows the staff to do whatever it can to get reimbursed for the plugging and reclamation. The staff believes all their assets have been confiscated.

Case 23087: It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order 27596 issued in Case 23087, be approved this 27th day of September, 2016. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

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

Mr. Helms gave an update on the administrative rules process. (A list of the rules is available in the Commission files.) He provided a list of all of the rules as they were proposed and the fate of them in front of the Administrative Rules Committee. He also provided a letter from the Legislative Council discussing concerns with regards to five sections of rules that are highlighted in yellow. Thirty-three sections will go into effect October 1 and five sections of the rules the Commission approved in June and moved through the process are being held over until December 5 which is the next time the Administrative Rules Committee is meeting. That timing means the earliest those five sections could take effect would be January 1. The Committee is asking that a representative of the Commission, probably himself, meet with Senator Armstrong to work on a resolution of their concerns. The thing that comes up in every one of the five sections is the retroactive application of the rule. His intention would be to contact Senator Armstrong to begin meeting with him to talk about possible ways to resolve this and in November put that proposal in front of the Commission for consideration so it could go back to the Administrative Rules Committee on December 5.

Commissioner Goehring said he is in favor of Mr. Helms working with Senator Armstrong and figuring out what needs to be done to comply with the intent of the law.

Governor Dalrymple said Mr. Helms needs to have that meeting but the Commission has carefully reviewed the rules and they are good rules--reasonable, rational and he didn't see any reason not to go forward with them. If there is an issue with gathering lines or spill containment, he didn't see the difference whether it is a brand new site or an old site. If there is a risk it needs to be addressed. He thought it should be more of a discussion of the amount of time that operators need to get in compliance with the new rules, we can be flexible there but the rules are good rules.

Commissioner Goehring stated that he had been contacted about the retroactivity of the rules--that retroactivity was never spelled out, implied or intended in the legislation. That was not the intent of the Legislature and the Commission did not have the authority to apply the rules retroactively. He thought it was more of how we worded the rules that was causing concern.

Attorney General Stenehjem expressed concern that a construction season has been lost. He agrees with Governor Dalrymple that the Commission by adopting these rules took measures to assure that there is maximum safety of these pipelines. The Commission also included language that would allow for exceptions when operators demonstrate to the Commission that those kinds of protections are not needed.

In response to a question Mr. Helms indicated that should a spill happen before the rules become effective the Commission has limited authority--there will still be reporting under the current rules.

Attorney General Stenehjem said that by adopting the rules the Commission had hoped to put in place the requirements to stop the leaks from happening in the first place. He didn't know if there was anything Mr. Helms can do to address the Committee's concerns but staff had extensive hearings on these rules, listened to both sides and came up with a good approach to this that made significant concessions plus allowed for an exception for cases that are made on a case by case basis.

Mr. Helms said the staff considered over 500 pages of transcripts and comments and every one of these held over sections were amended after the comments and before the Commission's June approval. Apparently not to the satisfaction of the parties that appeared at the Administrative Rules Committee meeting so he will meet and hear their proposal and go from there.

Governor Dalrymple said there is no harm in discussion. We did our homework on this and they are a good set of rules.

Mr. Helms indicated that Cases 24178 and 24592 listed on the agenda for executive session can be removed. The staff had been informed that a settlement offer would be provided and it has not been received so there is nothing to discuss at this time.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2 the Industrial Commission close the meeting to the public and enter executive session for the purpose of attorney consultation. The purpose of the executive session will be to consult with the Commission's attorney regarding the following pending adversarial administrative proceeding for Case 24685. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Dalrymple reminded the Commission members and those present in the executive session that the discussion during executive session must be limited to the announced purpose for entering into executive session which is anticipated to last approximately 10 - 15 minutes.

The Commission is meeting in executive session to consult with the Commission's attorney(s) regarding the previously identified adversarial administrative proceedings. Any formal action by the Commission will occur after it reconvenes in open session.

Commission members, their staff, employees of the Department of Mineral Resources and counsel with the Attorney General staff will remain but the public is asked to leave the room.

At 11:08 a.m. the Commission entered into executive session for purposes of attorney consultation regarding pending adversarial administrative proceedings for Case 24685.

EXECUTIVE SESSION

Members Present:

Governor Jack Dalrymple
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Department of Mineral Resources Personnel Present:

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

Others in Attendance:

Hope Hogan Assistant Attorney General, Office of the Attorney General
Bonnie Storbakken Governor's Office
Jessie Pfaff Agriculture Department
Andrea Travnicek Governor's Office

No action was taken during the Executive Session which was adjourned at 11:18 a.m. and the Commission returned to open session and the public was invited to return to the meeting.

Governor Dalrymple stated that the Industrial Commission meeting is reconvened at 11:18 a.m. and the public has been invited to return to the meeting room. During its executive session the Commission consulted with its attorney regarding Case 24685. No final action will be taken by the Commission at this time as a result of the executive session discussion on Case 24685. The Commission has provided to its attorney guidance regarding the development of an order for this case.

Mr. Helms reported that the trial for Jason Halek has been scheduled to begin January 10 here in Bismarck. It is anticipated that it will be a three week trial. The indictment has been made public--Mr. Halek has been indicted on one count of conspiracy and two counts of serious violations of the Safe Drinking Water Act. He reminded the Commission that they had imposed a significant penalty on Mr. Halek and filed felony charges on Mr. Garber, the operator, who cooperated with EPA. EPA is now taking the next step to indict Mr. Halek, who lives in Texas. He indicated that the Department of Mineral Resources staff has worked with EPA to assist them in this case.

Being no further Department of Mineral Resources business, Governor Dalrymple adjourned this portion of the meeting at 11:20 a.m. and the Commission took up Public Finance Authority business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA

A handwritten signature in blue ink, appearing to read "Karlene Fine".

Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on September 27, 2016 beginning at 9:00 a.m.
Governor's Conference Room
State Capitol

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

Also

Present: DeAnn Ament, Public Finance Authority
Bonnie Storbakken, Governor's Office
Jessie Pfaff, Agriculture Department

Governor Dalrymple called the Public Finance Authority portion of the Industrial Commission meeting to order at 11:23 a.m. following completion of Department of Mineral Resources business.

Ms. DeAnn Ament, Public Finance Authority Executive Director, presented a Clean Water State Revolving Loan request from the City of Horace in the amount of \$1,340,000 to reline their sanitary sewer mains and man hole spot repairs and new man hole covers. They have applied for a twenty year loan and are pledging special assessments for the repayment. The Advisory Committee recommended approval of the loan.

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

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 Horace (the "Political Subdivision") has requested a loan in the amount of \$1,340,000 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 said she has been working with the Health Department, the recipient of the grant for the State Revolving Fund (SRF) Program, and after looking at the capacity of the SRF program have determined that as of January, 1, 2017 they will reduce the loan interest rates to 1.5% with a .5% administration cost for a loan rate of 2%. This will make the program even more attractive for municipal borrowers.

Being no further Public Finance Authority business, Governor Dalrymple adjourned this portion of the meeting at 11:23 a.m. and the Commission took up Administrative business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on September 27, 2016 beginning at 9:00 a.m.
Governor's Conference Room
State Capitol

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

Also

Present: Bonnie Storbakken, Governor's Office
Jessie Pfaff, Agriculture Department

Governor Dalrymple called the Administrative portion of the Industrial Commission meeting to order at 11:23 a.m. following completion of Public Finance Authority business.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented minutes for the Commission's consideration.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approves the following minutes: August 23 confidential and non-confidential meeting minutes and July 26 confidential meeting minutes. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

In response to a question, Ms. Fine indicated that she would be appearing before the Personnel Board in October regarding the Executive Director and the Deputy positions being determined as non-classified.

Being no further Administrative business, Governor Dalrymple adjourned the Commission meeting at 11:24 a.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary