

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on May 1, 2017 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also
Present: Leslie Oliver, Governor's Office
Cassandra Torstenson, Governor's Office
Jessie Pfaff, Agriculture Department
Max Wetz, Housing Finance Agency
Pat Nagel, Housing Finance Agency
Aron Abbey, TSRC MHA Nation
Robert Fimbres, TSRC MHA Nation
Jay Schuler, Department of Commerce
Andrea Pfennig, Department of Commerce
Members of the Press

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

Mr. Pat Nagel, Housing Finance Agency CFO, discussed the North Dakota Housing Finance Agency, Housing Finance Program Bonds Supplemental Authorizing Resolution 2017 Series A \$80,000,000, Series B \$11,060,000 and Series C \$13,940,000 and report on the 2017 Series A, B and C bond sale. He said Series A is a tax exempt transaction for the First Home Program. Of the \$80 million about \$55 million in loans has already been originated with the balance in the pipeline. All those funds are reserved plus approximately \$20 million so the Agency staff and financing team is already looking at the next bond transaction. When the financing team began working on this issuance they knew the demand was going up and increased the size of the transaction but the purchase of loans has been even higher than what they anticipated. He stated that the Series B and C are a taxable transaction for the ROOTS Program for \$25 million with Series B being the fixed rate portion and Series C being the variable rate. Approximately \$9 million of this amount is already used and, hopefully, the remaining amount will be sufficient to meet the need through year end. He indicated that the rate on the Agency's program is 3.45 percent on First Home and 3.75 on ROOTS.

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

STATE OF NORTH DAKOTA

NORTH DAKOTA HOUSING FINANCE AGENCY
HOUSING FINANCE PROGRAM BONDS HOME
MORTGAGE FINANCE PROGRAM

2017 SERIES A - \$80,000,000

2017 SERIES B - \$11,060,000

2017 SERIES C - \$13,940,000

**SUPPLEMENTAL
GENERAL AUTHORIZATION RESOLUTION**

WHEREAS, the Industrial Commission of North Dakota (the "Commission"), acting in its capacity as a state housing finance agency, i.e., the North Dakota Housing Finance Agency (the "Agency"), is

empowered by the provisions of the North Dakota Century Code Chapter 54-17 (the "Act") to establish and has established a home mortgage finance program to contract to purchase from lenders mortgage loans made to persons or families of low or moderate income to finance the purchase or substantial rehabilitation of owner occupied, residential dwelling units; and

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

WHEREAS, the General Resolution authorizes the issuance and sale of the captioned 2017 Series A Bonds (the "2017 Series A Bonds"), 2017 Series B Bonds (the "2017 Series B Bonds" and, together with the 2017 Series A Bonds, the "Fixed Rate Bonds") and 201 7 Series C Bonds, (the "2017 Series C Bonds" and, together with the 2017 Series A Bonds and the 2017 Series B Bonds, the "Bonds") pursuant to the Act, the application of the proceeds of which will provide funding for the captioned Home Mortgage Finance Program, including the North Dakota Roots Program (the "Program"), contemplated by the Act in furtherance of the Program for the providing of decent, safe, and sanitary housing for persons and families of low or moderate income; and

WHEREAS, the Commission acting as the Agency, pursuant to that 2017 General Authorization Resolution adopted by the Commission on February 16, 2017 (the "General Authorization Resolution"), regarding the authorization of and the negotiation and sale of the Bonds, appointed as its agents the Executive Director, the Director of Homeownership Programs, and the Chief Financial Officer of the Agency (the "Authorized Officers") for the purpose of negotiation of the terms of sale of the Bonds, subject to the limitations set out in the General Authorization Resolution, and to sign such agreements as are required for the issuance of the Bonds on behalf of the Commission after such terms of sale had been negotiated and to sign such certificates and other documents as are necessary and customary to complete the sale of the Bonds and to enter into agreements for their sale by the Agency and purchase by the Underwriters (as hereinafter defined, and which are so designated by an Authorized Officer); and

WHEREAS, the Authorized Officers did negotiate the sale of the Fixed Rate Bonds on April 4, 2017, within the limitations set out in the General Authorization Resolution as to maximum principal amount, final maturity and maximum interest rate; and

WHEREAS, the Authorized Officers intend to formally negotiate the initial interest rate on, and sale of, the 2017 Series C Bonds on or about May 9, 2017 within the limitations set out in the General Authorization Resolution (as hereby supplemented and amended) as to, final maturity and maximum interest rate, with a variable interest rate, subject to tender by bondholders; and

WHEREAS, the Agency expects to enter into a Standby Bond Purchase Agreement (the "Standby Bond Purchase Agreement") with the Federal Home Loan Bank of Des Moines to provide liquidity for any 2017 Series C Bond tenders; and

WHEREAS, the Agency negotiated and executed an ISDA Master Agreement dated as of July 30, 2009, between Royal Bank of Canada and the Agency (the "ISDA Master Agreement"), and pursuant thereto

entered into a Confirmation in conjunction with the sale of the 2017 Series C Bonds to effectively result in a fixed interest rate on the 2017 Series C Bonds; and

WHEREAS, in furtherance of the above stated objectives, the Commission, the Agency and RBC Capital Markets, LLC, Morgan Stanley & Co. LLC, Piper Jaffray & Co. and Isaak Bond Investments, Inc. as the purchasers of the Fixed Rate Bonds (the "Underwriters") have caused to be prepared and presented to the Commission for adoption after the sale of the Fixed Rate Bonds pursuant to the terms of the 2017 Series A/B Purchase Contract described below, but prior to delivery of the Fixed Rate Bonds, the following documents in final form (unless otherwise indicated) (collectively, the "Fixed Rate Closing Financing Documents"):

- A. 2017 Series A/B Bond Resolution, in substantially final form, attached hereto as Attachment A;
- B. 2017 Series A/B Purchase Contract, dated April 4, 2017 by and between the Commission and the Underwriters, attached hereto as Attachment B;
- C. Preliminary Official Statement with respect to the Fixed Rate Bonds, dated March 27, 2017, attached hereto as Attachment C; and
- D. Official Statement, with respect to the Fixed Rate Bonds, dated April 4, 2017, attached hereto as Attachment D; and

WHEREAS, in furtherance of the above stated objectives, the Commission, the Agency and RBC Capital Markets, LLC, as the purchaser of all of the 2017 Series C Bonds ("RBCCM"), have caused to be prepared and presented to the Commission for adoption in connection with the sale and delivery of the 2017 Series C Bonds, the following documents in substantially final form (collectively, the "2017 Series C Closing Financing Documents" and, together with the Fixed Rate Closing Financing Documents, the "Closing Financing Documents"):

- A. 2017 Series C Bond Resolution, attached hereto as Attachment E;
- B. 2017 Series C Purchase Contract, attached hereto as Attachment F, by and between the Commission and RBCCM;
- C. Offering Circular with respect to the 2017 Series C Bonds, dated May 2, 2017, attached hereto as Attachment G;
- D. Remarketing Agreement, attached hereto as Attachment H, by and among the Commission, RBCCM and Wilmington Trust, National Association, as tender agent;
- E. Confirmation to ISDA Master Agreement, attached hereto as Attachment I; and
- F. Standby Bond Purchase Agreement, attached hereto as Attachment J; and

WHEREAS, it appears that each of the Closing Financing Documents is in the appropriate and final form (or substantially final form, subject to determination of the final terms of the Bonds in accordance with

this Supplemental General Authorization Resolution) and is an appropriate document to be approved or executed and delivered by the Commission or the Agency, as may be necessary for the purpose intended; and

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

NOW BE IT HEREWITH RESOLVED:

1. The execution and delivery of the Closing Financing Documents and the sale of the Bonds to the Underwriters and RBCCM, as specified in and in accordance with the terms set out in each of the 2017 Series A/B Purchase Contract and the 2017 Series C Purchase Contract, is hereby authorized and the officers, agents and employees of the Commission and the Agency are hereby authorized, empowered and directed to take any actions required to effect the transactions contemplated therein and to finalize the terms of and execute any instruments (including any continuing disclosure agreement and tax certificates or forms) and take any actions required to effect the issuance of the Bonds, and to apply the monies received by the Commission from the bond proceeds in such manner as is necessary to give effect to the Program.
2. All prior acts of the officers, agents and employees of the Commission and the Agency which are in conformity with the purpose and intent of the General Resolution, the General Authorization Resolution and this Supplemental General Authorization Resolution in furtherance of the sale of the Bonds shall be and the same hereby are in all respects approved, ratified and confirmed.

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

Being no further Housing Finance Agency business, Governor Burgum adjourned this portion of the meeting at 1:05 p.m. and the Commission took up Renewable Energy Program business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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Governor Burgum called the Renewable Energy Program portion of the Industrial Commission meeting to order at 1:05 p.m. following completion of Housing Finance Agency business.

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

Renewable Energy Development Fund
Financial Statement
2015-2017 Biennium
May 1, 2017 Industrial Commission Meeting

	<u>Cash Balance</u>
July 1, 2015 Balance	\$ 3,496,859.75
Revenues from Resources Trust Fund	\$ 3,000,000.00
Other Revenues through March 31, 2017	\$ 5,636.83
Returned cash	\$ 331.40
Expenditures through March 31, 2017	<u>\$(1,539,930.43)</u>
Cash Balance as of March 31, 2017	\$ 4,962,897.55
Outstanding Administrative Commitments (<i>estimate</i>)	\$(46,334.59)
Outstanding Project Commitments as of March 31, 2017	<u>\$(1,825,480.88)</u>
Uncommitted dollars as of March 31, 2017	\$ 3,091,082.08

Renewable Energy Development Fund
Continuing Appropriation Authority
2015-2017 Biennium

July 1, 2015 Balance of Uncommitted Dollars	\$ 2,470,113.85
Transfer from Resources Trust Fund for 2015-2017 Biennium	\$ 3,000,000.00
Interest Income (Estimated)	\$ 5,000.00
Income from Project Applications (Estimated)	\$ 1,500.00
Returned Commitments	<u>\$ 331.40</u>
	\$ 5,476,945.25
Administrative Commitments	\$(120,000.00)
Commitments 2015-2017	<u>\$(2,265,000.00)</u>
	\$ 3,091,945.25

57-51.1-07. Allocation of moneys in Oil Extraction Tax Development Fund states the following:

Five percent of the amount credited to the Resources Trust Fund must be transferred no less than quarterly into the Renewable Energy Development Fund, not to exceed three million dollars per biennium.

Renewable Energy Development Fund (54-63-04, N.D.C.C.) – Continuing appropriation. The Renewable Energy Development Fund is a special fund in the state treasury. All funds in the Renewable Energy Development Fund are appropriated to the Industrial Commission on a continuing basis for the purpose of carrying out and effectuating this chapter. Interest earned by the Fund must be credited to the Fund.

Ms. Andrea Pfennig, Department of Commerce, discussed the Renewable Energy Council’s recommendations on the following two Grant Rounds 31 and 32 applications:

R-031-D: “A Novel Approach to Reduce the Energy Consumption of Residential Homes”; Submitted by Terra Labs; Principal Investigator: Daniel Schwandt; Project Duration: 11 months; Total Project Costs: \$1,461,664; Request is for \$500,000 - Council recommendation is \$500,000 with two contingencies. The purpose of the project is to develop a community heating and cooling system that utilizes geothermal energy and heat pumps to provide affordable and efficient energy for a residential community to be built in Horace. The system will be owned by the City of Horace. Cost savings will be realized through joint trenching with water main along with shared heating and engineering design in the well field. Expected results of the project include:

- Provide heating and cooling to at least 200 residential homes that is consistent, economical and energy efficient.
- Develop an effective load management method that improves heating and cooling load deficiencies thereby reducing the electricity demand on existing utility infrastructure.
- Demonstrate the feasibility of and opportunities for both residential geothermal heat pumps and community scale heating and cooling projects.

Ms. Pfennig stated the developer will be providing the land and there will be green space/four-acre park. Cass County Electric has indicated their support for the project. Mr. Jay Schuler, Department of Commerce Commissioner and Chairman of the Renewable Energy Council, said this project has been done in Canada and Europe but has not been done in the U.S. He noted that it would make a lot more sense to actually have this project done where there is no natural gas because the savings would be much greater. Even though Horace has natural gas this is a good place for a model to show how it works.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Renewable Energy Council to fund the grant application “A Novel Approach to Reduce the Energy Consumption of Residential Homes” and authorize the Industrial Commission Executive Director to execute an agreement with Terra Labs to provide a total of Industrial Commission Renewable Energy Program funding in an amount not to exceed \$500,000 with the contingency that State and local regulatory approvals are obtained and the results from Phase 1 of the project are provided to the Industrial Commission prior to disbursement of funds. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

R-032-A: “Portable Solar Array Modules”; Submitted by Packet Digital; Principal Investigator: Andrew Paulsen; Project Duration: 9 months; Total Project Costs: \$1,000,000; Request for: \$500,000 – The purpose of the project is to develop and commercialize transportable solar power generation modules capable of delivering up to 1kW for remote military installations, emergency shelters and camps, and a variety of commercial uses; and to eliminate the fuel requirement and noise and reduce the life cycle cost of standard electromechanical power generation.

Packet Digital is partnering with Nishati, a Virginia based company to develop the product. Manufacturing will occur at Chiptronics in Dunseith. Navigant Research forecasts the portable solar market will grow from \$550 million in 2014 to \$2.4 billion in 2024 (15.87% CAGR.) The product that Packet Digital is developing is expected to provide portable solar with 3% more power in 42% less space and 80% less setup time compared to what is currently available on the market.

With this project, Packet Digital expects to add 2 - 4 jobs in the first year, increasing to 5 - 10 in the next few years. Chiptronics also expects to add 4 - 5 jobs to support the manufacturing.

Ms. Pfennig said the Commission has worked with Packet Digital in the past and provided funding of \$1.2 million for three solar projects. Mr. Schuler said Terry Zimmerman with Packet Digital indicated that their company has generated sales in excess of \$2 million and has generated a profit. He indicated that the Council had added a contingency that the Industrial Commission Executive Director negotiate with Packet Digital to receive the funds back if Packet Digital reaches a certain level of success. Mr. Schuler posed the question: How much money should the Commission give to an individual or a company – should it be a loan or a grant? The Council had talked about the role of the Program being to help the company out at the beginning but as the company moves forward the funding come in the form of a loan. That is something the Commission has to decide.

Commissioner Goehring said it depends on the merits of the project – how much benefit will be derived; is it the beginning of something great or is it in midstream of something that the company is tweaking and modifying? Those are things that should be considered when determining the level of funding and if the funding award should be in the form of a grant or a loan.

Attorney General Stenehjem said if the company has ongoing operations and is making money and they agree to the funding being disbursed in the form of a loan then the funding should be in the form of a loan. The loan repayments can then be used to fund additional projects.

Mr. Schuler said the program receives \$3 million a biennium and Packet Digital has received \$1.2 million to date. Packet Digital has two different business models and they both look impressive.

Governor Burgum said so it is not a grant and not a loan – it is a grant but if you are successful then the grant gets paid back so it is kind of a loan. There was discussion about how to define certain level of success.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Renewable Energy Council to fund the grant application “Portable Solar Array Modules” and authorize the Industrial Commission Executive Director to execute an agreement with Packet Digital to provide a total of Industrial Commission Renewable Energy Program funding in an amount not to exceed \$500,000 with the contingency that the Executive Director include in that agreement provisions requiring funds be paid back if Packet Digital reaches a certain level of success.

In response to a question, Mr. Schuler indicated that Packet Digital is working with the Defense Department - the matching funds are coming from the Naval Research Laboratory. Packet Digital will be developing the value-added electronic components to be integrated into the portable solar arrays--fold-up generators that the military can carry on their backs and open up in an isolated area and generate electricity. Mr. Schuler stated that he is supportive of requiring a payback when the company is successful but was uncertain of how to structure the financing. Ms. Pfennig said one of the goals of this project is to develop a product that is more durable so they have been talking to different countries where sand can be an issue and they have developed a mesh screen that goes over it and a way for it to operate even when it is damaged – those are things they have developed in the past and things they want to create.

Governor Burgum said he was comfortable with the motion which delegates the Commission's Executive Director, with Mr. Schuler's help, to negotiate a trigger amount.

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

Ms. Pfennig discussed the Renewable Energy Council recommendations on the following two amendment requests for applications previously approved:

Contract R028-038: "Solar Soaring Power Manager Phase III"; Submitted by: Packet Digital; Original Total Project Costs: \$1,000,000; Original Amount Requested: \$375,000; Revised Total Project Costs: \$1,125,000; Revised Amount Request: \$500,000 (Increase of \$125,000) She said this request is for funding of the final phase of a three phase project to develop a solar powered UAS. In this final phase Packet Digital requested and received \$375,000 and they have developed some products with that funding. However, they feel they need to do a bit more work with the UAS to go commercial and have requested an additional \$125,000 which would take them up to that \$500,000 award ceiling. Packet Digital is working with c2renew based out of Fargo for the material for the UAS; it is biocomposites so it is using biomass and also working with Chiptronics for manufacturing. Ms. Pfennig noted that the Council is recommending a contingency that there be a repayment provision in regards to this funding award of \$125,000. The repayment provision would not apply to the funding that was previously approved.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Renewable Energy Council to increase the funding for the project "Solar Soaring Power Manager Phase III" and authorize the Industrial Commission Executive Director to execute an amendment to Contract R028-38 increasing the funding by \$125,000 which brings the total to an amount not to exceed \$500,000 with the contingency that the Executive Director include in the amendment provisions requiring funds be paid back if Packet Digital reaches a certain level of success. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Contract R025-035: "Pilot Scale Facility for Biocomposites Development for Industrial and Consumer Products Phase II"; Submitted by: c2renew; Request to reallocate funding amounts between operations and equipment – Ms. Pfennig indicated that the funding for this project is being used develop a pilot facility. The company is not asking for additional funds they just want to shift \$50,000 of the funding award from equipment purchases to operational expenses. The final breakout would be \$300,000 allocated to equipment and \$200,000 allocated to operating. Mr. Schuler noted that he had a conflict of interest on this project as he is a stockholder in the company.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Renewable Energy Council and authorizes the Industrial Commission Executive Director to execute an amendment to Contract R025-035 with c2renew for the "Pilot Scale Facility for Biocomposites Development for Industrial and Consumer Products" project allowing for a reallocation of Renewable Energy Program funding with \$300,000 being allocated for equipment costs and \$200,000 for operating costs and further to extend the contract through December 31, 2017. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

The following request for confidentiality for portions of the reports for the Portable Solar Array Modules project was presented:

RE: Confidentiality determination

The Renewable Energy Program statute - Chapter 54-63 - allows the Industrial Commission to determine if certain information is confidential.

Terri Zimmerman with Packet Digital has requested confidentiality for portions of the reports on the "Portable Solar Array Modules." Ms. Zimmerman has provided the information that is required in the statute to make the determination of confidentiality. Therefore it is my recommendation that the Industrial Commission grant Packet Digital's request and determine that the following information is confidential:

Portable Solar Array Modules project report appendices.

Ms. Zimmerman has indicated that they will be providing non-confidential information on their project that would be available to the public and the Commission will be posting those reports on its website.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Industrial Commission Executive Director and grant Packet Digital's request and determine that the following information is confidential:

Portable Solar Array Modules project report appendices.

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

Ms. Fine discussed a request for a special grant round as follows:

RE: Additional Renewable Energy Program Grant Round

The Industrial Commission is in receipt of a request from for the establishment of an additional grant round (Round 33). The Renewable Energy Program policies allow for the establishment of additional grant rounds by the Industrial Commission.

Ron Day with Tesoro Logistics indicated that they wish to submit a proposal for funding of a project for the installation and the modification of equipment at Tesoro's Dickinson Refinery to enable the facility to co-process renewable feedstocks (e.g., vegetable oils such as soy or distillers corn oil) into renewable diesel while continuing the processing of Bakken Crude oil. He has indicated a need to kick-off this project as soon as possible to allow for construction during the 2017 construction season.

I have consulted with Andrea Pfennig with the Department of Commerce as to whether she has any objections to having an additional grant round and she has indicated she does not. Therefore, I am recommending the establishment of an additional grant round with a deadline submission date of May 15, 2017.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Industrial Commission Executive Director and approve an additional grant round for the Renewable Energy Program with an application submission deadline of May 15, 2017. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

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May 1, 2017

Ms. Pfennig announced Mr. Kyle Bahls from ADM, a member of the Renewable Energy Council, is being transferred so as of June 1 he will no longer be on the Council. Appointments to the Council are done by the Governor and his office is in the process of filling that upcoming vacancy.

Being no further Renewable Energy Program business, Governor Burgum adjourned this portion of the meeting at 1:24 p.m. and the Commission took up Bank of North Dakota business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



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Jessie Pfaff, Agriculture Department
Aron Abbey, TSRC MHA Nation
Robert Fimbres, TSRC MHA Nation
Eric Hardmeyer, Bank of North Dakota
Todd Steinwand, Bank of North Dakota
Kelvin Hullet, Bank of North Dakota
Craig Hanson, Bank of North Dakota
Darrel Lingle, Eide Bailly
Members of the Press

Governor Burgum called the Bank of North Dakota portion of the Industrial Commission meeting to order at 1:25 p.m. following completion of Renewable Energy Program business.

Mr. Eric Hardmeyer, Bank of North Dakota President, presented the 2016 Bank of North Dakota Annual Report. (A copy of the report is available in the Commission files.) He noted that:

- this is the 13th year of consecutive record profits with net income at \$136 million
- the loan portfolio grew by about \$450 million
- Bank has maintained their S&P rating.
- over the last 10 years the Bank has grown from \$2.7 billion in assets to \$7.3 billion which is slightly less than in 2015.
- Capital is at its highest level at \$875 million.

He indicated the format of the annual report is different from prior years with just the balance sheet and income statement. It includes highlights about the education and infrastructure programs that the Bank financed this past year with quotes from stakeholders and individuals that did financing with the Bank.

He stated that 2016 was a record setting year--largest loan portfolio; largest equity position; largest profit. He stated that this was a result of the work of the Bank's employees and he thanked them for their hard work.

In response to a question Mr. Hardmeyer discussed the decrease in deposits at the Bank and the options that the Bank has to obtain liquidity if the State's deposits continue to decline. He stated that this is something they are monitoring all the time.

In response to a question Mr. Hardmeyer indicated that at the end of March the Bank's capital was at almost 13%. That is the highest capital that the Bank has had. The Bank's target is to be no less than 10%. With the transfers of \$240 million going to the State the percentage will drop down to 11%. In addition the Bank is on pace to earn between \$145 million to \$150 million in 2017. Those profits will become retained earnings so he believes the Bank is in good shape regarding capital but Bank management is continually working on the liquidity challenges.

In response to a question Mr. Hardmeyer discussed the analysis the Bank management does each month in regards to interest rate sensitivity--they look at the impact on the Bank's portfolio in different interest rate environments--most likely, declining, increasing, etc. Bank management is anticipating that the Federal Reserve will increase interest rates a couple of times during 2017 and then again in 2018.

Mr. Darrell Lingle, Eide Baily, presented the Independent Auditor's Report and Financial Statement - 12/31/16 (FASB). (A copy of the report is available in the Commission files.) Mr. Lingle explained that these financial statements are prepared under FASB Standards. The Bank also has financial statements that are prepared under the Government Accounting Standards (GASB). Those financial statements are required because the Bank is a state agency and their financial information needs to roll up into the State's Comprehensive Annual Financial Report (CAFR). The financials being presented today are the FASB financials -- the same standards followed for other banking institutions.

Mr. Lingle stated that their firm had issued an unmodified opinion or an unqualified opinion which is the highest level of assurance they can provide over the financial statements. He discussed the allowance for loan losses compared to total loans, how they had analyzed it and indicated that they are comfortable with the level of loan loss allowance. He went over the interest rate swap contracts/derivatives and reviewed how they had tested them and no issues were identified. He concluded that their opinion was unqualified and it was another good year for the Bank.

In response to a question Mr. Lingle said their firm had been conducting the audit on the Bank for five years. Their contract is up and the process for selecting the audit firm for the future has begun.

Mr. Kelvin Hullet, Bank of North Dakota, discussed amendments to the General Loan Policy for the following four programs: (A slide presentation is available in the Commission files.)

- Beginning Entrepreneur Loan Guarantee Program (revised)
- BND Accelerated Growth Loan Program (new)
- PACE (Partnership in Assisting Community Expansion) (revised)
- Infrastructure Loan Fund (revised)

ATTACHMENT B2 LOAN POLICY

BEGINNING ENTREPRENEUR LOAN GUARANTEE PROGRAM

The Bank may guarantee loans made to beginning entrepreneurs in compliance with N.D.C.C. § 6-09-15. The intent of this program is to assist an individual in the start-up or purchase of a revenue-producing enterprise. Also includes child care providers that consist of a child care home, group, or center licensed by the Department of Human Services.

A beginning entrepreneur is a resident of North Dakota who:

1. Has graduated from high school or has received a general equivalency certificate.
2. Has had some training, by education or experience, in the type of revenue-producing enterprise which that person wishes to begin.
3. Has, including the net worth of that person's dependents and spouse, if any, a net worth of less than an amount determined by the Bank's Investment Committee which is \$500,000.

A loan guarantee means an agreement that in the event of default by a beginning entrepreneur under a promissory note, the Bank shall pay the lender the amount agreed upon in the Bank's Commitment Letter of the amount of principal due the lender on a loan at the time the claim is approved. The final claim may include up to 90 days of interest and all reasonable collection expenses based on the Bank's guarantee percentage.

The loan guarantee may not exceed five years. The maximum total loans to a single borrower may not exceed \$200,000 the Bank may approve a guarantee on a loan up to \$5,000 to a beginning entrepreneur for business start-up expense. The Bank may approve a guarantee on a loan up to \$25,000 without requiring collateral.

The Bank will provide loan guarantees based on the loan amount as follows:

	<u>Maximum Loan Amount</u>	<u>Maximum Guarantee %</u>
Up to	\$100,000 <u>\$150,000</u>	85%
From	\$100,001 to \$150,000 <u>\$150,001 to \$300,000</u>	80% <u>75%</u>
From	\$150,001 to \$200,000 <u>\$300,001 to \$500,000</u>	75% <u>50%</u>

At the discretion of the lead bank with Bank of North Dakota's consent, a beginning entrepreneur may receive a one-year period of interest only payments at the beginning term of the loan.

A lender is any lending institution that is regulated or funded under the laws of this state or the United States and which has provided financing to a beginning entrepreneur for the establishment of a qualified revenue-producing enterprise.

A revenue-producing enterprise means any real property, building, improvements, equipment or personal property used in connection with the enterprise.

The Bank will charge a guarantee fee equal to 0.50% per year or a one-time fee of 2.00%. The lender is required to charge an interest rate acceptable to the Bank. The guarantee fee may be included in the rate charged by the lender.

This program can be used for refinance or consolidation of debt as long as the amount of the refinance or consolidation does not exceed 20 percent of the total loan to be guaranteed. This program can be used in conjunction with other Bank loan programs. Total outstanding guarantee under this program at the time of issuance may not exceed 5.00% of the Bank's tier one capital as defined by the Department of Financial Institutions.

In response to a question Mr. Hullet stated that the definition of beginning entrepreneur is completely disconnected from the age of the borrower. Mr. Hardmeyer noted that this program is a legislative directed program.

BND ACCELERATED GROWTH LOAN PROGRAM

Loan Purpose –

The Bank of North Dakota Accelerated Growth Loan Program is established to assist North Dakota based companies with a record of proven operations, experienced management, and the ability to generate cash flow, but have limited assets for normal bank financing.

Qualifications –

To qualify, companies must have strong prospects for growth that could include purchase orders for merchandise or services. The company must show through its application that prospect for sales growth of 15% or greater over the three year period following the inception of the loans.

— These companies will have sales of \$1.5m to \$10m per year. These loan will have a higher degree of risk. The goal of this program is to provide a bridge that transitions the company to traditional bank financing.

A loan must be for one of the following purposes:

- Finance the acquisition of real property.
- Remodel or expand an existing business if owner occupied
- Purchase or lease equipment
- Provide working capital
- Refinance an existing loan with a maximum amount that may not exceed 30% of the new loan.

Loan Amount –

BND's participation may not exceed \$3,000,000. The lead financial institution's share is a minimum of 10 percent of the total loan amount and will be negotiated on a case-by-case bases.

Interest Rate –

The interest rate on BND's participation of the loan will be variable at WSJ Prime plus 2% as published in the Wall Street Journal. Loans in this program will be repriced annually but can be repriced more frequently at the discretion of the Bank. The maximum term of a loan in this program is 10 years. The lead financial institution may add no more than .50% (50 basis points) to the loan for a servicing fee.

Fees & Costs-

The lead financial institution may charge an origination fee of up to 1.00% of the total loan mount, which shall be shared with the Bank of North Dakota.

Guarantees –

Personal guarantees will generally be required from the principals with respect to all corporate and partnership borrowings.

Collateral –

Security for the loan is evaluated on a loan-by-loan basis. Collateral is required and must be of such a nature that repayment of the loan can be reasonably expected.

The Cumulative amount of loans under this program may not exceed 3 percent of BND's Tier One Capital.

Mr. Hullet said that the private sector will be taking the lead on these loans but because there generally is no secondary source of repayment the local lender needs the Bank to participate and take a large portion of the loan. He explained the type of situation when this program would be needed. These are companies that are experiencing large growth in a very short span of time and don't have a secondary source of repayment. The hope is that the company grows rapidly and they are successful after two or three years and will be able to move on to traditional bank financing. At the higher rates being offered with this program once the company is successful they will want to move on to another loan and the Bank will no longer be needed.

In response to a question Mr. Hardmeyer said the interest rate today for this program would be 6%. He said this is a niche program where the Bank sees an opportunity to help these companies but the Bank needs to receive an interest rate that reflects the risk it is taking with these loans. Governor Burgum indicated that even though it is at a higher interest rate it will provide an option for a company to obtain financing without giving up equity in their company as they grow at an accelerated rate.

PACE

(PARTNERSHIP IN ASSISTING COMMUNITY EXPANSION)

PROGRAM DESCRIPTION

The PACE (Partnership in Assisting Community Expansion) program has been established under

N.D.C.C. § 6-09.14, to assist North Dakota communities in expanding their economic base by providing for local jobs development. The program is available to all cities and counties throughout North Dakota for business projects involved in manufacturing, processing, value-added processes and targeted service industries.

LOAN PARTICIPATION

PACE Fund –

The PACE Fund is established to buydown the interest rate on loans of qualified businesses.

Qualified Institutions –

Any financial institution currently qualified to participate in a loan with the Bank is qualified to participate in this program.

Participation Percentage –

The Bank may take not less than 50 percent nor more than 80 percent of the total loan amount as its participation percentage.

Qualified Businesses –

~~This program is intended to finance businesses involved in manufacturing, processing, value-added processes and targeted industries. For purposes of this policy, “targeted industries” are defined as data processing, data communications, telecommunications, major tourist destination attractions, holding companies involved in leasing assets to entities otherwise defined as a PACE qualified business, intermodal service facilities and all other companies that generate 75 percent or more of their sales outside of the State of North Dakota.~~

~~“Primary sector business” as defined by NDCC 1-01-49 means an individual, corporation, limited liability company, partnership, or association certified by the department of commerce division of economic development and finance which through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth.~~

~~For purposes of this program, “new wealth” means revenues generated by a business in this state through the sale of products or services to:~~

- ~~a. Customers outside of this state; or~~
- ~~b. Customers in this state if the products or services were previously unavailable or difficult to obtain from a business in this state.~~

A holding company may qualify provided the benefit of the PACE buydown flows through to the lessee. The lessee will be responsible for satisfying the job creation requirements of the program. ~~If no less than A~~ minimum of 40 percent of the facility space is used by a PACE qualified business, the entire requested loan amount for the facility will be deemed as a PACE qualified project, subject to all other requirements of the program.

Loan funds may be used for the purchase of real property and equipment, and for the expansion of existing facilities and working capital requirements, including inventory. The underlying qualification for this program is new job creation within the community.

This program cannot be used to refinance any existing debt. In addition, the program will not finance a relocation of an existing North Dakota business within North Dakota.

Jobs Qualification –

~~In response to the difficult economic times, the job creation requirement of PACE will be suspended for existing and new PACE loan recipients until December 31, 2010. Jobs will continue to be tracked for informational purposes.~~

~~In order to qualify for the suspension of the jobs requirement, the PACE borrower must have been in compliance with the terms and conditions of the PACE documents and other loan documents as of January 1, 2009. The borrower must maintain viability and compliance with the loan documents regardless of the status of the jobs requirement.~~

~~After December 31, 2010, the job creation requirements of all PACE borrowers will be re-instated as described in the PACE documents executed by each borrower at the time of loan closing.~~

~~For recipients of PACE loans committed to prior to January 1, 2006, the borrower must show evidence that, there will be at least one full time equivalent job created for every \$100,000 of total PACE borrowing. The jobs must be created within the first two years and maintained for the duration of the PACE agreement. After the borrower has met the initial job creation requirements, the borrower will be allowed a one year grace period in the event subsequent PACE job verification reports indicate employment levels are below the minimum number required. If the borrower is unable to return to job creation compliance after the grace period, the PACE interest buydown will be reduced commensurate with the actual jobs created.~~

For recipients of PACE loans committed to after January 1, 2006, the Bank will comply with the parameters established in accountability legislation described in N.D.C.C. § 54-60.1. Companies receiving PACE Loans after (Date of Implementation) will be required to meet the job creation requirements in the first three years.

As of (Date of Implementation), The Bank of North Dakota establishes the following buy down schedule for communities based on business investment or jobs when accessing the PACE Program. The first three years of job creation will be considered in the allocation. The ranges and corresponding BND participation amounts are listed below.

	Minimum Investment	Jobs Created	BND Buy Down
Tier One	\$750,000 to \$1,200,000	2 to 5	\$100,000
Tier Two	\$1,200,001 to \$2,200,000	6 to 10	\$200,000
Tier Three	\$2,200,001 to \$3,500,000	11 to 15	\$300,000
Tier Four	\$3,500,001 to \$4,500,000	16 to 20	\$400,000
Tier Five	\$4,500,001 +	20 +	\$500,000

Maximum Buy Down = \$500,000

The Bank of North Dakota Investment Committee has the authority to allocate amounts they determine are more applicable for a particular application, upon their own recommendation or that of the President of the Bank of North Dakota. These ranges will be reviewed annually by the BND Investment and Executive Committee.

Lending Criteria –

The Bank will use its normal credit standards in reviewing any loan request. These standards are determined by loan size and the type of project.

Interest Rate –

This program requires that the lenders recognize two different interest rates:

Yield Rate –

Yield Rate is the interest rate that will be charged by the banks for the loan. This rate will approximate current market rates for similar types of loans.

Borrowing Rate –

Borrowing Rate is the interest rate that will be charged to the borrower. The lenders agree to loan the funds to the borrower at an interest rate below that of the yield rate.

Interest Differential –

The difference between the yield rate and the borrowing rate is the Interest Differential. This difference will be paid to the lenders under an agreement among the lenders, the borrower, the community, and the Bank on behalf of the PACE Fund.

INTEREST RATE REDUCTION PROGRAM

Interest Rate Reduction Funding –

The Bank on behalf of the PACE Fund, will use the available funds in the PACE Fund to reduce the interest rate on loans made and participated under this program.

Interest Rate Reduction –

The PACE Fund will be used in conjunction with community funds to reduce the interest rate on loans to businesses. The amount of interest rate reduction is not limited under this program. However, the PACE Fund's portion is limited by this policy.

Community Percentage Factor –

Communities within the state are given a percentage factor to determine the PACE Fund's maximum participation in the interest rate reduction funding. This factor is based on four economic factors (i.e., taxable sales and purchases, employment, taxable valuation, and population). The top 200 populated communities will be divided into five groups of 40 each based on the four economic conditions.

Based on the scoring from the four economic factors, each group will be assigned a percentage factor ranging from 85 percent to 65 percent. Communities that have not been assigned a Community Percentage Factor will be evaluated on a case-by-case basis to determine their participation percentage.

The Community Percentage Factor will be updated on an annual basis.

PACE Fund's Percentage Funding –

The PACE Fund will participate in the interest rate reduction funding at the lesser of the Community Percentage Factor or \$500,000 for each loan made under this program for each PACE funding period. In addition, the PACE will limit the borrowing rate to 5.00% below the yield rate, but in no event may the interest rate be more than five hundred basis points below the national prime interest rate. (If the prime rate is published as a range, the highest interest rate in that range will be used for purposes of this program.) In no case will the PACE Fund buydown an interest rate below 1.00%.

Community's Percentage Funding –

The local community will contribute its participation percentage of the interest rate reduction funding based on the Community Percentage Factor. The funds for the community's portion may come from a local development corporation, contributions, community funds, future dedicated tax programs or other community sources. The community's contribution of direct cash, loans, equity, investments, land, property or infrastructure may count towards the community's funding of its portion of the buydown.

The community's portion cannot come from a loan, grant or gift from the borrower or any party, other than the community, which would receive a direct or indirect financial benefit because of a direct or indirect financial relationship with the borrower. In addition, the local percentage cannot contain a contribution from the local lender greater than the local lender would normally contribute to the community's economic development efforts.

All parties to this program will be required to execute a funding agreement that stipulates compliance with the program and the sources of funding.

Community's Funding Agreement –

Among the parties to the loan, there will be an agreement that the community's portion of the interest rate reduction will come from the community as a grant or a loan. If the community provides its share of the PACE interest rate buydown as a loan, interest may accrue; however, repayment of principal or interest on the loan from the community shall not commence until the PACE interest buydown has been fully expended. All parties will stipulate that this funding was in compliance with terms and conditions of this program.

Program Application –

The community shall assess the value of the proposed project and determine the amount of the interest rate reduction. When the cost of the reduction has been established, the community shall apply to the Bank for a commitment to fund Community Percentage Factor on behalf of the PACE Fund. Upon approval of the loan, the interest rate reduction funding will automatically be approved.

Funding of Interest Rate Reduction –

A trustee, escrow agent or paying agent shall be appointed to act as agent for the reduction fund. The community and the Bank will make periodic payments to this agent sufficient to cover the difference between the lender's Yield Rate and the Borrowing Rate.

The community has the option to prefund the interest rate reduction in a lump sum payment to the Bank. The amount of this prefunding will be discounted at a rate determined by the Bank.

Failure of the Community to Fund –

If the community fails to fund any portion of its periodic payment, the community must fund all unfunded portions before becoming eligible for the PACE program in the future. In addition, the community must prefund 100 percent of their portion of future loan requests.

Default by the Borrower –

If the borrower is in default under the loan agreements, the interest rate on the note changes from the Borrowing Rate to the Yield Rate. This change becomes effective for all interest that has accrued and will continue to accrue at that level until the loan is brought current or no longer in default. The loan will be considered in default as specified in the loan agreement.

If the borrower fails to meet the minimum Jobs Qualifications, the interest rate on the loan shall reflect an adjusted rate commensurate with the reduced subsidy based on the actual jobs created.

FLEX PACE

FLEX PACE / FLEX PACE FOR AFFORDABLE HOUSING

Qualified Businesses –

These options within the PACE Program will provide interest buydown to non-PACE qualifying businesses for which the Community determines eligibility and accountability standards. Job creation will not be a requirement of FLEX pace or Plex PACE for Affordable Housing, but jobs will be tracked for informational purposes.

~~Flex PACE will allow communities the ability to provide assistance to businesses that would do not meet the current primary sector job requirements of PACE such as jobs retention, technology creation, retail, smaller tourist businesses, single or multi-family housing units intended for rental and essential community businesses. In the case of Flex PACE for Affordable Housing, the program specifically targets the financing of affordable multi-family housing units and is available through June 30, 2019.~~

Jobs Qualification –

~~Jobs creation will not be a requirement of Flex PACE or Flex PACE for Affordable Housing, but jobs will be tracked for informational purposes.~~

Flex PACE / Flex PACE for Affordable Housing Funding –

Each biennium, the Bank's Investment Committee will designate a dollar amount of the available PACE funds for Flex PACE and Flex PACE for Affordable Housing. This designation is not an exclusive reservation of the funds and therefore will be available for other PACE eligible projects.

The cumulative amount of PACE funds available per biennium under Flex PACE and Flex PACE for Affordable Housing to a North Dakota community or an individual borrower will be determined by the Bank's Investment Committee. In the case of Flex PACE for Affordable Housing, the program specifically targets the financing of affordable multi-family housing units and is available through June 30, 2019.

Flex PACE Parameters –

Existing PACE Program parameters (e.g., interest rate buydown maximum, community match, the Bank's participation amount, default) will apply to Flex PACE. The parameters also apply to Flex PACE for

Affordable Housing; ~~however, the maximum buydown amount may be up to \$500,000 per project and will be determined by the Bank's Investment Committee.~~

- The maximum buy down on a community business is \$200,000
- The maximum buy down on a child care facility is \$300,000
- The maximum buy down on a Flex Pace Affordable Housing Project is \$500,000 per project.

Mr. Hullet said that the economic developers have been informed that there may need to be some adjustments to the tiers in this policy going forward based on the amount of money that is available for PACE and FlexPACE buydowns. He isn't sure what the demand will be and if it is substantial some changes may need to be made.

In response to a question Mr. Hardmeyer reviewed how the PACE/FlexPACE programs work and how the loans are approved not only at the Bank but also the community involvement with the match interest buydown. He also explained how the buydowns work over the life of the loan. He indicated that the interest rate buydown is generally around 4% to 5%.

ATTACHMENT C10 LOAN POLICY

INFRASTRUCTURE LOAN FUND

The Bank shall administer the Infrastructure Revolving Loan Fund established by N.D.C.C. § 6-09- 49 for the purpose of providing loans to political subdivisions for essential infrastructure projects. This fund is a revolving loan fund and is a continuing appropriation.

~~The Bank shall administer the \$150,000,000 Infrastructure Revolving Loan Fund which shall be funded by a transfer a maximum of \$100,000,000 from the Bank and \$50,000,000 from the Strategic Investment and Improvements Funds, or so much as many be necessary. Transfers shall occur between July 1, 2015 and June 30, 2017.~~

The Bank will have the authority to determine allocation of funds based upon the political subdivision's population base.

Qualifying Requirements for Borrower –

Loans may be made to North Dakota political subdivisions whose projects have been determined to be a priority for the state based upon a priority ranking methodology as established by the Bank.

Political subdivisions which receive funds distributed by the state treasurer or the Department of Transportation as approved by Senate Bill 2103 of the 64th Legislative Assembly will be ineligible to receive a loan under this Fund until July 1, 2017.

Eligible Loan Proceeds –

The priorities for this program shall include a focus on essential infrastructure projects needs in growing North Dakota communities. Proceeds may be used to finance capital construction projects for the following: the following eligible projects:

- New or replacement of existing water or wastewater treatment plants
- New or replacement of existing sewer, storm sewer and waterlines
- New or replacement of existing transportation infrastructure
- New or replacement of existing curb and gutter construction including curb and gutter construction

- ~~Other infrastructure needs as established by the Bank~~

Ineligible use of proceeds includes:

- Building construction other than structures integral to treatment plants or other approved processes are not eligible under this program
- Refinancing of existing debt or other obligations will not be allowed

Loan Amount –

The cumulative loan amounts may not exceed \$15,000,000 per applicant.

Repayment Terms –

The promissory note shall require the following:

- The term of the construction and permanent financing period may not exceed 30 years.

Interest Rate –

The interest rate established for this program has been set at 2.00% with the fund receiving 1.50% and the Bank receiving a 0.50% service fee.

Collateral –

The Bank may take all steps necessary and appropriate to preserve security under this program.

Application Process –

All applications for loans under this program must be made to the Bank. The Bank will review and determine project priority ranking based on parameters established by the Bank. The Bank will be responsible for final due diligence and loan committee approval.

The Bank will require the following items from the applicant:

- Application
- Legal opinion and resolution of the governing board of the political subdivision confirming the project
- Preliminary engineering study, environmental impact analysis as necessary
- Analysis of the project including:
 - A listing of other sources of funding for the project intended to leverage the dollars requested of the Infrastructure Revolving Loan Fund.
 - A description of the nature of the proposed infrastructure project with some focus on the need for the project, the reasons it is in the public interest, and the overall economic impact to the state or regions within the state.
- The estimated cost of the project and the amount of the loan sought and other proposed sources of funding
- Financial statements for the subdivision, as well as projections to support the repayment capacity for the project
- Any other data or documentation as deemed necessary

Fees and Costs –

The Bank may charge an origination fee and charge the borrower for all fees associated with the project or other loan servicing expenses.

Mr. Hullet said they have already provided a guidance letter to the cities and counties through their associations and to the engineering firms explaining how the Bank is going to be administering the program this year. They are hopeful that they will be able to get the requests in quickly so the applications can be processed in time for the political subdivisions to use the monies during the 2017 construction season.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendation of the Bank of North Dakota Advisory Board and approves the amendments to the Beginning Entrepreneur Loan Guarantee Program, PACE (Partnership in Assisting Community Expansion), and Infrastructure Loan Fund Policies and further approves the new BND Accelerated Growth Loan Program Policy as presented. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Hardmeyer discussed his officer status recommendation as follows:

RE: Officer Designation

I am proposing for your approval Senior Vice President Officer status for Jeff Weiler. Jeff joined the Bank of North Dakota as the Director of Risk Management in January 2016. Jeff has been doing an excellent job in his Risk Management role. While not a voting member of the Executive committee he has contributed significantly to discussions and on strategic decisions.

In addition, Jeff has taken a lead role in BND's cultural shift to innovation by helping to implement a bank-wide coaching structure.

With his promotion to Senior Vice President, Jeff will become a full voting member to the Executive Committee. Careful consideration has been given to ensure that we avoid any conflicts with his roles as an Executive Committee member and his functional role as Risk Manager. I have discussed this with Bob Entringer, Commissioner of the Department of Financial Institutions, and he feels that as long as there is a direct reporting line to the Advisory Board conflict is mitigated.

Prior to joining BND, he served as Executive Vice President at Starion Bank. There he led the Retail and Mortgage Banking as well as Wealth Management and Insurance.

I believe that Jeff can figure into the long term succession plans for other key management positions.

Attached you will find an organizational chart that gives you a visual of the new structure.

(A copy of the organizational chart is available in the Commission files.)

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Bank of North Dakota Advisory Board and names Jeff Weiler as a Senior Vice President which will make him a voting member of the Bank of North Dakota Executive Committee. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Hardmeyer distributed the 2017 Legislative Update. (A copy of the update is available in the Commission files.)

Mr. Hardmeyer presented the First Quarter 2017 Performance Highlights. (A copy is available in the Commission files.) He noted the following:

- \$7 billion+ in assets
- Equity over \$910 million--this will be the high-water mark for the year. Since March 31 the State has asked for their first draw on the \$100 million approved during the special session so \$72 million was paid in April. This will continue to drop as the Bank transfers the remaining \$28 million of the \$100 million plus the transfers to the Infrastructure Revolving Loan Fund as projects are funded which will be \$100 million and then the \$140 million authorized during the 2017 session will come out over the next biennium.
- Income statement for the first quarter shows \$38.5 million and with the April numbers the Bank is at over \$50 million for the year.
- Delinquencies - residential portfolio delinquencies are growing but these loans are all guaranteed -- FHA or VA guaranteed so the Bank's exposure is minimal.
- Allowance for Credit Losses is in a very good position with a \$12 million cushion.

Mr. Hardmeyer presented the non-confidential Bank of North Dakota Advisory Board February 16, 2017 meeting minutes.

Governor Burgum closed the meeting at 2:43 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 completion of confidential Bank of North Dakota business Governor Burgum adjourned the Bank of North Dakota portion of the meeting at 2:49 p.m. and the Commission took up State Mill business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on May 1, 2017 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also
Present: Leslie Oliver, Governor's Office
Cassandra Torstenson, Governor's Office
Vance Taylor, State Mill
Ed Barchenger, State Mill
Members of the Press

Governor Burgum called the State Mill portion of the Industrial Commission meeting to order at 2:49 p.m. following completion of Bank of North Dakota business.

Mr. Vance Taylor, North Dakota Mill General Manager, presented the North Dakota Mill Third Quarter Financial Report as follows:

North Dakota Mill
Review of Operations
3rd Quarter Ended 3/31/17

SUMMARY

Profits for the 3rd Quarter of the year were \$2,432,884 compared to \$1,706,126 last year. Operating activity for the nine months ending March resulted in a profit of \$8,141,195 compared to \$6,661,970 last year.

	<u>Quarter</u>		<u>Year-to-Date</u>	
	<u>3/17</u>	<u>3/16</u>	<u>3/17</u>	<u>3/16</u>
Profits	2,432,884	1,706,126	8,141,195	6,661,970
Sales	72,483,286	65,272,138	214,342,162	206,247,273
Cwt. Shipped:				
Spring	3,222,865	2,850,295	9,784,444	8,879,961
% to Total	90.9%	91.1%	91.3%	91.8%
Durum	<u>324,325</u>	<u>277,698</u>	<u>932,951</u>	<u>791,401</u>
	<u>3,547,190</u>	<u>3,127,993</u>	<u>10,717,395</u>	<u>9,671,361</u>
Bag Shipments	637,863	621,473	2,055,756	1,965,476
% to Total	18.0%	19.9%	19.2%	20.3%
Tote Shipments	38,005	29,959	116,603	95,003
% to Total	1.1%	1.0%	1.1%	1.0%
Family Flour Shipments	65,713	65,314	220,547	219,009
Organic Flour Shipments	34,589	40,480	115,885	137,766

Grain Purchased:

Spring	6,993,970	6,089,290	20,830,603	18,127,101
Durum	<u>552,341</u>	<u>560,929</u>	<u>1,787,636</u>	<u>1,471,666</u>
Total	<u>7,546,311</u>	<u>6,650,219</u>	<u>22,618,239</u>	<u>19,598,767</u>

SALES

3rd Quarter

Sales for the 3rd Quarter were \$72,483,286 compared to \$65,272,138 last year. Shipments of 3,547,190 cwts. are 419,196 cwts. above last year. Bag shipments for the 3rd Quarter are 637,863 cwts., which is 16,390 cwts. above last year's 3rd Quarter. Tote shipments for the 3rd Quarter are 38,005 cwts., which is 8,046 cwts. above last year. Family flour shipments reached 65,713 cwts., which is 0.6% above last year's 3rd Quarter.

Year-to-Date

Sales for the nine months ended March were \$214,342,162 compared to \$206,247,273 last year, an increase of 3.9%. Shipments of 10,717,395 cwts. are 1,046,034 cwts. above last year, an increase of 10.8%. This is a new record for 9 months of shipments. The average settled price of grain purchased fell \$0.19 per bushel from last year. Year-to-date bag shipments are 2,055,756 cwts., an increase of 90,280 cwts. from last year. Tote shipments for the year are 116,603 cwts., which is 21,600 cwts. above last year. Family flour shipments for the nine months ended are 220,547 cwts., an increase of 0.7% from last year. Organic flour shipments were 115,885 cwts., a decrease of 15.9% from last year.

OPERATING COSTS

3rd Quarter

Operating costs for the 3rd Quarter were \$7,928,401 compared to \$6,533,450 last year, an increase of \$1,394,951. Operating cost per cwt. of production was \$2.17 compared to \$2.14 last year, an increase of 1.4%.

Year-to-Date

Year-to-date operating costs are \$22,938,270 compared to \$19,575,281 last year, an increase of 17.2%. Operating cost per cwt. of production for the nine months ended was \$2.16 compared to \$2.13 last year, an increase of 1.4%.

PROFITS

3rd Quarter

Profits for the 3rd Quarter were \$2,432,884 compared to \$1,706,126 last year. Gross margins as a percent of gross sales for the quarter were 14.5% compared to 12.7% last year.

Year-to-Date

Operating activity for the nine months ended March led to a profit of \$8,141,195 compared to \$6,661,970 last year. Year-to-date gross margins are 14.7% compared to 12.8% last year.

Risk Management Position

The table below shows our hedge ratio by futures month going forward. A hedge ratio shows the relationship between our net cash position and our futures position. The mill does remain at risk for changes in the basis.

**Position Report
 31-Mar-17**

Period	Hedge Ratio
May-17	0.9
July-17	1.0
Sept-17	1.0
Dec-17	1.0
Mar-18	1.0
May-18	0.9
Net Position	1.1

In response to a question regarding how all of their operating and software systems are working, Mr. Taylor said there was a bit of a lead time there for the new equipment and software so they have not received the first of the equipment yet, that will be in probably mid to late summer.

In response to a question regarding if the gross margin increase was attributed to the new capital investment or partly market driven, change in competition or more efficiency, Mr. Taylor said all of the above. The additional volume and increased efficiency they have achieved is driving most of it but market conditions have improved a little bit after the first of the year. Demand is pretty strong and the Mill has been able to add a few pennies here and there that they could not last year.

Mr. Taylor presented a request for a capital project - Automated Flour Packing System in the amount of \$1,950,000 as follows:

Capital Project for Consideration

5/1/2017

Automated Flour Packing System

\$1,950,000

Current situation:

The existing B2 50 and 100 pound flour packing system is over 25 years old and is worn out to the point where replacement with a new automated packing system is required. Customer demand for packaged flour has grown to the point where it exceeds our present packing capacity. Excessive overtime is needed to meet customer demand for packaged flour.

Proposed change and result:

Purchase and install a new Automated Flour Packing System with automated bag closure, bag flattening, metal detection and automatic palletizer. This integrated system will increase the speed of flour packaging by more than 50% over the existing B2 line and will increase reliability.

Financial returns will be generated by increased bag flour shipments and reduced overtime.

Estimated Financial Return Summary:

348,720 Additional Cwts. Shipped Per Year X \$1.50/Cwt. 24	\$523,079
Hours/Week Reduced Overtime X \$41.62 X 30 Weeks	\$29,966
Total Estimated Return	\$553,045
ROI	28.4%
Payback Time	3.73 Years

Equipment listing Summary:

- Flour Conveyor
- Packing Machine
- Sewing System Bag
- Conveyors
- Checkweigher and Reject Conveyor Metal Detector
- High Level Palletizer Full
- Pallet Conveyors
- Electronic Controls
- Catwalks

Mr. Taylor said the plan would be to order it soon and install the system in February of 2018 during the Mill's slow period. There is a long lead time on packing systems of this type.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the expenditure of \$1,950,000 for an additional FY2017 capital project -- Automated Flour Packing System.

In response to a question regarding if they have people loading pallets by hand, Mr. Taylor said no, it is an automated system. Currently there are employees that do sewing by hand. The Mill has a fully automatic palletizer and the packer is automated but it is 27 years old and it is a primitive automated system. The newer systems are much more reliable and much faster. This will eliminate the hand sewing and it will be fully automatic sewing or heat seal.

In response to a question regarding if it would eliminate some overtime, Mr. Taylor said it should eliminate a lot of overtime plus at the same time allow the Mill to get more volume out to capture that business that it has been missing especially in the fall. This is for 50 and 100 pound bags and will also do 25 pound bags.

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

Mr. Taylor discussed the modifications to the North Dakota Mill Purchasing Policy. (A copy of the marked up changes is available in the Commission files.) He said they are raising some limits slightly to make it more workable and we are using our purchasing cards more and more and this will facilitate that. We are also making some changes to fit our new paperless system that we have been bringing up to speed over the last year or so and we are also delegating some purchasing authority to some assistant manager department head positions that have been recently created to be able to approve these purchases when the managers and department heads are away.

In response to a question regarding when the last time those were raised, Ms. Fine indicated the policy was last changed in 2013.

In response to a question regarding how many people have authorization to use the corporate purchasing cards, Mr. Barchenger said all the supervisors on the plant so approximately fifteen. The supervisors that do the plant work because they buy bearings or some small items and three people in the office.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approve modifications to the North Dakota Mill Purchasing Policy and approve the revised policy as follows:

Purchasing Policy

The purchasing policy establishes guidelines to direct all employees in the purchasing of goods and services. The policy will accomplish the following:

1. Establish levels of responsibility for expenditures and approvals.
2. Provide reasonable assurance that the best price/value item is being purchased.
3. Establish and review procedures to ensure that these policies and procedures are being followed.

Purchase Orders

The purpose of a purchase order is to establish the price and quantity of the item(s) being ordered. When the item(s) that was ordered arrives, the purchase order provides a mechanism to review the packing sheet and the invoice to ensure that we are being provided what was ordered at the price agreed upon when that order was placed.

A purchase order is required for all purchases over \$1,000. If the Corporate Purchasing Card is used this limit is increased to \$2,000. Purchase orders may be completed for items less than \$1,000. It is required that a purchase order be completed at the time the order is placed. The mill employee will enter the purchase order into the computer system using Great Plains Dynamics. In addition to the items and cost, the expense coding is also entered at the time the purchase order is created. If the employee is authorized to approve the purchase order, they should do so at the time of entry, otherwise they will need to contact the supervisor or manager who is authorized to approve their purchase orders. No changes should be made to the purchase order after it is has been approved and the item(s) ordered.

A purchase order or purchase order number must be given to the supplier at the time the order is placed. This gives the supplier a reference number to use on their packing list and invoice that we can track. If the supplier requests a copy of the purchase order, the purchasing agent will fax or email a copy to them.

Several purchases of less than \$1,000 (\$2,000 if the Corporate Purchasing Card is used) in an effort to avoid this policy, will be considered a violation of this policy. All purchase orders will list the quantity, price, and other pertinent information.

Competitive bids should be obtained whenever possible. In some instances, this is not always practical because of product quality, single source supply, etc. When competitive bidding is not used, the department supervisor or manager is responsible to provide a reason as to why competitive bidding was not used in a note attached to the purchase order and when required an alternate procurement will be completed.

Purchases must be from state approved suppliers whenever possible.

Commitment Authority

Only those people delegated by the General Manager are authorized to commit the Company for materials, equipment, supplies, and services. Grain procurement is the responsibility of the Grain Department and transportation is the responsibility of the Traffic Department.

The buyer and assistant buyer are responsible for ordering items classified as essential to operations such as flour bags, shipping supplies, enrichments, etc. Competitive bids will be obtained for these items and recommendations presented to the Controller and General Manager for review and approval.

The Office Assistant and Executive Assistant will have the authority to purchase office supplies and other miscellaneous items for the office.

Sales people have the authority to approve the outside warehousing expenses and the promotional allowances for customers. The Sales Manager will approve all sales commissions paid to brokers.

Front line supervisors have the authority to approve purchase orders up to \$5,000. The supervisor should work closely with the buyer or assistant buyer to get the best value on these items.

Senior managers/Department Heads have the authority to approve purchase orders up to \$10,000. The senior managers/department heads may work closely with the buyer or assistant buyer to get the best value on these items.

Assistant Managers/Department Heads have the authority to approve purchases in their respective departments in absence of the Senior Manager/Department Head following the same guidelines set for the Senior Manager/Department Head.

The General Manager or Sales Manager will approve purchases of promotional items used for customer and employee appreciation and retention.

The **General Manager** must approve any purchase order exceeding the above limits. In addition, the General Manager must approve all purchases of products that are bought for the purpose of resale by the Mill such as flour, millfeed, beans, etc. and donations. The General Manager will also approve all purchase orders for capital items above \$10,000. In his absence, the Controller may approve the purchases.

Receiving and Payment

Items that are received which have a packing sheet that references our purchase order number will be cross referenced with the purchase order to see if all items ordered were received. If not all items listed on the purchase order were received, the purchasing department will keep the purchase order in an open status until the remaining items are received or cancelled.

Invoices that reference a Purchase Order go to the Buyer to be distributed to the appropriate supervisor/manager for confirmation of delivery. Should a discrepancy between the invoice and the purchase order exist (other than a freight cost) the mill employee will provide an explanation as to why a discrepancy exists and attach that to the purchase order and provide the correct amount to pay the vendor. All other invoices received from vendors with the exception of outbound for freight invoices, will be forwarded to accounts payable and scanned into the paperless system. Accounts payable will distribute the invoices through the paperless system to the appropriate mill employee for approval.

Invoices for outbound freight are received by the traffic department, approved or corrected, and forwarded to accounts payable for payment.

Invoices that are not tied to purchase orders such as utility bills must be approved by the appropriate supervisor or department head.

Effective Date: May 1, 2017

In response to a question regarding the policy saying “the Mill will enter the purchase order in the system” are you able now to have an integration so it goes directly from the card to accounting or do you still do manual entry, Mr. Barchenger said the main people that use it right now keep track in an Excel spreadsheet and it integrates directly

into Great Plains. They do not do manual entry every time someone uses a card – the person who is entering the information whose buying it has to put the information into a spreadsheet and it is then automatic.

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

Mr. Taylor gave an update on capital projects. He said the G-Mill project is essentially done, up and running and yielding well. That project will be closed out before the end of the fiscal year. The flour storage project is very close to being completed and should be using it within the next couple of weeks. They hope to close it out by the end of this fiscal year. The wheat unloading pit is coming along nicely and he handed out pictures. (The pictures are available in the Commission files.) Most of the hardware is installed and they are working mostly on electrical. The plan is to put the first wheat through that by the end of this month or the first part of June. The goal is to have it fully up and running mid-summer well before the next harvest. It is a tall tower; it is the new landmark in Grand Forks on the north end. The contractors had to wait for the spring thaw to complete some of the track and drainage work which is now happening and should be done within the next month or so.

In response to a question regarding what that will do to wait times during harvest, Mr. Taylor said they think it will double the Mill's unloading speed on the trucks. It is a 40,000 bushel per hour system with the present system only at about 13,000 to 15,000 bushels per hour. The plan is to put a lot of trucks through this new pit and use it for rail cars when we are doing rail. We expect it to double our unloading speed so it should cut wait times in half. Right now trucks sometimes wait four, five or six hours and we hope this cuts it down to two or three hours at the worst and hopefully a lot less than that.

Mr. Taylor gave a legislative update. He said they did get the additional six FTEs -- two for the elevator terminal to run the new pit, two for food safety and two for the packing department to help deal with that additional volume we will have going forward with the new packing line. Transfers were set at 75 percent and there was no change to the gain sharing program. There was a lot of discussion about the gain sharing but in the end no change. They did put in place a requirement that the Industrial Commission do a study on the gain sharing over the next two years which he is looking forward to working on with the Commission. Governor Burgum indicated that he would like to collaborate with him on the gain sharing program and study. He believes the gain sharing program should be utilized in more agencies as opposed to being eliminated. The right gain sharing program will encourage people to the right behaviors. We want to be sure to present this study in the best way possible.

Attorney General Stenehjem said he has become convinced over the years that the gain sharing program really does work and it matters to those employees who he has talked to. Mr. Taylor said it is a program that is really easy to defend and all of the employees really care about it and all the numbers show that it easily pays for itself each year. It will be interesting going through the study and learning about these types of programs.

Mr. Taylor said the whole working culture of the plant is based around that gain sharing program and he thanked the Commission members for their support of it during the session.

In response to a question regarding looking ahead if he sees any constraints in terms of the Mill's ability to grow the business given the additional transfers of profits, Mr. Taylor said it might force the Mill to slow things down a little bit because Mill management doesn't want the Mill's debt to grow and the Mill take on too much interest risk but he believes the Mill will still be able to make progress and hopefully continue to move forward.

Governor Burgum encouraged Mr. Taylor to continue to bring high ROI projects for consideration even if the Mill appears to be capital constrained because of the higher transfers. Sometimes there is not an understanding of the secondary effects of transferring profits out of the Bank and the Mill. The Mill is even more of a case than the Bank because the Bank is a special one of a kind entity but the Mill is out there competing every day with other

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May 1, 2017

mills and if we are going to be in this business then we ought to be in it to compete and compete well and not artificially constrain your ability to be successful. It is either that or we should not be in it. It is either one or the other, you can't be in this business part way. Attorney General Stenehjem said we should be in it but agreed there is a return on investment here. Commission Goehring said Mr. Taylor is doing good work and the Mill needs to keep moving forward and generate more business for the State.

Mr. Taylor stated they just received an award for Supplier of the Year from one of the Mill's biggest distributors over the weekend, Valley Bakers in Appleton, Wisconsin. That doesn't happen all the time. The Commission congratulated him on receiving the award.

Being no further State Mill business, Governor Burgum adjourned the meeting at 3:11 p.m. and 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 May 1, 2017 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also

Present: Leslie Oliver, Governor's Office
Cassandra Torstenson, Governor's Office
Jaret Wirtz, Western Area Water Supply Authority
Kelvin Hullet, Bank of North Dakota
Craig Hanson, Bank of North Dakota
DeAnn Ament, Public Finance Authority
Members of the Press

Governor Burgum called the Western Area Water Supply Authority portion of the Industrial Commission meeting to order at 3:11 p.m. following completion of State Mill business.

Ms. Karlene Fine, Industrial Commission Executive Director/Secretary, presented the Western Area Water Supply Authority March Financial Report and Debt Reduction Report as follows: (A full copy of the report is available in the Commission files.)

RE: Western Area Water Supply Authority - Industrial Sales - March, 2017 & Debt Repayment Report

Attached is the Western Area Water Supply Authority (WAWS) financial information for the month of March, 2017.

Page 1 prepared by the Bank of North Dakota, reflects debt service payments through the month of March, 2017. In March interest was paid on the two BND loans and two Water Commission loans and principal was paid on both the \$50 million and \$40 million BND loans.

The next 3 pages (pages 2, 3 & 4) I prepared based on the information provided by WAWS staff reflecting March revenues and expenses and net income. There were two principal payments made in March that are highlighted in yellow. Net income for the month of March was \$34,293.06 before making their principal payments. No baseline sales payments were paid and those deferred costs are reflected on the line item titled Deferred Expense Asset. (As you will recall from the overall Debt Service spread sheet the breakeven sales monthly number is \$871,750 without the baseline sales payments. With WAWS sales for the month of March being \$34,293.06 they were under that number by \$837,456.94.)

Page 5 is the balance sheet prepared by WAWS staff as of March 31, 2017. As noted on the Balance Sheet the Accounts Receivables are \$1,821,261.03 which is included in the assets of \$7,719,364.35 Note: The assets include a deferred expense line item of \$5,999,726.27 and the liabilities include, within the accounts payable, that same amount which reflects the deferred expenses for the Baseline Sales.

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

Mr. Jaret Wirtz, WAWS Executive Director, said the sales during March were all from the depots with a few maintenance water connections; no fracture water sales were involved in the March sales.

Ms. Fine discussed legislative action in HB 1020 regarding the Western Area Water Supply Authority as follows:

RE: House Bill No. 1020 (Currently being reviewed by the Governor)

There were a few bills during the 2017 Legislative Session that have an impact on the Western Area Water Supply Authority (WAWS). The only bill that I am aware of that relates to the Industrial Commission and its relationship with WAWS is House Bill No. 1020. I have noted below those sections from HB 1020:

Outstanding WAWS debt provisions: (The Bank of North Dakota will be discussing the provisions of Sections 9 and 10 at the June 5, 2017 Industrial Commission meeting.)

(Emergency Clause applies)

Section 9:

Notwithstanding Section 5 of Chapter 500 of the 2011 Session Laws, the Bank of North Dakota shall consolidate the \$40,000,000 loan to the Western Area Water Supply Authority authorized in Section 5 of Chapter 20 of the 2013 Session Laws, the \$50,000,000 loan to the Western Area Water Supply Authority authorized in Section 2 of Chapter 500 of the 2011 Session Laws, and the \$25,000,000 loan from the General Fund to the Western Area Water Supply Authority authorized in Section 3 of Chapter 500 of the 2011 Session Laws. The terms and conditions of the consolidated loan must be negotiated by the Western Area Water Supply Authority and the Bank of North Dakota. The Western Area Water Supply Authority is not obligated to repay principal on loans from the Resources Trust Fund for the period beginning July 1, 2017, and ending June 30, 2018. The interest rate on the \$10,000,000 loan to the Western Area Water Supply Authority authorized in Section 4 of Chapter 500 of the 2011 Session Laws must be 2.5 percent on any outstanding balance remaining after the effective date of this Act. The Bank of North Dakota shall report the terms of the consolidation loan upon its completion to the Legislative Management's Water Topics Overview Committee during the 2017-18 interim. The Western Area Water Supply Authority shall provide its monthly financial statements and industrial sales to the Legislative Council for the Legislative Management's Water Topics Overview Committee's review during the 2017-18 interim.

(Emergency Clause applies)

Section 10:

If the Western Area Water Supply Authority defaults on its payment of the principal or interest on the consolidation loan provided for in Section 9 of this Act or the revenue bonds or other financing provided for in Section 12 of this Act, the Bank of North Dakota shall notify the Legislative Council, and the State Water Commission shall provide a payment, subject to Budget Section approval, to the Bank of North Dakota in an amount of the default as certified to the Budget Section by the Bank of North Dakota.

Study Requirements: (I am in the process of developing a plan on how to proceed with this study. It is my goal to present that plan at the June 5, 2017 Industrial Commission meeting. Note there is a deadline to have this study complete by no later than June 1, 2018.)

(Emergency Clause applies)

Section 11:

There is appropriated out of any moneys in the Resources Trust Fund, in the state treasury, the sum of \$150,000, or so much of the sum as may be necessary, to the Industrial Commission for the purpose of conducting an independent study of the feasibility and desirability of the sale or lease of the industrial water supply assets of the Western Area Water Supply Authority, for the period beginning with the effective date of this Act, and ending June 30, 2019. The study must provide information regarding the financial impact to the Western Area Water Supply Authority, its members and customers, the financial viability of the Authority, and options available to the Authority for debt servicing. The Industrial Commission may form a nonvoting advisory committee chaired by the State Engineer to provide input regarding the scope of the study and to receive reports on the status of the study. The Industrial Commission shall report to the Legislative Management's interim Water Topics Overview Committee on the results of the study by June 1, 2018.

(Emergency Clause applies)

Section 12:

1. If the Industrial Commission determines, based on the study directed in Section 11 of this Act, that it is feasible and desirable to lease or sell the industrial water supply assets of the Western Area Water Supply Authority, the Industrial Commission shall develop a timeline to complete the lease or the sale of the industrial water assets of the Western Area Water Supply Authority and report to the Legislative Management's interim Water Topics Overview Committee.
2. If the Industrial Commission determines, based on the study directed in Section 11 of this Act, that it is not feasible and desirable to lease or sell the industrial water supply assets of the Western Area Water Supply Authority, notwithstanding Section 5 of Chapter 500 of the 2011 Session Laws, the Western Area Water Supply Authority shall, with the assistance of the Industrial Commission and the Bank of North Dakota, repay its obligations to the Bank of North Dakota through the issuance of revenue bonds or other financing options acceptable to the Industrial Commission and Bank of North Dakota.

Water Rates: (At the May 1, 2017 meeting Mr. Wirtz will be presenting a proposal regarding revised water rates that can be considered by the Commission under current law. **It is my recommendation that you direct Mr. Wirtz to discuss water rates with the WAWS Board and bring their recommendation to the Commission in June for the Commission's consideration.** Those recommended rates if approved would be effective as of July 1, 2017.)

Section 24

Section 61-40-11 of the North Dakota Century Code is amended and reenacted as follows:

61-40-11. Water rates.

The Industrial Commission may authorize the Authority to contract at competitive, floating, market rates for industrial water depot and lateral retail sales. The Authority shall provide a report on the rates to the Commission and Legislative Management's Water Topics Overview Committee on a regular basis. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the Authority, with the exception of the costs identified in Section 61-40-10 which are paid for by industrial water depot and lateral sales.

Section 24 did not have an emergency clause. Current law reads as follows:

61-40-11. Water rates

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

Bank of North Dakota staff, Mr. Wirtz and I will be available at the May 1 meeting to discuss this legislation and the suggestions presented in this memorandum.

Mr. Kelvin Hullet, Bank of North Dakota, indicated the Bank is currently working on the refinancing of the WAWS loans as discussed during the legislative session. They have also been in discussions with Pam Sharp, OMB, regarding the timing of the \$25 million payment from the refinancing of the General Fund/WAWS loan--whether the payment should come during the 2015-2017 biennium or the 2017-2019 biennium. Mr. Hullet reviewed the restructuring package of the WAWS debt as follows:

- BND loans (2 loans) will continue to be variable debt - LIBOR rate plus 1.5% adjusted on a quarterly basis (currently variable rate is 2.6%)
- General Fund loan will become part of the BND loans so it will go from being a 5% interest loan to a variable rate loan
- Resources Trust Fund loans will be restructured.

He indicated that this restructuring is being done until the WAWS study on the lease or sale of the WAWS industrial water assets is completed and then, based on the results of the study, the Bank will again look at restructuring the WAWS debt. Mr. Hullet said that the study will look at the options of leasing or selling the WAWS industrial sales or developing a refinancing package that is more long term.

In response to a question Mr. Hullet stated that House Bill 1020 does include language in Section 10 that in the event of a default the Resources Trust Fund would make the debt payment. That is a new provision; previously it was just the moral obligation of the State. The new language states if WAWS can't make a payment on either the Bank refinanced loans or, if we go to bonding, bond payments then the Resources Trust Fund would be the secondary source of repayment.

Mr. Hullet stated that the legislation gives WAWS the ability to issue revenue bonds. The information given to the Legislature outlined the option that WAWS would bond the \$90 million of BND debt (current BND outstanding loans plus the General Fund loan) and the Bank would reset the Resources Trust Fund notes to interest only for five years and the accrued interest would be paid at the end of the loan. If the Industrial Commission and WAWS decides that the lease or sale makes sense then the Bank's expectation is that the sale or lease of the industrial water assets will be used to repay the \$90 million Bank note. One way or the other the intent is to take that \$90 million note off of short term financing within the next year.

Ms. Fine indicated that she is working with the Water Commission (State Engineer is to Chair the Study Advisory Committee) on how to proceed with the study that must be completed by June 1, 2018.

Ms. Fine stated that during the legislative session there was discussion regarding WAWS not offering competitive water rates and that WAWS should be allowed to do that. There was a provision included in Section 24 regarding competitive water rates. That provision did not have an emergency clause so it becomes effective on July 1. Mr. Wirtz will be presenting today a revised rate schedule under the terms of the current law and then will present a new rate schedule at a future meeting that would become effective on July 1.

Mr. Wirtz discussed a revised volume industrial rate schedule. (A copy of the schedule is available in the Commission files.) Last year the Commission adopted a tiered price schedule dealing with volume commitments by companies – the more a company bought the lower the price with a cap of \$.60 per barrel for anything over a million plus barrels. That rate structure expires on May 31. What he is proposing today is a revision to allow for a little bit lower price. Currently water is selling anywhere from \$.40 to \$.60+ per barrel on the frack water side depending on the location. What is being proposed today will allow WAWS to be competitive on the fracture water sales. WAWS had only one water frack sale in March. In order to insure payments on the State's debt, WAWS needs to make some frack water sales. WAWS has had steady sales at the depots for maintenance water but to get that revenue up to where WAWS needs them, they are requesting additional options to be competitive. This proposal would allow WAWS to offer a lower price for higher volume down to \$.45 a barrel. At that lower price WAWS will be able to cover their production and delivery costs and still make a profit to be used to pay down debt.

In response to a question Mr. Wirtz said WAWS' current share of the statewide market is at 10%. The Water Commission has quantified the WAWS share for their five-county service area to be approximately 14%. He indicated that in order to make their debt payments they need to have market share of 20% to 25%. If WAWS can

get some of that market back it would help ease the stress of making the debt payments. He indicated that there are some better ways to do this that would be advantageous for everyone and he will present those ideas in June to be effective after July 1 when the new law goes into effect.

In response to a question Mr. Wirtz stated that this revision would apply for May and June or until the Commission acts on a new rate schedule. It is important that WAWS has competitive rates to offer right now so there is an incentive for companies to purchase water from WAWS.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem to approve the following revised volume industrial rate schedule effective May 1 until subsequent action can be taken.

Proposed Industrial Rate Schedule (5/1/2017)

<u>Volume Commitment in Barrels</u>	<u>Price Per Barrel</u>	<u>Price Per 1000 gallons</u>
0-250,000	\$.84	\$20.00
250,001-500,000	\$.75	\$17.86
500,001-750,000	\$.70	\$16.67
750,001-1,000,000	\$.65	\$15.48
1,000,001-1,500,000	\$.60	\$14.29
1,500,001-2,000,000	\$.50	\$11.91
2,000,000+	\$.45	\$10.71

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

Governor Burgum indicated that the Commission looks forward to a more comprehensive discussion in June on essential pricing options including a better sense of competition, gross margins and costs.

Mr. Wirtz indicated that he has some data that he would like to present regarding water sales in the area that he believes would be useful to the Commission.

Being no further Western Area Water Supply Authority business, Governor Burgum adjourned the meeting at 3:28 p.m. and took up Public Finance Authority business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on May 1, 2017 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also

Present: Leslie Oliver, Governor's Office
Cassandra Torstenson, Governor's Office
Jaret Wirtz, Western Area Water Supply Authority
Kelvin Hullet, Bank of North Dakota
Craig Hanson, Bank of North Dakota
DeAnn Ament, Public Finance Authority
Members of the Press

Governor Burgum called the Public Finance Authority portion of the Industrial Commission meeting to order at 3:28 p.m. following completion of Western Area Water Supply Authority business.

Ms. DeAnn Ament, Public Finance Authority (PFA) Executive Director, presented a State Revolving Fund Reimbursement Resolution for the Commission's consideration. She indicated that the Authority will need to issue bonds for the State Revolving Fund Program within the next 6 to 18 months. By approving this resolution any loan draws the PFA would pay out in regards to this proposed financing from today through 18 months (the resolution limit) or whenever the PFA issues bonds will be considered an expenditure of funds. By adopting this resolution the Authority can be reimbursed for the loan draws from the bond proceeds and the bond proceeds will be considered spent as soon as the issue closes/loan draws are reimbursed. The IRS tax-exempt regulations require that the Commission adopt a resolution in order to reimburse these loan draws and consider the bond proceeds expended.

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

RESOLUTION PROVIDING FOR REIMBURSEMENT OF CERTAIN COSTS FOR THE STATE
REVOLVING FUND PROGRAMS

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 Industrial Commission, acting pursuant to provisions of the Act, the Clean Water SRF Act, and the Drinking Water SRF Act, and pursuant to the Amended and Restated Master Trust Indenture dated as of July 1, 2011, between the Authority and the Bank of North Dakota, as Trustee, as amended (the "Master Trust Indenture") expects to authorize and direct the issuance by the Authority of a future series of its State Revolving Fund Program Bonds (the "Bonds");

WHEREAS, the Authority desires to fund additional projects pursuant to the Clean Water Program and the Drinking Water Program with amounts on deposit in the Federally Capitalized Loan Accounts and Unrestricted Cumulative Excess Subaccounts (the "Accounts") and, at a later date as determined in the discretion of the Executive Director, and in compliance with Treas. Reg. §1.150-2, reimburse those Accounts of the Clean Water Program and the Drinking Water Program from the proceeds of subsequent Bonds issued pursuant to the Master Trust Indenture;

NOW THEREFORE, BE IT RESOLVED BY THE INDUSTRIAL COMMISSION OF NORTH DAKOTA, AS FOLLOWS:

Section 1. Definitions. All terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Master Trust Indenture.

Section 2. Purpose and Expectations. The Industrial Commission declares that it intends for the Authority to undertake the making of Loans pursuant to the Clean Water Program and the Drinking Water Program with amounts on deposit in the Accounts and to reimburse the Accounts for expenditures made for costs of the Loans out of the proceeds of the Bonds. This declaration is a declaration of official intent adopted pursuant to Treas. Reg. §1.150-2.

Section 3. Timing and Amount of Reimbursement. Reimbursement allocations made under the provisions of this resolution shall be made within 18 months of the date hereof and shall not exceed \$160,000,000 in aggregate principal amount consisting of up to \$80,000,000 for the Clean Water Program and up to \$80,000,000 for the Drinking Water Program. The Executive Director shall be responsible for the timing and amount of the reimbursement allocations. Each allocation shall be evidenced by an entry on the official books and records of the Authority maintained with respect to the Bonds.

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

Ms. Ament presented a Capital Financing Program loan request from the City of Rolla in the amount of \$750,000. She indicated that this is a little different from other financings that the Commission has approved. The City of Rolla wants to do some road repairs and the plan is to use PFA internal funds because the City wants to repay the loan within five years. The City has provided a memorandum indicating that they will be able to repay the loan in that time frame. Based on that information, the Advisory Committee is recommending approval of the loan.

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

INDUSTRIAL COMMISSION OF NORTH DAKOTA
NORTH DAKOTA PUBLIC FINANCE AUTHORITY
RESOLUTION APPROVING

LOAN AND PURCHASE OF MUNICIPAL SECURITIES
WITH FUNDS HELD IN THE CAPITAL FINANCING PROGRAM
GENERAL BOND RESOLUTION OPERATING ACCOUNT

WHEREAS, the City of Rolla (the "Political Subdivision") has requested a loan in the amount of \$750,000 (the "Loan") from the North Dakota Public Finance Authority (the "NDPFA") to finance a seal coat and crack sealing project; and

Whereas, the Political Subdivision will issue revenue bonds payable with sales tax collections to repay the loan;

Whereas, upon a review of the loan application, the NDPFA's Advisory Committee is recommending approval of the Loan; and

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

1. The Loan is hereby approved.

2. The Executive Director is authorized to fund the Loan as an eligible investment with funds available under the NDPFA's Capital Financing Program General Bond Resolution Operating Account, upon receipt of the Municipal Securities described and authorized to be issued in the Resolution to be adopted by the Political Subdivision's governing body.

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

Ms. Ament presented a Clean Water State Revolving Fund loan request from the City of Larimore in the amount of \$9,360,000. This would be to replace 6.2 miles of sewer lines. The City will issue improvement bonds payable with special assessments. Based on that information, the Advisory Committee recommended approval of the loan.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem 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 Larimore (the "Political Subdivision") has requested a loan in the amount of \$9,360,000 from the Program to finance a sewer line replacement project; 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 Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Ament presented a memorandum on the Public Finance Authority Advisory Committee loan approvals for the State Revolving Loan Fund Clean Water and Drinking Water and Capital Financing Program applications as follows:

Re: Cavalier, Clean Water State Revolving Fund
Gardner, Clean Water State Revolving Fund
Gardner, Drinking Water State Revolving Fund
Horace, Drinking Water State Revolving Fund
Maxbass, Drinking Water State Revolving Fund
Mohall, Drinking Water State Revolving Fund
Sherwood, Drinking Water State Revolving Fund
Flasher Public School District, Capital Financing Program

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 approved, 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 loans.

The committee reviewed an application from the City of Cavalier requesting \$906,000 loan under the Clean Water State Revolving Fund (CWSRF) Program to finance the extension of sewer services to Pines Addition. The total project cost is \$906,000. This project qualifies for up to \$271,800 of loan forgiveness; the net amount of the loan will be \$634,200 when fully funded. 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 revenue 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 Gardner requesting a \$27,000 loan under the CWSRF Program to refinance a 1999 USDA-Rural Development which financed improvements and replacements to

the existing sewer lift station and lagoon. The requested term for the CWSRF loan is 13 years. The City will issue revenue bonds payables.

The committee reviewed an application from the City of Gardner requesting a \$250,000 loan under the Drinking Water State Revolving Fund (DWSRF) Program to refinance a 2010 USDA-Rural Development which financed a replacement water storage system, build a new pump house, update an 8" water main and install 3 fire hydrants. The requested term for the DWSRF loan is 25 years. The City will issue revenue bonds payable with water revenues.

The committee reviewed an application from the City of Horace requesting a \$580,000 loan under the DWSRF Program to finance the installation of 6" PVC water main and also replace 4" water main with 6" PVC water main. Total construction costs are estimated at \$580,000. The requested term for the DWSRF loan is 20 years and the average annual payment will be approximately \$33,968. 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 Maxbass is requesting an \$85,000 increase to the previously approved \$373,000 loan (total \$458,000) under the DWSRF Program to finance the replacement of the aging wells and well house. Total construction costs are estimated at \$585,000 with \$127,000 from Surge Funding provided by the ND Legislature in 2015. This project qualifies for up to \$288,000 of loan forgiveness; the net amount of the loan will be \$170,000 when fully funded. The requested term for the DWSRF loan is 20 years. The City of Maxbass will issue revenue bonds payable with water user fees.

The committee reviewed an application from the City of Mohall requesting a \$610,000 loan under the DWSRF Program to finance the installation of an elevated 200,000 gallon water tower, water piping, sewer service, access road electrical and controls. The entire project will cost \$1,280,000 with the State Water Commission providing a \$670,000 grant. The requested term for the DWSRF loan is 20 years. The City will issue revenue bonds payable with water revenues.

The committee reviewed an application from the City of Sherwood requesting a \$155,000 loan under the DWSRF Program to extend 8" PVC water mains to loop the water system. The project cost is \$611,000 with \$456,000 provided by a State Water Commission MR & I grant. The requested term for the DWSRF loan is 20 years. The City will issue revenue bonds payable with water revenues.

The committee reviewed an application from the Flasher Public School District (District) is requesting a \$400,000 loan under the Capital Financing Program. The District will demolition the 1911 high school building and erect a pre-engineered building which will hold two vocational classrooms. It will also serve to connect the administration/elementary wing to the older gym and vocational shop. The entire project is estimated at \$1,300,000 with \$900,000 being provided from local funds on hand. The requested loan term is 20 years. The District will use their building fund levy of 10 mills to repay the debt. In addition, the District has authorized the Public Finance Authority to intercept future Foundation Aid, if necessary.

The Public Finance Authority's Advisory Committee approved the loans at their April 25, 2017 meeting.

Being no further Public Finance Authority business, Governor Burgum adjourned the meeting at 3:31 p.m. and took up Department of Mineral Resources business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on May 1, 2017 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also

Present: Leslie Oliver, Governor's Office
Cassandra Torstenson, Governor's Office
Lynn Helms, Department of Mineral Resources
Bruce Hicks, Department of Mineral Resources
Alison Ritter, Department of Mineral Resources
Matthew Sagsveen, Attorney General's Office
Alexis Brinkman Baxley, NDPC
Jan Swenson, Badlands Conservation Alliance
Lawrence Bender, Frederickson & Byron
John Morrison, Crowley Fleck
Hope Hogan, Attorney General's Office
Aron Abbey, TSRC MHA Nation
Robert Fimbres, TSRC MHA Nation
Members of the Press

Governor Burgum called the Department of Mineral Resources portion of the Industrial Commission meeting to order at 3:32 p.m. following completion of Public Finance Authority business.

Mr. Lynn Helms, Department of Mineral Resources Director, presented orders for the following cases: (Copies of the orders are available in the Commission files.)

Case 25640, Order 28208 - Petition for the unitization of the Haley-Red River Unit, Bowman County
Case 25642, Order 28210 - Petition for the unitization of the Corey Butte-Red River Unit, Bowman County –Mr. Helms provided a copy of an exhibit from the record that showed the location of the proposed units. (A copy of the exhibit is available in the Commission files.) Mr. Helms said the two proposed units are small units in Bowman County and are similar to other successful waterflood units that Luff Exploration has formed in the area. The staff is recommending a correction to the unit agreements related to the proper identification of the actual top of the Gunton Formation so it is consistent with the Oil and Gas Division's data base and everyone's understanding of where the top of the Gunton Formation is. In regards to the Corey Butte Unit a mineral owner, Mr. Paul White, appeared at the hearing and expressed concern about his equity in the Unit. Evidence was presented at the hearing that showed that the determination of equity is based on the geology. That information is reflected in the findings of the order. Mr. White also expressed concern about the performance of the well in the unit and that has been addressed in the order. The final consideration about Corey Butte is that it is right on the North Dakota/South Dakota border. There is a high possibility that oil could move back and forth across that border. The proposed order notes that there are provisions for a border agreement of those two adjoining units. Luff has the Pete's Creek Red River Unit in South Dakota and they will have the Corey Butte Unit in North Dakota. There is a border agreement which the Division staff will be monitoring as will Luff. If there is a situation where it looks like injection or production is crossing the state boundary it can be addressed in that border agreement in terms of how the production is allocated and who gets the taxes. South Dakota has a 4% tax and North Dakota has a 10% tax. All of the issues are addressed in the orders and he recommended approval.

Case 25640: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 28208 issued in Case 25640, providing for the unitized management, operation and further development of the Haley-Red River Unit located in Bowman County, be approved this 1st day of May, 2017. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 25642: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 28210 issued in Case 25642, providing for the unitized management, operation and further development of the Corey Butte-Red River Unit located in Bowman County, be approved this 1st day of May, 2017. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 25641, Order 28209 - Determination of Plan of Unitization of the Haley-Red River Unit - Consideration of a motion to delegate authority to sign when amended Unit Agreement and ratifications are submitted.

Case 25643, Order 28211 - Determination of Plan of Unitization of the Corey Butte-Red River Unit - Consideration of a motion to delegate authority to sign when amended Unit Agreement and ratifications are submitted. – Mr. Helms said the two proposed orders would approve the ratification of the two units but before the orders are approved the operator needs to make minor corrections to the unit agreements and file that information with the Commission. The staff will also need to go through the mathematical exercise of making sure that the operator has obtained more than 60% ratifications as required by law. He recommended that the Commission approve motions delegating the responsibility of signing the orders to him.

Case 25641: It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Department of Mineral Resources Director be authorized to sign Order 28209 issued in Case 25641 regarding the Determination of a Plan of Unitization upon receipt of an amended Unit Agreement and when sufficient ratifications are submitted. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 25643: It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Department of Mineral Resources Director be authorized to sign Order 28211 issued in Case 25643 regarding the Determination of a Plan of Unitization upon receipt of an amended Unit Agreement and when sufficient ratifications are submitted. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 25644, Order 28054 - Confiscation of production-related equipment and salable oil at the #1 McMahan State well, Dunn County

Case 25645, Order 28055 - Confiscation of injection related equipment and salable oil at the #1 Cook N well, Dunn County – Mr. Helms stated that these two orders deal with confiscation of well bores and production equipment. (A handout is available in the Commission files.) Mr. Helms reviewed the long history the Division has had in working with this operator, Marsha Azar, to keep these wells actively producing and maintaining the well sites. The end summary is that these are the last two wells operated by Marsh Azar. They are on a \$50,000 surety bond which the Division would send a letter to the surety company saying plug and reclaim the wells or forfeit the bond. There is approximately \$143,000 in a suspense account at BND that can be confiscated. The best guess is that the equipment on the two sites is worth less than \$30,000. The sum total of what the Division could receive is about \$220,000 and the estimated costs for plugging and reclamation is \$300,000. He provided pictures of the equipment and structures on the two sites. With this action Mr. Azar will no longer be a North Dakota operator – all of his wells will have gone to people who have either properly bonded them or put them on production and the Division will see that these sites are properly plugged and abandoned at a cost of, hopefully, \$70,000 to \$80,000 from the Abandoned Well Fund.

In response to a question Mr. Helms reviewed the steps the Division has followed before reaching this point of confiscation. He indicated that if the surety bond is forfeited the Division will then go out for bid to have the work done on plugging the wells and reclaiming the wellsites.

Case 25644: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 28054 issued in Case 25644, authorizing the confiscation, under NDCC §§ 38-08-04 and 38-08-04.9 of all production-related equipment and salable oil at the #1 McMahan State Well in Dunn County, be approved this 1st day of May, 2017. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 25645: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 28055 issued in Case 25645, authorizing the confiscation, under NDCC §§ 38-08-04 and 38-08-04.9 of all injection-related equipment and salable oil at the #1 Cook “N” Well in Dunn County, be approved this 1st day of May, 2017. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 25679, Order 28089 - Consideration of request for amendments to field rules for the Pratt-Madison Unit and the Pratt-Madison Pool, McHenry County

Case 25680, Order 28090 - Consideration of request for amendments to the field rules for the Pratt-Madison Unit and Pratt-Madison Pool, McHenry County – Mr. Helms said these cases deal with an application to do some work near the Pratt-Madison Unit. Sedalia Energy, the operator of the Unit, is proposing to drill some horizontal wells partially in the Unit and partially outside the Unit. They proposed a plan to share between the spacing units outside the Unit and the Unit based on feet of lateral drilled inside and outside the Unit. After reviewing the plan the staff determined that the proposal was not protective of correlative rights. The right way to do this is to enlarge the Pratt-Madison Unit to bring in the bordering spacing units and to drill the wells after that has been done. The proposed orders deny the applications and point out in the findings that the appropriate approach is to enlarge the Unit and then come back with a drilling proposal. In response to a question Mr. Helms indicated that enlarging a unit is not easy and is time consuming but it is the fairest way to do this because everyone then knows what they are sharing in and how they are sharing in the expanded unit.

Case 25679: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 28089 issued in Case 25679, denying the application be approved this 1st day of May, 2017. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 25680: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 28090 issued in Case 25680, denying the application be approved this 1st day of May, 2017. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 25708, Order 28118 - Consideration of amendments to the field rules for the Eagle Nest-Bakken Pool, Dunn County (A handout is available in the Commission files.) Mr. Helms indicated that this is a very complicated area in terms of ownership. In the 1280 acre unit consisting of Sections 16 and 21 37.3 percent is under lease to Marathon and 25 percent is leased to Slate with approximately 40 percent being unleased federal minerals. BLM controls the federal leases and will not allow wells to be drilled on this spacing unit without a lease. BLM has not completed their resource management plan for the Lost Bridge Consolidation Area so they are holding up development in the area. Slate has leases that are expiring in October and Marathon has leases that expire in May 2018.

Mr. Helms stated that the proposed order would deny Slate’s proposed application and will keep the standup spacing unit as a 1280 which allows for the most orderly development and the least impact footprint on the land. It

is a very rough topographical area and difficult to develop. The proposed order would allow Marathon to collaborate with Slate to develop the standup 1280 acre spacing unit if they get their drilling operations underway by August 1, 2017. That would preserve their respective leases. If they don't get drilling underway, the order would allow the Director to administratively approve an order that would break the spacing unit into 320 and 960 spacing units and allow Slate to proceed with the drilling of a well. This plan would preserve the operators' leases and would put the federal acreage into a drainage situation and force the federal government to offer their minerals for lease. It is not the preferred alternative but in the interest of protecting correlative rights and preventing the federal government from creating waste it is the best plan that they could come up with.

In response to a question Mr. Helms indicated that this should prompt some action by the federal government because federal law requires that they lease when their minerals are being drained.

In response to a question Mr. Helms explained how the federal government has delayed the development in the area -- by starting and stopping the development of a resource management plan for the area. He stated that the oil operators do not intend to disturb the surface in the Lost Bridge Consolidation Area. The federal minerals can be accessed by horizontal well bores from outside that Area. This will move the development forward and prevent the minerals under Section 21 going to waste.

Case 25708: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 28118 issued in Case 25708, denying the application of DW Slate LLC and affirming the 1280 acre spacing until August 1, 2017 at which time if no drilling has been commenced allowing the Director to administratively revise the spacing to 320-acre and 960-acre spacing units, be approved this 1st day of May, 2017. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum commented on a letter that he had just received from Secretary Zinke regarding the Secretary forming a 28 person committee for the purpose of providing input on changing or reviewing federal policy related to energy development on BLM and Tribal Lands. This group will be taking into consideration all forms of energy – wind, coal, oil and gas. Mr. Helms said what he would hope for is that if the federal government owns less than some agreed to percentage of the spacing unit that they would step back and say go ahead and develop the minerals. Currently that is not the position they have taken but that would be ideal. All of the federal policies have been built around large federal tracts in places like Wyoming, Utah and Nevada where the federal government owns the surface and the minerals and the tracts are large. Those policies for large tracts do not work for small federal tracts.

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 proceedings:

Case 25797

Case 25414

Case 24179

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

Governor Burgum 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 15-20 minutes. The purpose of the executive session is to consult with the Commission's attorney regarding the previously identified adversarial administrative proceedings. Any formal action by the Commission will occur after it reconvenes in open session. The executive session will begin at 4:00 p.m. When the executive session ends the Commission will reconvene in open session.

Governor Burgum reconvened the meeting at 4:16 p.m. in open session and the public was invited to return to the meeting room. During its executive session the Commission consulted with its attorney regarding pending adversarial administrative proceedings in regards to Case Nos. 25797, 25414, and 24179. He indicated that no final action will be taken by the Commission at this time as a result of the executive session discussion on these cases. The Commission has provided to its attorney guidance regarding these matters

Mr. Helms provided the following report on legislation impacting the Department of Mineral Resources:

DMR 2017 Legislative Session Round-Up:

HB 1336- Environmental Health and Safety Audits.

- Started with the Department of Health and then expanded to include Oil and Gas.
- Not a new concept. TX, SD, WY and OK all have similar laws. ND's was modeled somewhat after those states.
- Voluntary on the part of the operator. If a violation is found- have 45 days to notify the regulator and then 60 days to correct the violation unless an extension of no more than one year is requested and granted. Must complete the entire audit within 180 days.
- Must notify the regulator of audit in writing. Must specify what is being audited.
- No civil penalties unless: imminent or substantial harm to human health or environment; found by regulators before the audit; repeated violations more than once in two years, willful violation, gross negligence, violate federal rule to maintain primacy.
- Can also pursue penalties if: intentionally misrepresenting facts, initiated audit to avoid liability.
- The audit report itself is privileged- but the types of violations, and the required corrective action is not.

Benefits of HB 1336:

- Codifies a "find it and fix it" policy.
- Allows for oil and gas producers to self-report problems found in the field and correct them before they are found by state inspectors.
- Free from penalties if certain criteria are met.
- Anticipate several audits coming forward.

Required of Department:

- Work load will depend on number and scope of audits.
-

HB 1151- Spill Bill

- Increases ON SITE spill reporting minimum volume of oil, produced water and natural gas liquids from one barrel to ten barrels.
- Only on sites constructed after Sept. 1, 2000.
- Cumulative spills of more than 10 bbls. over a 15 day period must be reported.
- Based on 2016 stats about two-thirds of spills no longer must be reported.
- Does not change the fact that spills must be cleaned up.

Benefits of 1151:

- Potentially lowers number of reportable spills.

Required of the Department:

- Greater scrutiny during inspections, potential for additional inspections.

- Creation of database tracking method for spills. I.E. reportable vs. non-reportable, clean-up status, etc.
 - Additional testing requirements at the time of final site reclamation.
-

HB 1347 AWPSRF- Funding for studies researching brine pond locations/landownership/best possible remediation techniques, etc.

- Increases appropriation to Abandoned Well Oil and Gas Site Plugging Restoration Fund Legacy Program.
- Continues EERC and NDSU Studies.
- Dedicates \$1.4 million towards Brine pond studies- size, scope, landowners compensated.
- Adds Phase III pipeline study. Risk assessment and leak detection technology.

Benefits of 1347:

- Reclaims old oil field sites where there is no responsible party under state law.
- Studies best remediation techniques for Brine Ponds.
- Researches the number, location, size and compensation to landowners of brine ponds.
- Continues research on best practices for pipeline leak detection.

Required of the Department:

- Prepare and procure two bids for projects: studies and Landman.
 - Participate when needed in Phase III pipeline study.
-

HB 1257- Unitization

- Decreases the minimum royalty owner and working interest owner consent needed to form a unit from 60% to 55%. Also changes language so the amount need to dissolve a unit is consistent with the amount it took to create the unit. (80% from 1965 to 1991, 70% from 1991 to 2001, 60% from 2001 to July 31, 2017 and 55% for any unit formed after August 1, 2017.)

Benefits of 1257:

- Lowering percentage allows for greater possibility of unitization in the future for increased oil recovery and footprint reduction.

No additional requirements of the Department.

SB 2014- DMR Budget

- Decreases FTE count from 110 to 101.5.
- Maintains inspection and enforcement staffing.
- Appropriates money for 2 contingent positions based on well count of 18,200 and budget section approval.
- \$1 million for litigation.
- Study of lake bed dredging jurisdiction.

Benefits of 2014:

- Contingent positions allow for Oil and Gas division to add positions as oil activity increases.
- Continues funding for litigation against federal policies which interfere with State jurisdiction.

Required of the Department:

- Reduction in Force.
 - Study jurisdiction of lake beds.
-

SB 2134- Ownership of minerals under the lake.

- Creates a process to determine the ordinary high water mark of the Missouri River and subsequently the proper mineral owners.

- DMR must hire a consultant within 90 days to review the corps survey and report findings back to DMR within 6 months.
- DMR must then have a public hearing to review consultant findings and take public comments on said findings.
- Commission must issue order to determine location of ordinary high water mark where in dispute.
- May require State Trust Land Dept. to repay lease and mineral revenue payments to operators who must disperse them to the correct mineral owners, if a determination is made that revenue incorrectly went to the state.
- Challenges to findings of the IC must be brought to District Court within two years.

Benefits of 2134:

- Establishes state policy for determining ordinary high water mark of the Missouri River.
- Provides due process to those who wish to challenge the presumptive ordinary high water mark.
- Sets a statute of limitations for court challenges of NDIC ordinary high water mark determinations.
- Establishes a timeline for distributing lease and mineral revenue to the rightful owners.

Required of the Department:

- Retain a consultant within 90 days.
- Hold a public hearing, make a determination and recommendation to the Industrial Commission.
- If necessary, participate in any appeals of IC decision.

SB 2156- permitting required for underground storage and retrieval, waste disposal facilities, and the disposal of radioactive waste material; and to provide for a legislative management study.

- This bill changes the definition of “high-level radioactive waste material” so it is consistent with the federal definition in the Nuclear Waste Policy Act of 1982 (amended in 2004).
- Under the existing statutes, testing and exploration for a radioactive disposal site would be regulated as a stratigraphic test hole under ND Century Code 38-08, this bill moves that regulatory authority to ND Century Code 23-20.2 Disposal of Nuclear and Other Waste Material.
- Places all activities related to nuclear waste disposal in the same chapter of the century code.
- Under this bill, parties could not explore or test for a subsurface nuclear waste disposal facility without first obtaining approval from a concurrent resolution passed by the legislature.
- In the original bill parties had to obtain permission from the county and water resource district prior to permission via a concurrent resolution in the legislature for subsurface disposal of radioactive waste in the state. This was deemed a legislative veto by the local subdivisions of the legislative branch so it was amended to give the county control of the size, scope, and the location of the disposal site.
- There are problems with the existing law (NDCC 23-20.2) that need to be fixed to insure that the State of North Dakota has an opportunity to oppose nuclear waste disposal within the state if we so choose.
- The intent of the Legislative Management Study is to fix those problems:
 - Determine the feasibility of splitting NDCC 23-20.2 into three chapters (subsurface nuclear waste disposal, subsurface disposal of other wastes, and subsurface disposal and retrieval of material). The Department of Mineral Resources already has prepared a first draft of these new chapters.
 - Review the legality of the existing statute in view of legislative veto, the commerce clause, special laws, and local laws.
 - Identify mechanisms and procedures for a special session for the state to file a “notice of disapproval” to Congress within the mandated 60 day window.

Required by the Department:

- The Department of Mineral Resources – Geological Survey and Dept. of Environmental Quality have already done work on these issues and plan to pursue these issues ourselves if the proposed study is not chosen by legislative management.

HCR 3014- Studying the various legal notice requirements of all state agencies and political subdivisions

Benefits of 3014:

- Identify potential cost savings to the state.
- Identify potential alternatives to various legal notice requirements.

Required of the Department:

- Participation if requested.
-

HCR 3027-consider studying the estimated fiscal impact to the state of refracturing existing oil wells.

Benefits of 3027:

- Studies potential fiscal impact, costs and benefits related to tax collections for refracs.

Required of the Department:

- Participation if requested.
-

HB 1003- Attorney General Budget

Required of the Department:

- Provide funds for litigation relating to DAPL, if needed.
-

SB 2013- Department of Trust Lands Budget

Required of the Department:

- Participation in natural gas valuation study, if needed.

There was discussion regarding the reporting of spills and the importance of all the agencies involved in the reporting of spills working together. Mr. Helms said the State needs a single reporting form on the web and a single call in number or a one call for spills.

Mr. Helms presented and discussed in detail each of the following PowerPoint slides regarding SB 2134. He said the timeline is aggressive. They need the RFP on the website by June 1 and the firm selected by August 28 and the review needs to be finished by March 1, 2018. That would be roughly nine months. There was discussion regarding who would be eligible to do the study--the law prohibits firms that have previously done work on this issue.

Senate Bill 2134

- Adopts Corps survey as "presumptive determination" of the historical OHWM.
- Requires a review of the Corps survey to correct/modify survey segments if clear and convincing evidence shows adjustments are necessary under state law.
- Designates DMR to oversee review process.

SB 2134			
Timeline			
Effective Date of Bill	April 21, 2017	Emergency Clause	
Publication of Invitation by Department of Natural Resources	June 1, 2017	Department of Natural Resources to prepare Request for Proposal. This time line allows 60 days to prepare the RFP and determine method for distribution.	61-33.1-03 (1)
Selection of Firm - by the Department of Natural Resources	August 26, 2017	Selected must be done by August 26. (Must be done within 90 days from the publication of invitation.)	61-33.1-03 (2)
Firm begins their review. Firm provide findings and make recommendations on each segment of the river the firm reviewed.	September 1, 2017	This timeline assumes the firm's final report will be due on September 1, 2017. This may be a little aggressive in that once a firm is selected there needs to be time allowed to negotiate and finalize a contract.	61-33.1-03 (3) (4) (5)
Commission shall publish notice of the review findings.	March 1, 2018	The firm must complete their review within 6 months. Commission may act on the date of the recommendations.	61-33.1-03 (6)
Public Comment Period	March 25, 2018	This timeline assumes the notice could be published by February 25, 2018. (Could take up to 30 days to get notice in county papers.)	61-33.1-03 (6)
Public Hearings	May 24, 2018	60 days for comments. Public hearings to be held after the 60 days.	61-33.1-03 (6)
Hearing Officer/Staff provides recommendation.	June 23, 2018	Preparation of the recommendations. This timeline estimates 20 days. This may require more time depending on the number of comments - whether a transcript of the hearing needs to be prepared, etc.	61-33.1-03 (7)
Commission action	July 19, 2018	Commission may modify/Commission must take action on each finding. No use effective date of when the Commission has to act. Allow 25 days to get it finalized.	61-33.1-03 (7)
Distribution of application non-contradictory acreage	January 15, 2019	Distribution of royalties.	See 61-33.1-04 (1)
Other factors include bonus and royalty refunds and payment	July 19, 2020	Land Board and Operator must make payments within 2 years.	61-33.1-04 (2) & (3)
Revised 5/1/2017			

The current pending river litigation includes:

William S. Wilkinson, et. al. v. The Board of University and School Lands, et. al.; Williams County Case No. 53-2012-CV-00038 – ON APPEAL TO SUPREME COURT;

Statoil Oil and Gas, LP v. Abaco Energy, LLC et. al.; Williams County Case No. 53-2015-CV-00744 – ON APPEAL TO SUPREME COURT;

Statoil Oil and Gas, LP v. 1280 Royalties LLC et. al.; Williams County Case No. 53-2015-CV-01437 – ON APPEAL TO SUPREME COURT;

Whitetail Wave, LLC v. XTO Energy, Inc., et. al.; McKenzie County Case No. 27-2015-CV-00164;

Mary K Starin v. Kelly Schmidt, et. al.; Williams County Case No. 53-2015-CV-00986;

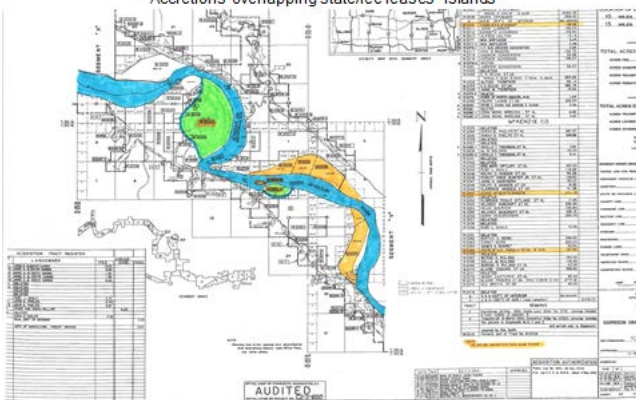
Continental Resources, Inc. v. ND Board of University and School Lands and United States; Case No. 1:17-cv-00014; and

ND Office of the State Engineer and ND Board of University and School Lands, IBLA Dkt No. 2016-170

SB 2134—Area of Review

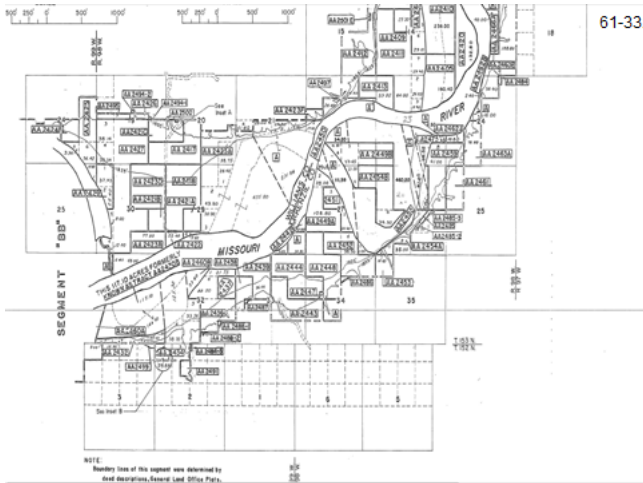
- Area of review covers 83 river miles and 12 Corps' survey segment maps from the northern boundary of Fort Berthold Reservation to 12 river miles west of Highway 85 bridge (see following slides).
- Fort Berthold Indian Reservation is not included.
- Approximately 39 river miles of the Missouri and Yellowstone located between the Montana State line and SB 2134 western boundary are not subject to this legislation or review process, and the OHWM is determined based on current river conditions.

NDIC Area of Review Example Corps Segment Map
 Accretions-overlapping state/fee leases—Islands



61-33.1-03 (3)

The selected and approved firm shall review the delineation of the ordinary high water mark of the corps survey segments. The review must determine whether clear and convincing evidence establishes that a portion of the corps survey does not reasonably reflect the ordinary high water mark of the historical Missouri riverbed channel under state law. The following parameters, historical data, materials, and applicable state laws must be considered in the review:

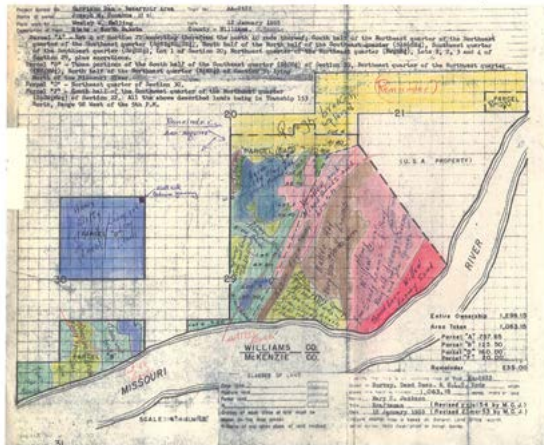


61-33.

61-33.1-03 (3) (a) NDGS appears to have a complete set of photo sheets along the Missouri River from the Montana Line to Garrison that were flown sometime between July and August of 1952. (Garrison closure date June 11, 1953)



61-33.1-03 (3) (b) Corps Historical Records—accretions—Red area "no agricultural value"



61-33.1-03 (3) (b) Corps Historical Records

Land appraisals

The Land appraisers were contract Ag appraisers from ND and other local rural states. They had degrees in Ag economics, soils, crops, etc, and many worked for small town Ag lenders.

These appraisals were not public and were for internal Corps purposes in evaluating land offers.

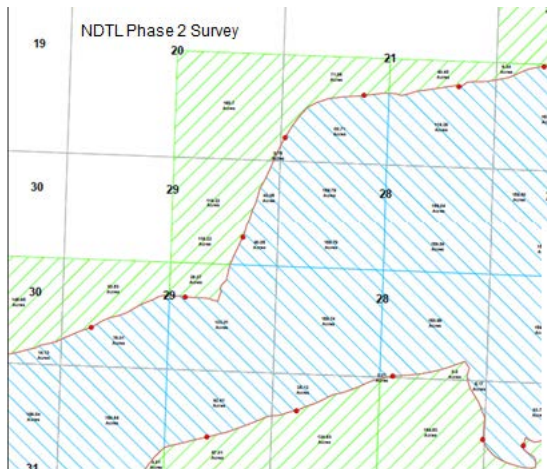
- The Corps just agreed to release these this year.

Some of these are very detailed and are very helpful in determining what the river bottom property really looked like and was worth.

In some cases they valued the river bottom acreage as two to three times the value of upland - inconsistent with that land being within the OHWM, which should have almost no value.

The key point is they represent the one and only detailed non-biased on the ground evaluation of the lands next to the river channel. Soils, land value, and other features that could be relevant in helping to interpret aerial photography and other data.
 - They are not conclusive and the intent was to the extent some of the detail could help interpret aerial photography and other data

61-33.1-03 (3) (c) USGS topographic data



61-33.1-03(3)(c) Missouri river flow data

NDGS constructed a graph from USGS stream Gauge files showing the flow in the pre-dam Missouri River at Bismarck for "Geology of Lewis and Clark" book.

Discharge Date	PGD aa	Depth	Feet	Height	Day	Year	Flow	Feet	Height	Day	Year	Flow	Feet	Height	Day	Year	Flow	Feet	Height	
18000	18000	18000	18000	18000	18000	18000	18000	18000	18000	18000	18000	18000	18000	18000	18000	18000	18000	18000	18000	18000

61-33.1-03(3)(d)

State case law regarding the identification of the point at which the presence of action of the water is so continuous as to destroy the value of the land for agricultural purposes, including hay lands. Land where the high and continuous presence of water has destroyed its value for agricultural purposes, including hay land, generally must be considered within the ordinary high water mark. The value for agricultural purposes is destroyed at the level where significant, major, and substantial terrestrial vegetation ends or ceases to grow. Lands having agricultural value capable of growing crops or hay, but not merely intermittent grazing or location of cattle, generally must be considered above the ordinary high water mark;

61-33.1-03(3)(e)

Subsection 3 of section 61 - 33 - 01 and section 47 - 06 - 05, which provide all accretions are presumed to be above the ordinary high water mark and are not sovereign lands. Accreted lands may be determined to be within the ordinary high water mark of the historical Missouri riverbed channel based on clear and convincing evidence. Areas of low - lying and flat lands where the ordinary high water mark may be impracticable to determine due to inconclusive aerial photography or inconclusive vegetation analysis must be presumed to be above the ordinary high water mark and owned by the riparian landowner.

In response to a question Mr. Helms stated that he and his staff and Ms. Fine would be drafting the RFP. They have available copies of the RFPs that were issued by the State Land Department for the Phase 1 and Phase 2 studies to help them with that work. He noted that there is quite a bit of pending litigation. He thanked Ms. Hogan for providing the list of pending litigation along with the sample RFPs.

In response to a question regarding the short time frame and how that fits in with upcoming Commission meetings and if the Commission will review the RFP or do we need special meetings to help him maintain his timeline, Mr. Helms said the way the legislation is written the Commission does not see this again, other than updates that he provides, until the proposed order comes following the hearing. The way the law is written is that all that process – RFP, hiring of the consultant, oversight of their work, publication of the hearing notice, conduct of the hearing and the compilation into an order-- is all done at the Department. He will provide updates as this work is done but the way the legislation is written it doesn't require the Commission to take any action until the proposed order and its findings are ready for the Commission's review. His intention is at every meeting to provide an update. Attorney General Stenehjem indicated that his staff would be available to assist with the drafting of the RFP or other legal work as needed. The Commission members indicated they would like regular updates.

Mr. Helms said the area they have to review covers 83 miles of river and 12 Corp of Engineers Segment Maps. The Ft. Berthold Reservation is not included and a significant portion of the Missouri River and Yellowstone River located up stream are also not included.

He said they have a good idea of what data, including aerial photos, is supposed to be used and we have almost all of this in digital format which should speed up the consultant's process in terms of determining the appropriate location of the ordinary high water mark. One provision that we have to include in the RFP is that the final information be provided in a format that the State Land Department can use to determine what was below and above that ordinary high water mark as it relates to State Land leases. The timeline that State Lands has for redistributing bonuses and royalties is very tight. In order to accomplish that, we need to put that burden on the consultant to put it in a format that makes that work.

Mr. Helms reported on whether there is a relationship of idle well waiver policies to Sales Tax - wells elasticity. He stated that Moody's presented data at the last revenue forecast saying that the connection between taxable sales and wells available for production is broken. It has been suggested that it was broken when the Commission on October 22, 2015 allowed waivers and extensions of wells to remain idle. Mr. Helms provided a graph from Moody's showing that is not the case – that change of policy in October 2015 neither initiated nor changed the slope of the line. (A copy of the graph is available in the Commission files.) He indicated that he will continue to work with Moody's to figure out what has caused the change but this graph shows that it wasn't the waiver policy.

Mr. Helms said he has had some discussions with members of the Legislature regarding sales tax policy and has suggested that the sales tax streams that are highly dependent on commodity prices such as energy and agriculture be put into "buckets" similar to what is done with oil production and extraction taxes. That would allow for a more controlled stream of revenue going to the General Fund and would help to stabilize revenue forecasting.

Being no further Department of Mineral Resources business, Governor Burgum adjourned the meeting at 4:52 p.m. and took up Administrative business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on May 1, 2017 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also

Present: Leslie Oliver, Governor's Office
Cassandra Torstenson, Governor's Office
Members of the Press

Governor Burgum called the Administrative portion of the Industrial Commission meeting to order at 4:52 p.m. following completion of Department of Mineral Resources business.

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

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring to approve the February 20, 2017, February 23, 2017 and March 15, 2017 meeting non-confidential and confidential minutes as presented. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Administrative business, Governor Burgum adjourned the meeting at 4:53 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary