

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on June 5, 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, Department of Agriculture
Lynn Helms, Department of Mineral Resources
Bruce Hicks, Department of Mineral Resources
Ed Murphy, Geological Survey
Alison Ritter, Department of Mineral Resources
Lawrence Bender, Frederickson & Byron
Hope Hogan, Attorney General's Office
Robert Fimbres, MHA
Rylan Baker, MHA
Geoff Simon, Western Dakota Energy Association
Jan Swenson, Badlands Conservation Alliance
Danette Welsh OneOAK
Ron Ness, ND Petroleum Council
Brent Brannan, OGRP
Justin Kringstad, Pipeline Authority
Members of the Press

Governor Burgum called the Department of Mineral Resources portion of the Industrial Commission meeting to order at 12:43 p.m.

Mr. Lynn Helms, Department of Mineral Resources Director, presented proposed Order 27909 in Case 25506. (A copy of the order and the handout are available in the Commission files.) Mr. Helms explained that this matter involves the revocation of an order to operate a treating plant. He indicated that the handout includes a photo that shows:

- the Apollo Resources (Apollo) facility (Madison Treating Plant #1) located 12 miles south of Arnegard;
- a Hunt Oil producing location with the two pumping units;
- a salt water disposal well not operated by Apollo but was utilized by Apollo. This well has been damaged to the extent that the operator believes it may have to be redrilled to be able to continue to operate the treating plant.
- a set of frac tanks that were moved onto the location without approval and there were some problems getting those diked.
- a red outlined area which is an area of contamination as a result of some activity by an employee of Apollo. That employee, Mr. Norman Fred, is no longer with Apollo.

Mr. Helms stated that Mr. Fred was found last October to be pumping salt water and drilling mud over the dike on to Mr. Madison's pasture and was ordered to stop. The Reddocks, owners of the Madison Treating Plant #1, came in and began the cleanup and that cleanup is still in progress. Mr. Helms indicated there is the potential for criminal charges against Mr. Fred because of his activities and there is also a notice of violation and complaint on the part of the Health Department because the contamination moved down a stream.

Mr. Helms stated that the hearing was held to review the permit for the treating plant. The Division staff brings these treating plants up for a review and rehearing every three years or less depending on the activity level at the plant.

Mr. Helms stated that he is recommending approval of Order 27909 which will revoke their permit and order them to remove the equipment, reclaim the site, complete the reclamation of the spill and end their operations at this site. He stated that within less than a year of getting their permit the Division staff started to see minor violations and those escalated to more and more major violations and finally culminated in what was witnessed last October. The cleanup activities have been too little and too slow. It is time to revoke their permit and order them to close down and reclaim the site.

In response to a question, Mr. Helms said it is his understanding this is the last and only operation they have in the State. He stated that three landowners in McKenzie County either appeared or submitted information at the hearing asking that the Commission revoke the permit and not extend their operations any further. The operator is under a notice of violation and complaint from the Health Department and the Commission staff is working on one. The company has a \$175,000 bond and their goal is to remediate the salt water damage in place by tilling in soil amendments and to work on it that way. He noted that there is always the risk that if the Commission revokes their permit and they have no income or cash flow that the Commission will end up with a bond forfeiture and we will end up cleaning the site up ourselves. That work can't be done for the amount of the bond. The staff would seek reimbursement for any additional funds. Apollo does not operate anywhere else in North Dakota but they do operate in the State of Louisiana. They have no recoverable assets that could be pursued here.

Case 25506: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 27909 issued in Case 25506, revoking Commission Order 24130 regarding the operation of a treating plant known as the Madison Treating Plant #1 located in McKenzie County, be approved this 5th day of June, 2017.

In regards to the disposal well, Mr. Helms stated there has been a contractual agreement between the owner of that well and Apollo. That will be another issue that the staff will have to tackle. It has its own bond He said Mr. Reddock testified that Mr. Fred pumped raw drilling mud that contained circulation material in it down the disposal well in an attempt to get rid of it and plugged the well off - damaging it potentially so badly that it can't be repaired. Mr. Helms stated that when the staff reviews paper work for companies looking for officers, directors and managers they will be watching for Mr. Fred's name.

In response to a question regarding if there was also an oil spill on the photo, Mr. Helms said Apollo indicated that they thought some of the damage resulted from the Hunt drilling pad. Apollo stated they had taken samples and sent them to a lab for testing. However they had no data to provide and couldn't remember what the lab results showed. The record clearly shows that although Apollo believed that Hunt contributed to the problem they have absolutely no data or evidence to back that up, nor did our field inspections back that up.

Mr. Bruce Hicks, Assistant Oil and Gas Division Director, stated the Health Department is working with Apollo on a remediation plan that is not yet in place. The off-site damage will be dealt with through the Health Department.

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

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2 the Industrial Commission close the meeting to the public and enter executive session for the purpose of attorney consultation. The purpose of the executive session will be to consult with the Commission's attorney regarding the following pending adversarial administrative proceeding:

Case 25840

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 10 minutes. The Commission is meeting in executive session to consult with the Commission's attorney regarding the previously identified adversarial administrative proceeding. Any formal action by the Commission will occur after it reconvenes in open session. Commission members, their staff, employees of the Department of Mineral Resources and counsel with the Attorney General's staff will remain but the public is asked to leave the room. The executive session will begin at 1:14 p.m. When the executive session ends the Commission will reconvene in open session

Governor Burgum reconvened the Commission meeting in open session at 1:37 p.m. and the public was invited to return to the meeting room. He stated that during its executive session the Commission consulted with its attorney regarding the pending adversarial administrative proceedings on Case 25840. He stated that no final action will be taken by the Commission at this time as a result of the executive session discussion on this case. The Commission has provided to its attorney guidance regarding this matter.

Commissioner Goehring raised the question of what contested cases need to come to the Commission. He stated that some of the cases are typical of what you have to deal with when you are a regulator. He suggested that the Commission set a dollar threshold or type of case that Mr. Helms should bring to the Commission for their consideration. He stated that Mr. Helms has a good understanding of what is sensitive or complex and what needs the Commission's input.

Attorney General Stenehjem said the Commission started out wanting to look at all of the complaint cases and now he thinks the Commission is at the point where only the most egregious cases require guidance from the Commission. He suggested that Mr. Helms and Ms. Hogan come up with a protocol of the kinds of cases that should come to the Commission.

Governor Burgum suggested that part of that protocol include an analysis of the size of fines, type of case, kinds of violations, and work off the current matrix. If a case is above a threshold or contains aggravating factors as Attorney General Stenehjem said maybe the Commission should see those cases but some things that are more as Commissioner Goehring is saying in the line of business would not need to come to the Commission.

Mr. Helms said it is his understanding that as long as the staff is using the standard matrix and a case is below a certain threshold the staff will deal with the case. If the case is above that threshold the staff will bring the matter before the Commission. If the matter involved a significant threat to health and safety or the environment or something with some serious egregious factors and the matrix doesn't take that into consideration, then those cases will be brought to the Commission. The Commission was in agreement. Mr. Helms said they will draft something up.

Mr. Ed Murphy presented Geological Survey Division Quarterly Report (including discussion of SB 2156). (A copy of the report is available in the Commission files.) He summarized as follows:

- Industry looked at 12,000 feet of core which is a trend that continues over the last three quarters and each quarter we continue to see more and more activity.
- Photographed 1,800 feet of core with a little over 5,000 photographs for the subscription site
- Paleontology Resource Protection Program – the paleontology program was established in 1989. To do any work on State owned lands you need to get a permit from the Geological Survey. The Survey has

issued 25 permits so it is a little less than one permit per year. On average the survey does 460 reviews primarily for the State Land Department looking at the impact to paleontological resources.

- State Fossil and State Rock and Mineral collections –The Survey is mandated to collect rocks, minerals and fossils. That is done through the State’s fossil collection as well as the rock and mineral collections – both are housed in the Heritage Center. The Survey has 12,000 rocks and minerals on display in its collection. State fossil collections are housed in 150 cabinets--over 140,000 fossil specimens. During a collection season the Survey could fill up anywhere from 3 to 4 cabinets. Any fossils picked up on federal land in North Dakota comes to the Survey for housing. The federal government has given the Survey some money for collections for that purpose so these fossils stay in the State which was the intent of this program. The estimated age of the oldest fossil in North Dakota would be in the mid 70 million years old. The Survey does have much older fossils that come up through oil and gas core that are on display and you are getting into hundreds of millions of years old.
- Fossil Digs - The Survey’s three paleontologists conduct about ten fossil digs over a field season. The digs often involve recently discovered fossils that must be excavated on either state or federal lands. Sometimes the digs will be on private land if the Survey has an agreement with the landowner that the fossil comes or gets donated to the State or at least a cast of it.
- Public Fossil Digs - The Survey also runs public fossil digs where the public is invited to participate. These were started in 2000 with one dig and now we are up to five and are very popular. He said the 3 paleontologists perform 75 percent of the outreach for several reasons – they are located in the Heritage Center that gets a lot of tourism traffic 200,000 per year and a lot of school groups.

Disposal of Nuclear and Other Waste Material. Mr. Murphy presented the following written information regarding this issue:

In 1979 State Geologist Lee Gerhard introduced a bill that would become NDCC 23-20.2 Disposal of Nuclear and Other Waste Material. Recent correspondence and his 1979 testimony made it clear that the potential underground storage of oil and gas was as much a driver of the bill as the subsurface disposal of nuclear waste. The resulting legislation regulates three activities: 1) subsurface nuclear waste disposal, 2) subsurface disposal of other types of wastes, [*this has been taken over now by the Underground Injection Control Program*] and 3) subsurface storage and retrieval of materials [*primarily oil and gas which is now covered by the Oil and Gas Division under 38-08*]. In 1979, NDCC 23-20.2-09 read in part “No person...may deposit, or cause or permit to be deposited in this state, any radioactive waste material which has been brought into this state for that purpose unless prior approval has been granted by the legislative assembly”. In 1987, NDCC 23-20.2 was amended to read “No person...may deposit, or cause or permit to be deposited in this state, any radioactive waste material which has been brought into this state for that purpose unless prior approval has been granted by concurrent resolution passed by the legislative assembly.” The law was amended because there was concern that it created a “local law” or “special law” conflict with the North Dakota State Constitution that had been amended in 1986. However, Legislative Council testimony during the 1987 Legislative Session stated that by the time the bill was printed they had concluded the addition of “concurrent resolution” by which the legislature could vote to approve or disapprove a nuclear subsurface disposal site created a legislative veto between the executive and legislative branches of state government.

In the 2017 Legislative Session Senate Bill 2156 proposed to give local authorities approval authority in this issue. Unfortunately, the Geological Survey did not become aware of this bill until it had passed out of the Senate and was in the House. I attended the bill hearing in the House, but did not testify because I had not discussed with the Industrial Commission our stance on the bill and the House Energy and Natural Resources Committee does not take neutral or agency testimony. Instead, I appeared three times before the committee while they were in committee work. Lynn Helms, Assistant Attorney General Hope Hogan, Environmental Health Section Chief Dave Glatt, and I drafted amendments to the bill, inserted language from the Association of Counties, and drafted the language for the study bill. The House and Senate concurred with these amendments.

Even if this topic is not chosen as an interim study, we need to prepare draft legislation to do the following: 1) remove subsurface disposal of other types of waste from NDCC 23-20.2 and create a new chapter in the century code for deep waste disposal, 2) remove subsurface material storage and retrieval from NDCC 23-20.2 and create a new chapter in the century code for subsurface storage, 3) update NDCC 23-20.2, and 4) either in NDCC 23-20.2 or in a new chapter layout the mechanisms for the Governor and/or legislature to file a motion of disapproval with Congress within the 60 day window mandated by the Nuclear Waste Policy Act of 1982.

In response to a question regarding if this bill covers everything not just the nuclear waste which was the purpose of the bill in Pierce County, Mr. Helms said yes. It is only a study bill now that directs the Natural Resources Committee, in consultation with the Health Department and Geological Survey, to split this out into separate chapters so it is not all covered under one statute. The status of the law now is that it is as bad as it was in 1987; it is unconstitutional and it is not in compliance with the Nuclear Regulatory Act.

Mr. Murphy said the intent of the law was to allow for some local say on an issue where he doesn't think the State has any say. It is right in the Nuclear Waste Policy Act that this is a federal issue and the states really don't have much say.

Mr. Murphy explained what the law provides under the Nuclear Waste Policy Act.

- The Secretary of Energy writes a letter to the President saying the federal government wants this site for nuclear waste disposal.
- The President sends a letter to both houses of Congress saying this is going to be the site.
- That State has sixty days to respond with a motion of disapproval if the State wants to contest it and the State has to give reasons why. Unfortunately in that Policy Act in one place it says the Governor and the Legislature and in three other places it says the Governor or Legislature so it conflicts a little bit.
- Then that response goes to both houses of Congress and if Congress gets a motion of disapproval from the State they have ninety days to act on it. It is specified in the Act that after a certain amount of time, it has to be pulled out of the committee; it goes on the Senate floor and can only be debated for ten hours; goes on the House floor and can only be debated for two hours. The intent is to make sure that if both houses of Congress vote for that site to be a nuclear waste disposal site, then it becomes one.

Ms. Hope Hogan, Assistant Attorney General, said there was an amendment in the late 80's to the Nuclear Waste Policy Act that designated Yucca Mountain as the disposal site and the work on that site has been held up with litigation and political maneuvering for all that time. Mr. Murphy said in 2009 Nevada followed the procedure and they issued a motion of disapproval and Congress voted to override that disapproval and make that the disposal site.

Attorney General Stenehjem said the concern here was that this test bore was going to be drilled and nobody in the county knew about it. His office took the position that a permit was needed. He asked if, under the federal law, the State can require the issuance of a State permit to do the test drilling. He said he didn't anticipate anything would be happening in the next couple of years so we have a chance to get the law fixed.

Mr. Murphy stated that there also has to be a process in place to submit State comments when the Legislature is not in session. You have to be able to have a mechanism for a special session to be called or some other alternative and we need to make sure the mechanism works correctly and is constitutional.

Commissioner Goehring suggested that the law allow for either the Governor or the Industrial Commission to have the authority to send Washington the State's concerns when the Legislature is not in session. The State also needs a defensible position so he would suggest that Mr. Murphy put together some parameters and criteria that a site must meet such as the appropriate type of rock and geology that would support nuclear disposal. If a site

doesn't meet all those criteria then the State's comments would be to disapprove the site. It gives the State a basis for sending the State's objections and puts us in a better position. Mr. Murphy agreed and said Ms. Hogan has already started doing the research and finding out what some of the other states have put into their laws regarding this issue.

Mr. Helms said what Commissioner Goehring is suggesting is there was no real basis for the State to deny them a permit to drill that stratigraphic test hole. Perhaps the Survey or DMR should do a rulemaking that singles out this type of stratigraphic test hole and sets some criteria that has to be met before it can be permitted. That would hold up this type of testing for a period of time. That is something that probably needs to be done – separate out this type of test and provide some special criteria or stipulations surrounding it that would also allow the local people to have input. If rules were developed there would have to be public hearings, taking testimony and really hear the concerns of the local residents.

Mr. Murphy said SB 2156 was in reaction to that stratigraphic test hole but the result of that legislation is that it has brought to our attention the problems that are currently in the law and they really need to be addressed separate from a rulemaking related to state permitting.

Mr. Helms said he is hearing from the Commission members that they want all these issues to be addressed as part of this study. He said since the study is to be done in consultation with the Geological Survey their work on this study will come back to the Commission.

Mr. Murphy commented on a number of their publications which dealt with landslide maps. In response to a question regarding the landslide mapping related to the work being done on pipeline siting and safety, Mr. Murphy said they had been doing maps for wind farms because they had received a number of requests. However, they have now shifted their staff back to working on landslide maps in areas where pipelines need to be installed. He noted that they already had two-thirds of that area done five to ten years ago and are now coming back to get those areas finished. The Survey staff will turn out at least a hundred maps this year.

Mr. Helms said that it had been discovered internally that when the geoscientists were updating a landslide map, they were not communicating that to the Department's permitting or pipeline groups. That has been corrected and whenever one of these areas gets updated that information goes to the oil and gas permitting and pipeline group so they can pull that quad up and review everything in that quad taking into account the new information on landslides.

Mr. Helms said he has prioritized the 18 interim studies that the Department of Mineral Resources will be tracking or involved in over the next year. (A handout is available in the Commission files.) He has listed the studies in his order of priority. He has also noted whether they are a 1, 2 or 3. One means actively participate; 2 means attend the meetings and help the committee as needed; 3 means monitor. In regards to SB 2134 (Study of the Ordinary High-water Mark along a certain portion of the Missouri River) the Request for Proposals has been posted. The timeline is for the Commission to consider the selection of a firm to do the work if they want to vote on the awarding of that contract at their July 18 meeting.

Being no further Department of Mineral Resources business, Governor Burgum adjourned the meeting at 2:14 p.m. and took up Oil and Gas Research Council business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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Present: Governor Doug Burgum, Chairman
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Brent Brannan, OGRP
Tessa Sandstrom, ND Petroleum Council
Justin Kringstad, Pipeline Authority
Members of the Press

Governor Burgum called the Oil and Gas Research Council portion of the Industrial Commission meeting to order at 2:14 p.m. following completion of Department of Mineral Resources business.

Ms. Karlene Fine, Industrial Commission Executive Director/Secretary, presented the Oil and Gas Research Fund Financial Report as follow:

Oil and Gas Research Fund
Financial Statement
2015-2017 Biennium
June 5, 2017

	<u>Cash Balance</u>
July 1, 2015 Balance	\$ 4,419,836.98
Revenues through April 30, 2017 (2% State's share of oil taxes)	\$10,000,000.00
Revenues from Abandoned Well Fund	\$ 2,000,000.00
Revenues from interest income & grant applications	\$ 10,338.35
Returned cash	\$ 208.53
Transfer to the Pipeline Authority Fund	\$ (200,400.00)
Expenditures through April 30, 2017	\$(8,222,860.45)
	\$ 8,007,123.41
Outstanding Administration Commitment as of April 30, 2017*	\$ (325,000.10)
Outstanding Commitments on Legislative Studies	\$ (200,000.00)
Outstanding Project Commitments as of April 30, 2017**/****	\$(6,523,955.84)
Balance	\$ 958,167.47

Oil and Gas Research Fund
Continuing Appropriation Authority
2015-2017 Biennium

Uncommitted Balance July 1, 2015	\$ 759,360.59
Carried Over Unused Administration Allocation	\$ 72,009.72
Projected Income from Project Applications & Interest	\$ 20,000.00
Returned Commitments	\$ 893,627.53
Revenues (2% of State's Share of Oil Tax Revenues)	\$10,000,000.00
Transfer from the Abandoned Well Fund for two studies	<u>\$ 2,000,000.00</u>
	\$13,744,997.84
Transfer to Pipeline Authority	\$ (200,400.00)
Administration Commitment*	\$ (522,909.72)
Approved Project Commitments 2015-2017**/****	\$ (5,256,919.00)
Legislative Mandated Studies	\$ (2,000,000.00)
Carried over Project Commitments for 2015-2017***	<u>\$ (4,796,940.00)</u>
Available Funding	\$ 967,829.12

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

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

*This includes the Legislative Mandated \$100,000 Natural Gas Study which will not be expended as this study was done by Justin Kringstad as part of the Pipeline Authority work.

**This includes \$1,100,000 of the \$6,000,000 commitment to Contract G-040-080 (Bakken Optimization 2.0). The remaining \$4,900,000 is to be expended in the 2017-2019 and 2019-2021 biennia.

***This amount includes research/education funding carried over from prior biennia for:

Contract G-028-058 with \$1,100,000 to be expended in the 2015-2017 biennium;

Contract G-030-060 with \$3,027,250 to be expended in the 2015-2017 biennium;

Contract G-034-065 with \$669,690 to be expended in the 2015-2017 biennium.

****Includes Contract G-000-004 in the amount of \$500,000 with the EERC for 3 years for non-match emerging issues.

Mr. Brent Brannon, Oil and Gas Research Program Director, discussed the Oil and Gas Research Council (Council) Grant Round 42 recommendation for an application that had been submitted by the April 1 special grant round deadline. He said the Commission had received three applications. One application did not meet the minimum requirements and was not presented to the Council for consideration. The other two applications were presented to the Council. However, one of those applications -- which was an amendment to a previously awarded grant--received a vote of 3 to 3 so it could not come to the Commission for their consideration. The third application is as follows:

“Energy of North Dakota Program” - North Dakota Petroleum Council; Principal Investigator: Tessa Sandstrom; Project Duration: 18 months; Total Project Cost \$975,975; Request for: \$478,500 – He said this program was formerly known as the Oil Can! Program. The Energy of North Dakota Program will be a continuation of many of its outreach programs such as Cookfests, Pick up the Patch, Code for the Road, Teachers Seminars, etc. There will be a more concerted effort on developing online materials and messages that are smartly scalable, relatable to a millennial audience. There were three technical reviewers who all recommended funding this application. His recommendation is in line with the technical reviewers. There was one conflict of interest and the vote at the May 22 Council meeting was 6 to fund, 0 not to fund and 1 absent and not voting.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Oil and Gas Research Council's recommendation to fund the grant application "Energy of North Dakota Program" and to authorize the Industrial Commission Executive Director and Secretary to execute a contract with the North Dakota Petroleum Council to provide an amount not to exceed \$478,500 in funding. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

It was noted that the application has a breakdown on the costs for the various programs -- Cookfests, Teachers Seminar, etc.

Being no further Oil and Gas Research Council business, Governor Burgum adjourned the meeting at 2:19 p.m. and took up Pipeline Authority business.

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Ron Ness, ND Petroleum Council
Brent Brannan, OGRP
Tessa Sandstrom, ND Petroleum Council
Justin Kringstad, Pipeline Authority
Members of the Press

Governor Burgum called the Pipeline Authority portion of the Industrial Commission meeting to order at 2:20 p.m. following completion of Oil and Gas Research Council business.

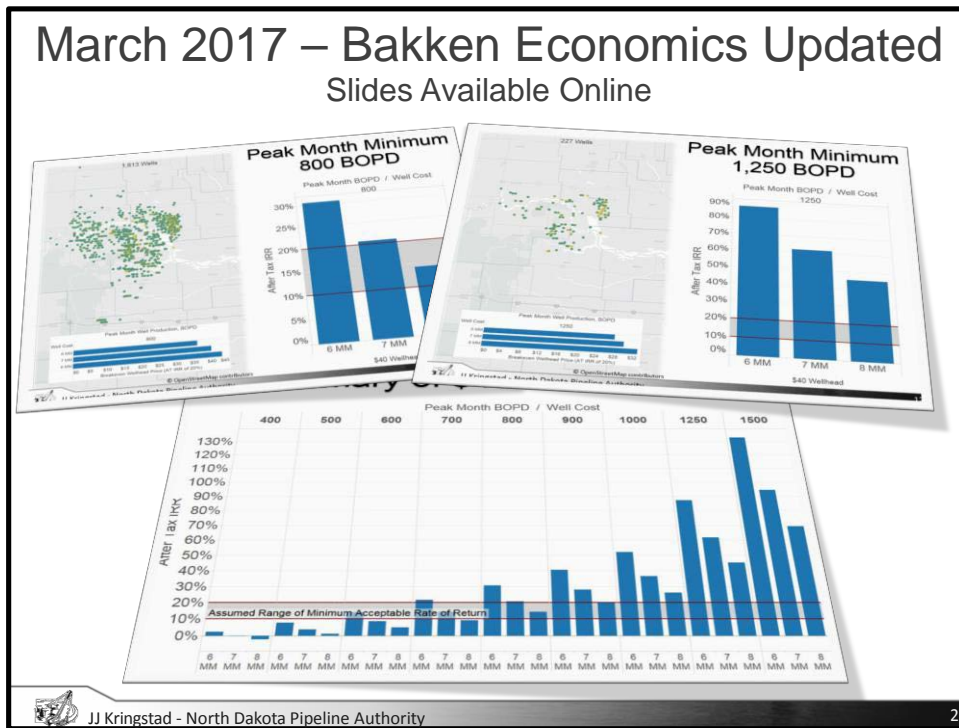
Mr. Justin Kringstad, Pipeline Authority Director, presented the quarterly Pipeline Authority Report and presented the following slides:

NDIC Update

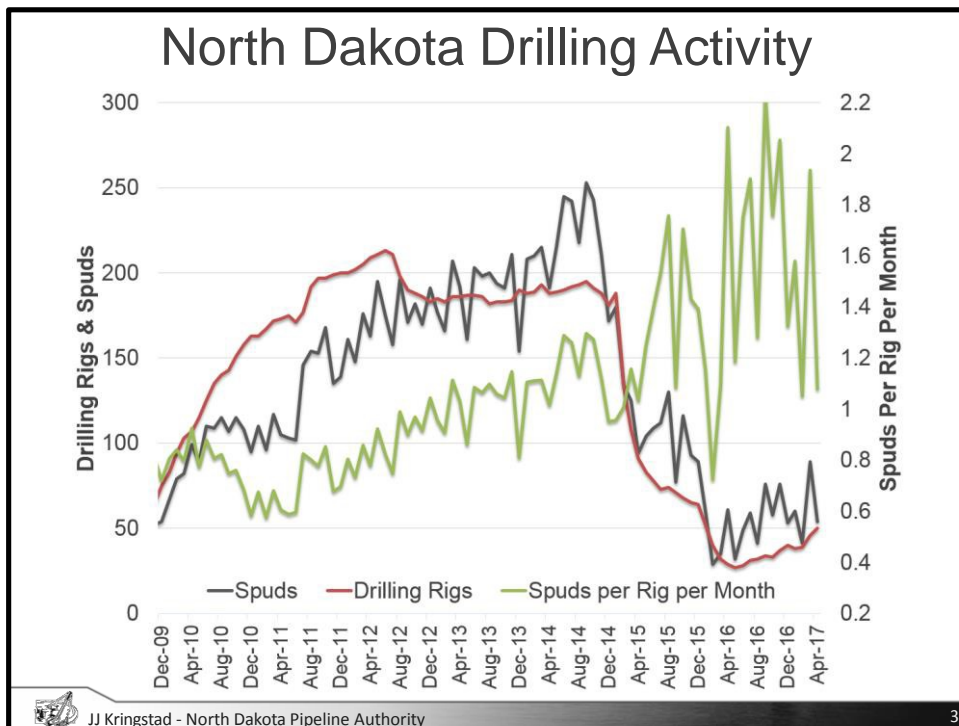
Justin J Kringstad
Geological Engineer
Director
North Dakota Pipeline Authority

June 5, 2017



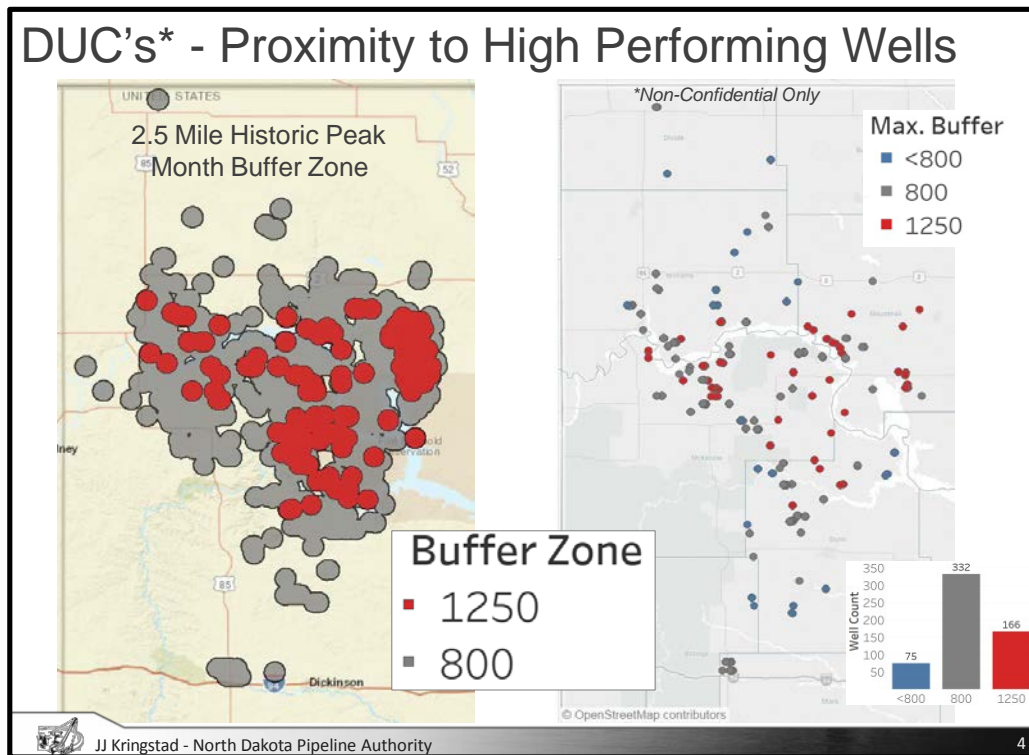


Mr. Kringstad stated that in March he updated all the Bakken economics work including well performance and rate of return for drilling in different parts of the State. It includes updated break even points and also the updated footprint so each quarter you can see a little bit of outward migration of that ring of what is considered economic. Those slides are available online.

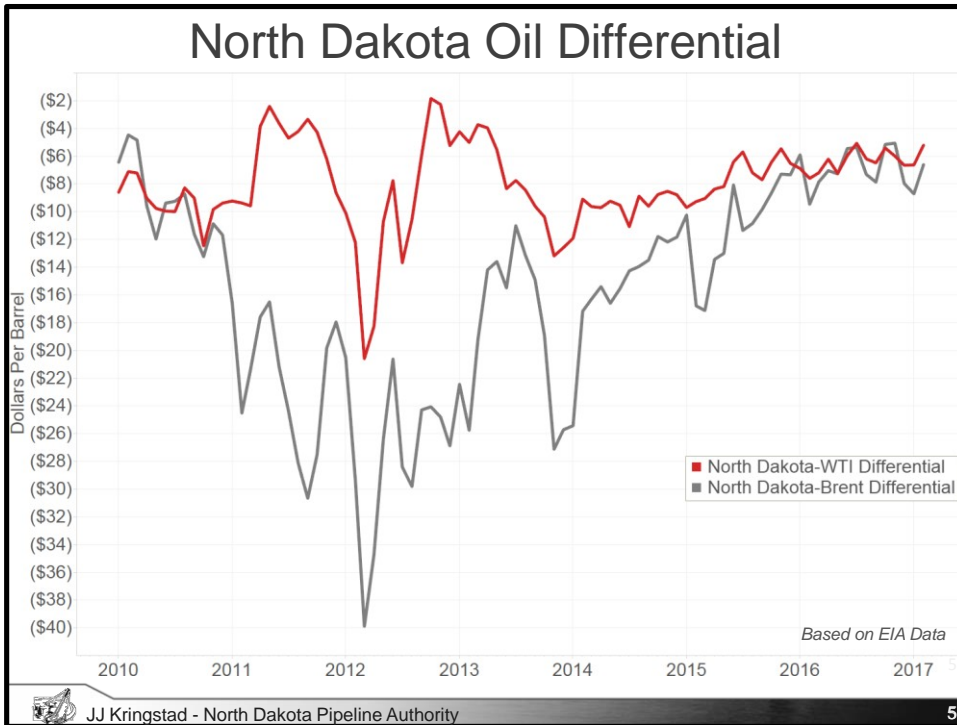


This is an update on drilling activity that is used for forecasting and planning purposes. The green part you can see

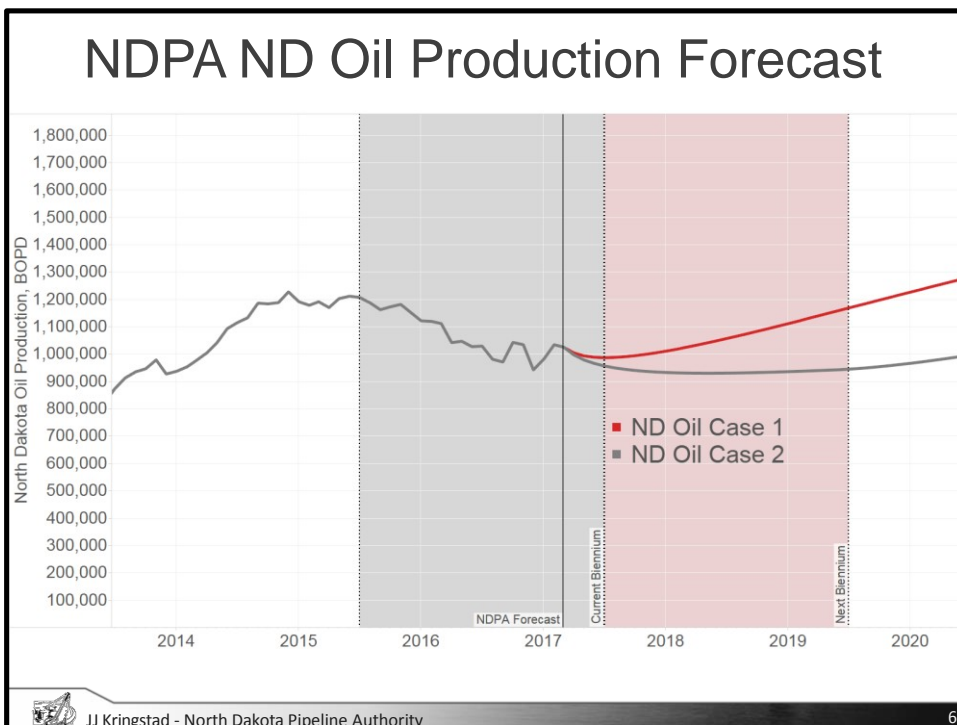
very wide movement up and down which is drilling efficiency or how quickly a rig can drill, how many wells a rig can drill in a given month. During the deepest part of the slow down we were trending almost around two wells per rig per month. As we see additional rigs come online, the red line, drilling efficiency has come down a little bit, softened likely due to newer crews, rigs coming out of storage and getting them back into service and he will keep watching this to see if we need to make any adjustments to forecast activities based on rig efficiencies.



This slide shows our DUC wells in North Dakota, the non-confidential ones, still appear to be very well positioned very quick targets for the industry. The left side is the well performance buffer zones with the red he considers some of the best acreage in the State and the gray is really good acreage still being economic in today's pricing environment and he situated the DUC wells by what footprint they sit in. Notice a vast majority are in the 800 plus buffer zone which is positive. We don't have DUCs sitting way out on the fringe areas that won't be touched for years. These are DUCs well positioned and will be brought online likely as the companies get them scheduled for completion.

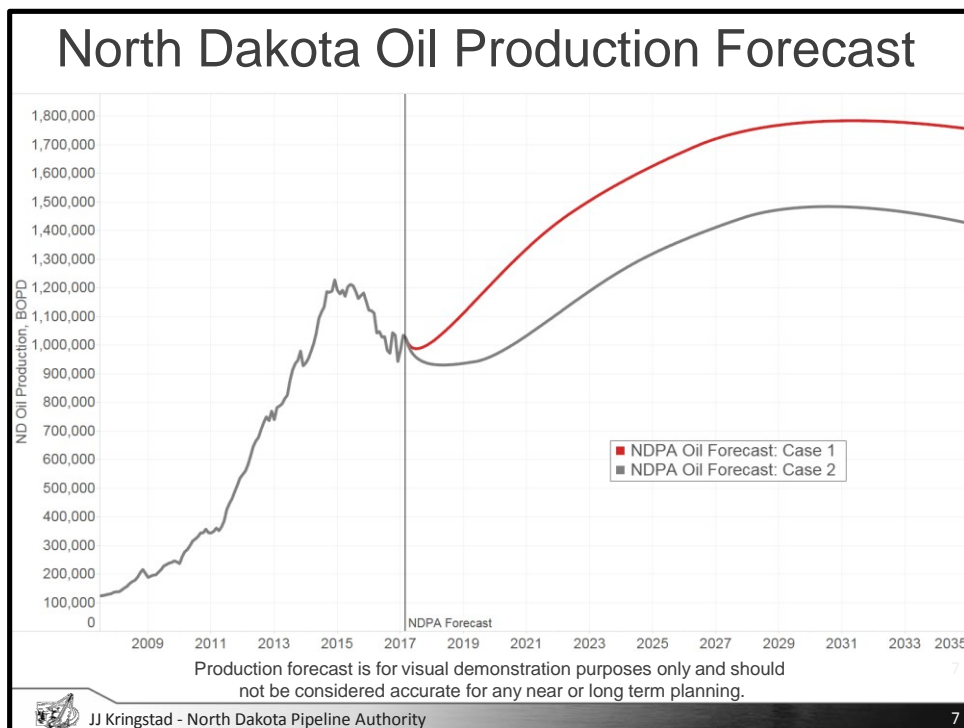


Update on pricing within the Basin, the latest available is from the February time frame with North Dakota pricing versus WTI was hovering between \$5.00 and \$6.00 discount. It will be interesting to watch as Dakota Access comes online and we have some more time for the market to adjust how this market is going to resituate itself. The \$5.00 to \$6.00 prior to Dakota Access coming online is a good benchmark to use for North Dakota oil prices.

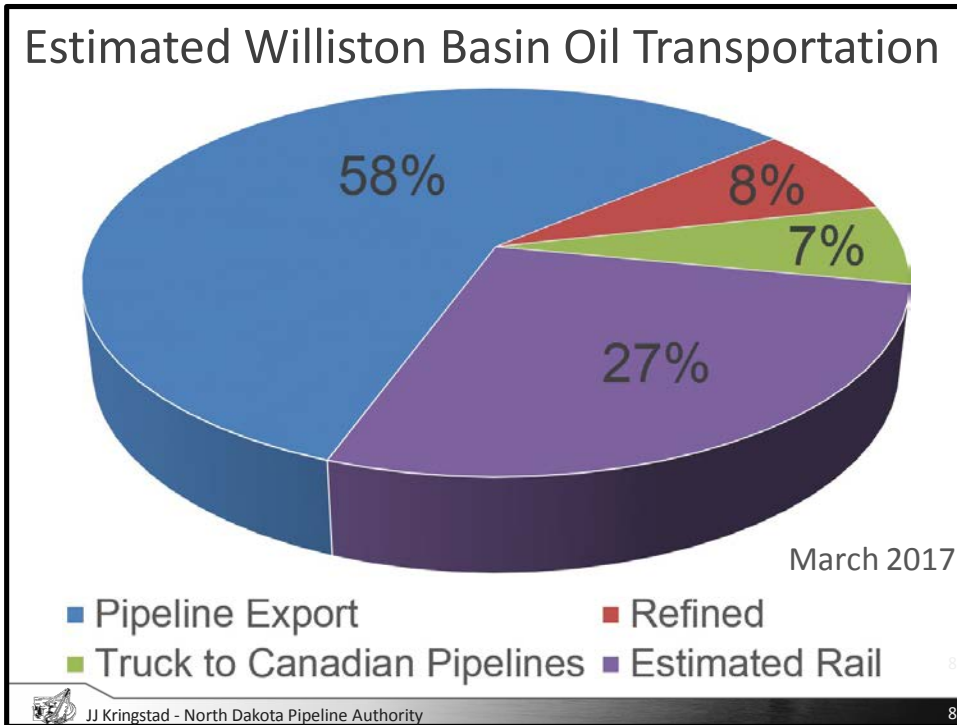


This is an update on the near term forecast for oil production for North Dakota. Coming out of the winter months

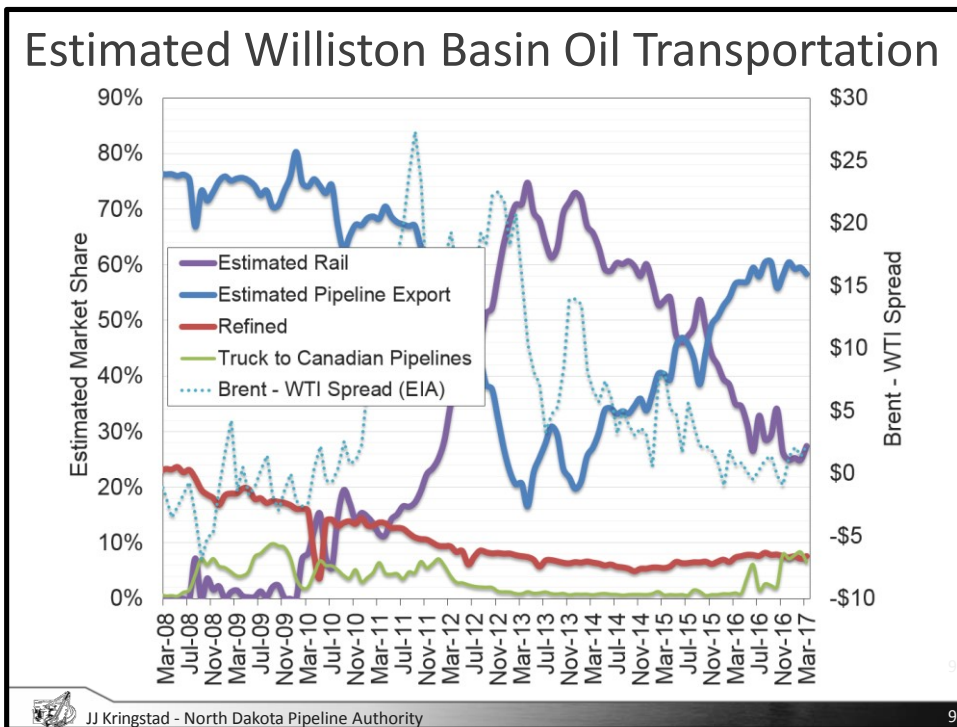
the model shows a little bit of a decline in Case One which is the higher of the two cases. Most likely from the things he has been seeing coming out of March going into April and May we may be able to stay above the million barrels per day and going into summer when we should see production ramp up. It may be safe to say that we may have seen the worst behind us as far as production numbers go. In response to a question he reviewed the assumptions he uses in Case One (\$50 price range and going up) and Case Two (level \$40 price). Price is part of the assumptions and is going to drive the activity.



Depending upon where activity levels get to with the amount of drilling inventory left, the amount of resources in the ground, the way the wells perform, still a very strong outlook for overall production from the State itself. Our previous highest production month was 1.2 million barrels per day. He noted that it will take some time to catch up on the declines on the existing wells when drilling starts back up.

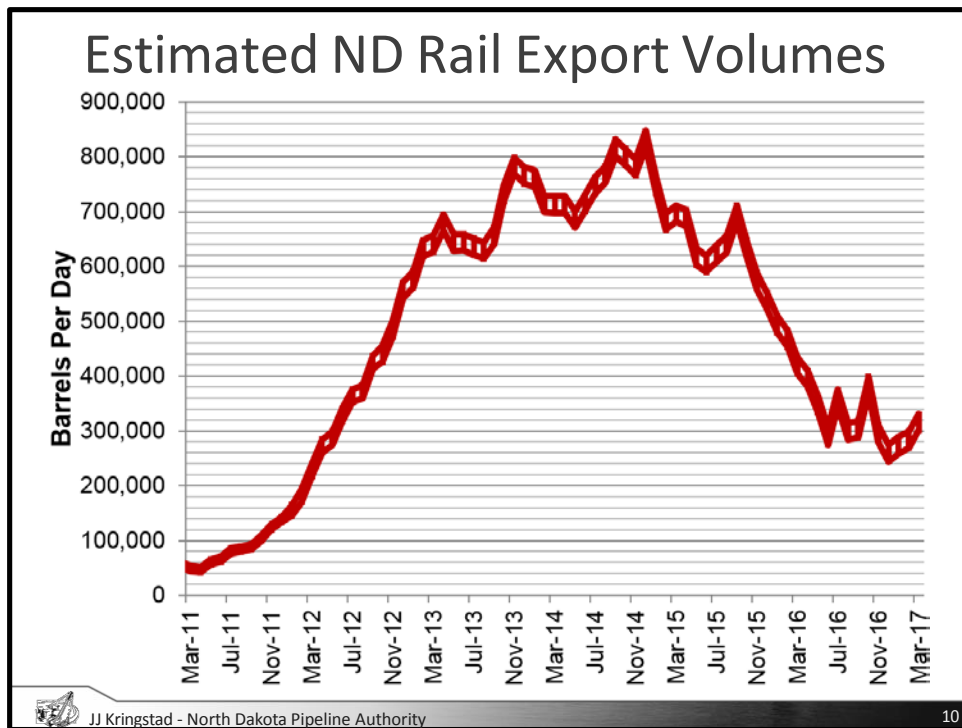


March update on how the oil is moving to market – the bulk is moved out by pipeline or being refined within the State itself and just over a quarter being moved out by rail to markets around the U.S.



This is a reference point of how moving the oil has shifted over time. Once Dakota Access comes online that's the big question everyone is trying to figure out – what is the new normal going to look like. It is going to change, we will see barrels come off the rail network and move onto the pipeline systems for the foreseeable future. As

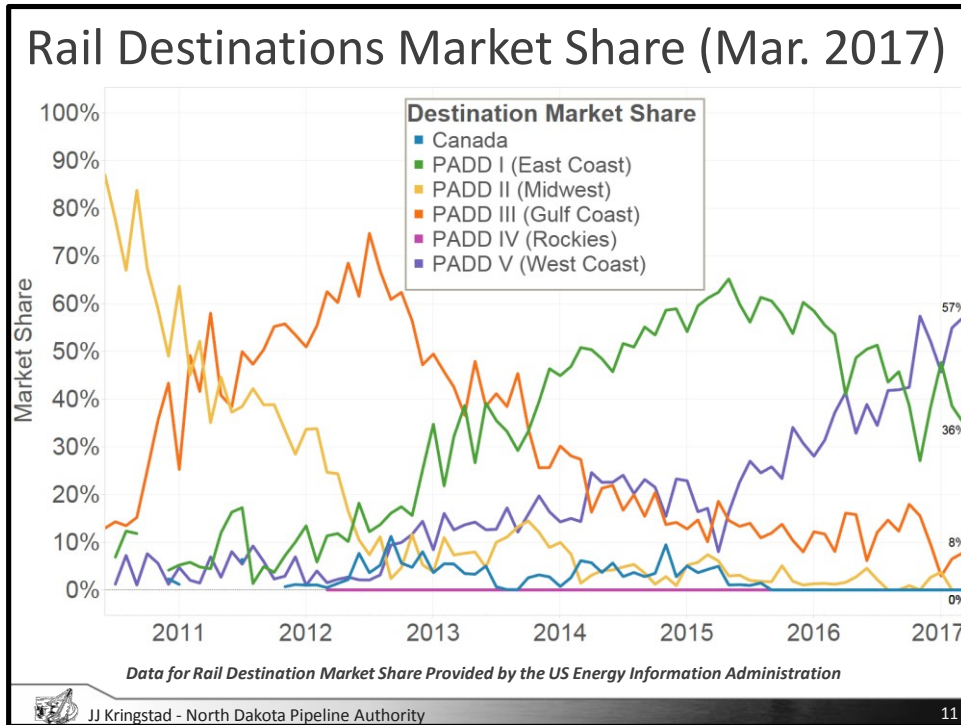
production continues to ramp up and markets adjust, we will just have to keep watching it monthly to see how it is evolving. The red line or refining would be the two North Dakota refineries – Mandan Tesoro and Dakota Prairie in Dickinson.



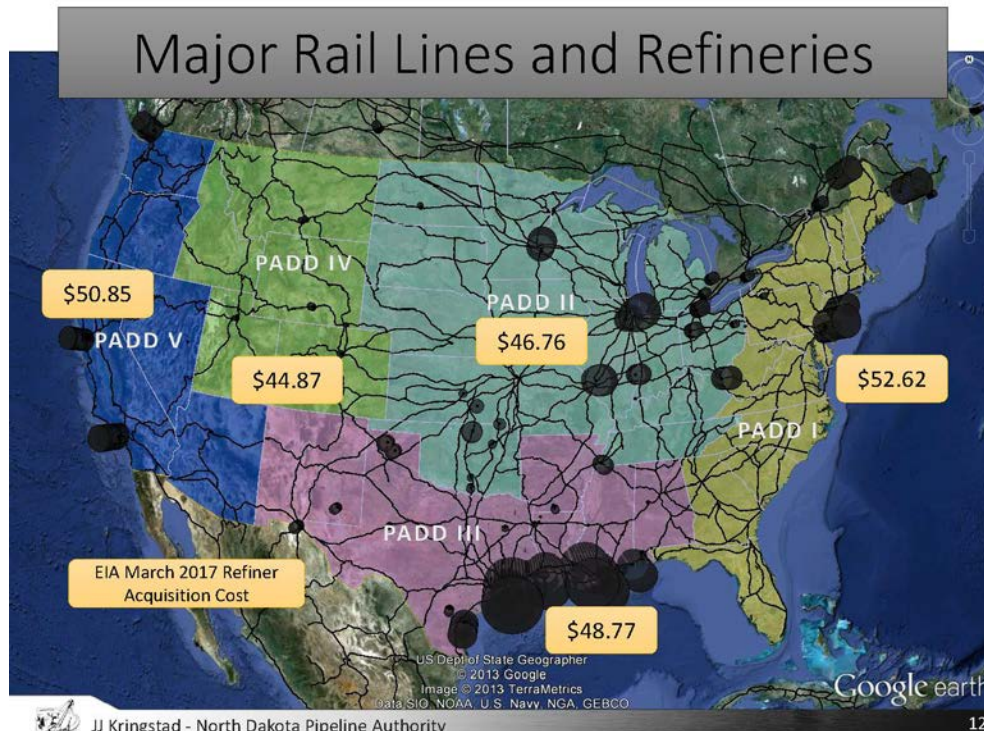
This is an update on how much oil is moving out by rail, right around 300,000 barrels per day is the current estimate but again as the 520,000 per day that Dakota Access will have the capability of moving – no one believes this would go completely down to zero but rather it is one or two trains a day on average, the market will decide that very soon.

In response to a question regarding pricing if the railroad will lower pricing when Dakota Access comes online, Mr. Kringstad said he couldn't speak for the railroads in regards to rail prices but in general whether it is loading or the actual hauling itself prices have gotten much more competitive even the last couple years with the slow down and production declines. Transporters were battling for market share – it is very competitive, every transporter whether it is Dakota Access or a legacy pipeline, they are all getting competitive for those barrels which is a net positive for the State, royalty owners and producers themselves. When there is transportation competition it will help pricing in North Dakota. It will likely take six to twelve months before he can come back to the Commission and report what the new normal is going to be, it is going to take a while before all this to start working its way through the system. We will have a positive market relative to take away capacity for a long period of time.

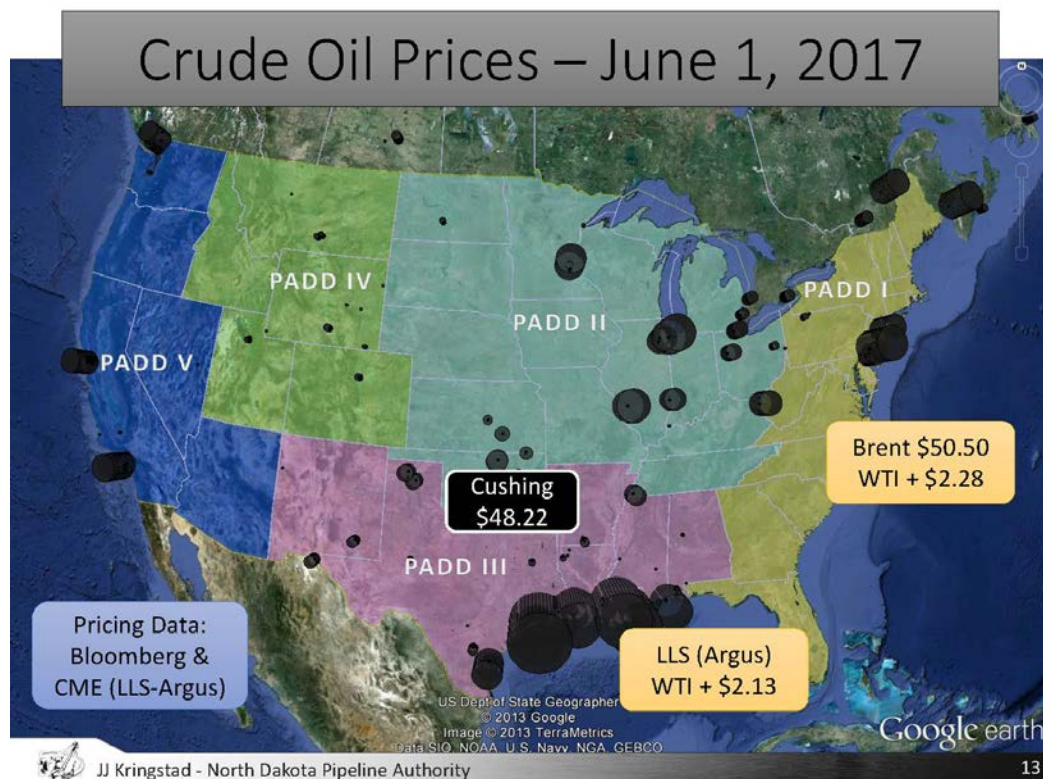
In response to a question regarding the differential, Mr. Kringstad said currently we are at about a \$5 to \$6 off of WTI – the probable difference will be maybe a dollar or two once Dakota Access comes on – total difference. \$5 or \$6 will become the new normal. Every \$1 generates about \$75 million in revenue back to the State.



The coastal refineries will still have to be by rail. This is North Dakota crude destinations by rail. The west coast has now taken over the lion's share of that and going forward the west coast will continue to be the primary destination for North Dakota's crude by rail. East Coast refiners are starting to readjust and taking more waterborne oil and the west coast has indicated those refineries continue to have a desire for that Bakken barrel coming in by rail.

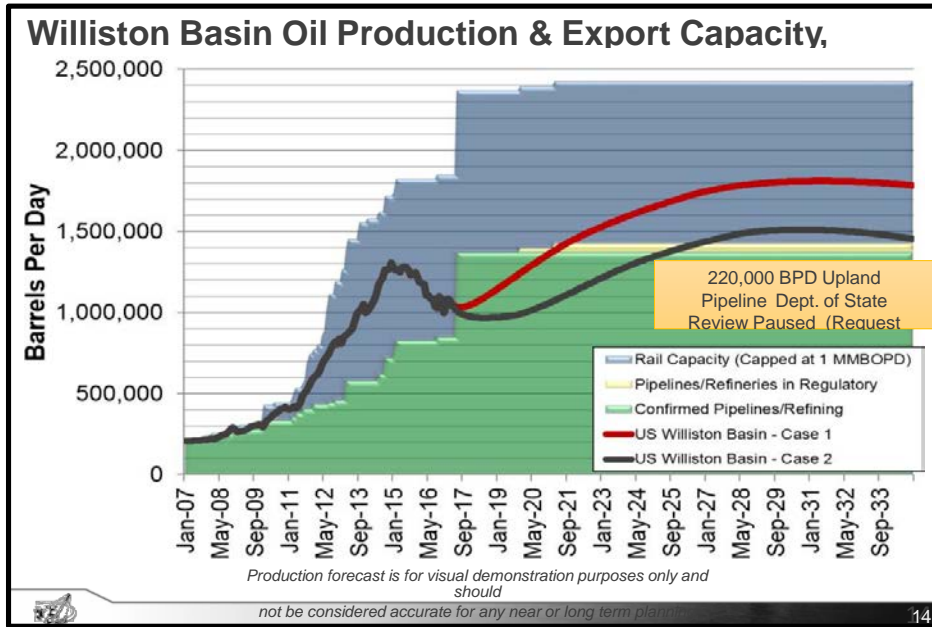


This is an update on pricing and what the different refineries are paying around the U.S. PADD 1 which is the east coast and then the west coast. PADD 1 does take a little bit higher transportation cost to get it there by rail. The west coast is a shorter haul--more of a direct one carrier route so there are some better transportation prices getting out to that Pacific Northwest and Washington refineries. He indicated that the size of the dots reflects the refining capacity.

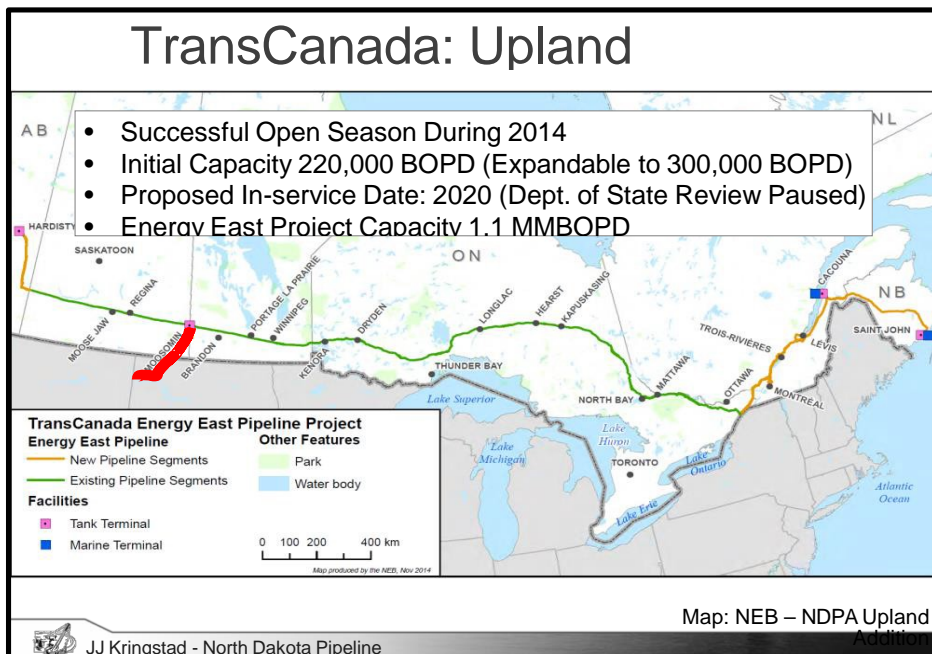


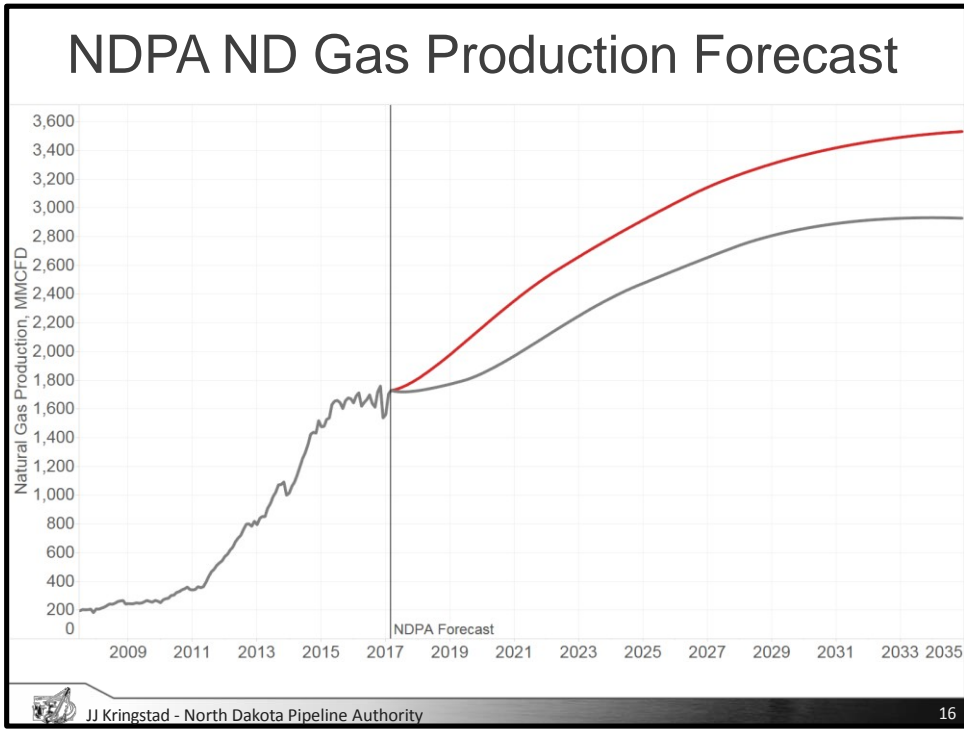
This reflects pricing as of June 1-- the Brent pricing and Cushing pricing. He has now added LLS – Louisiana Light Sweet – crude pricing. Many believe that once a Bakken barrel gets down to the gulf coast it may trend closer to that LLS pricing versus Cushing or Brent and as the beginning of June LLS was trading \$2.00 higher than a Cushing WTI barrel was. When we look at transportation costs from North Dakota to the Gulf and what pricing market those barrels are going to be active in, it's going to drive the net back to the price at the well head in North Dakota.

He indicated that he did not have a slide on this but he is often asked how much would it cost to move a Bakken barrel on Dakota Access to the Gulf. If it is a committed barrel meaning they have a five plus year term commitment on the line, it is between \$5.50 and \$6.50 per barrel for transportation all the way to the Gulf. If it is a walk up or non-committed barrel it was \$7.50 per barrel to get that Bakken barrel to the gulf coast.

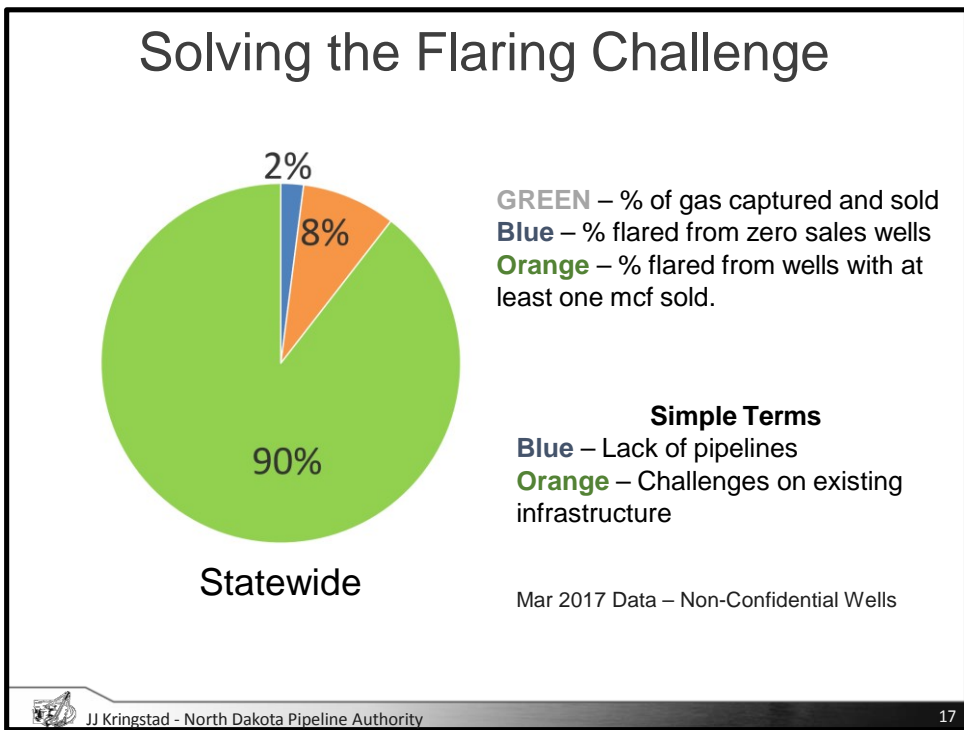


This is an update that brings it all together looking at forecasted oil production and then our take away options for those barrels. The beginning of June – this was the first time since the Bakken got going that we now have adequate pipeline capacity – since he came on in August 2008 we have been having to rely on rail in order to move all the barrels so this is going to be a new market situation and it will take some time for it to adjust and we start to realize what the new normal will look like. Going forward we’ll continue to look at where the production is trending and what other transportation options may be necessary in longer term to move these barrels to market. He noted the orange box – about a month ago TransCanada asked the Department of State to pause their review of the Upland Pipeline which is designed to move Williston Basin barrels north into Canada and east on their Energy East project. TransCanada has asked for the pause of this project and their review for that presidential permit. They did not give any other details about that other than it has been put on hold until TransCanada has some additional direction or guidance for the State Department going forward.

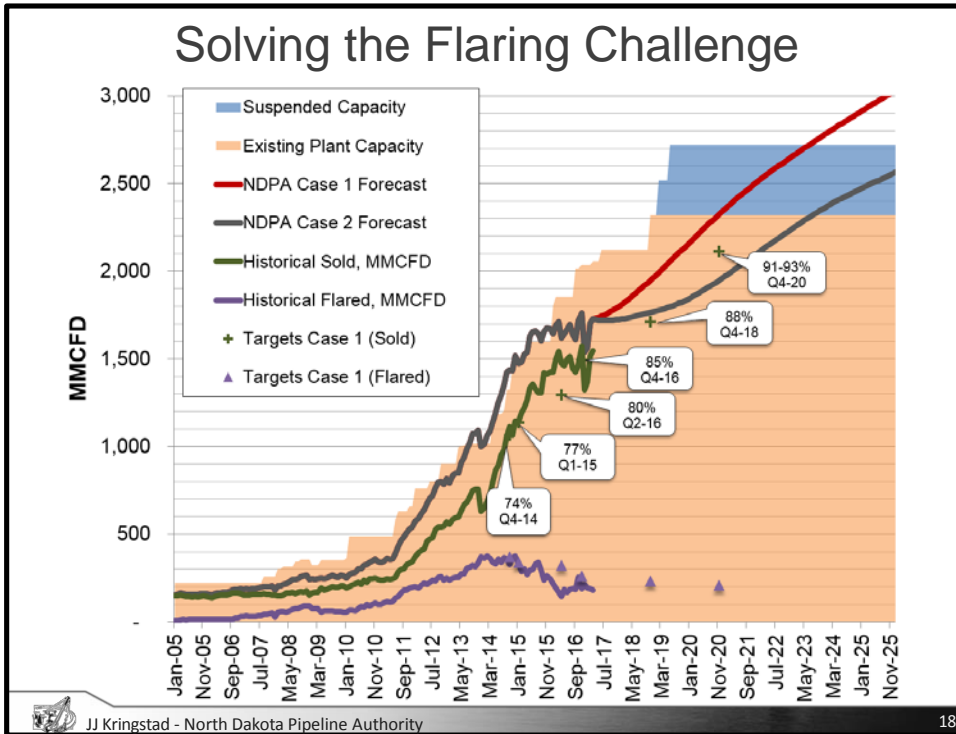




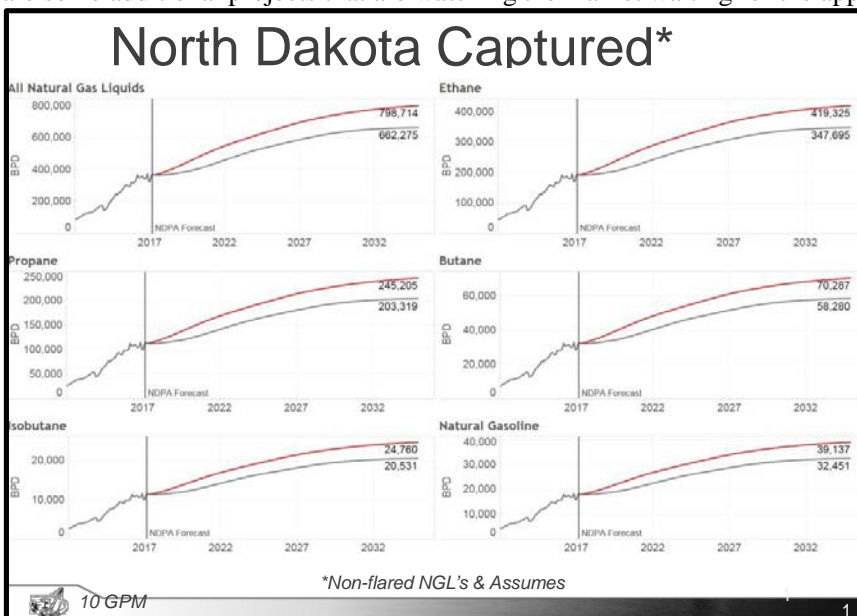
The natural gas forecast looks much more robust than the crude oil side because of the way the wells perform and where the activity is concentrated in the near term.



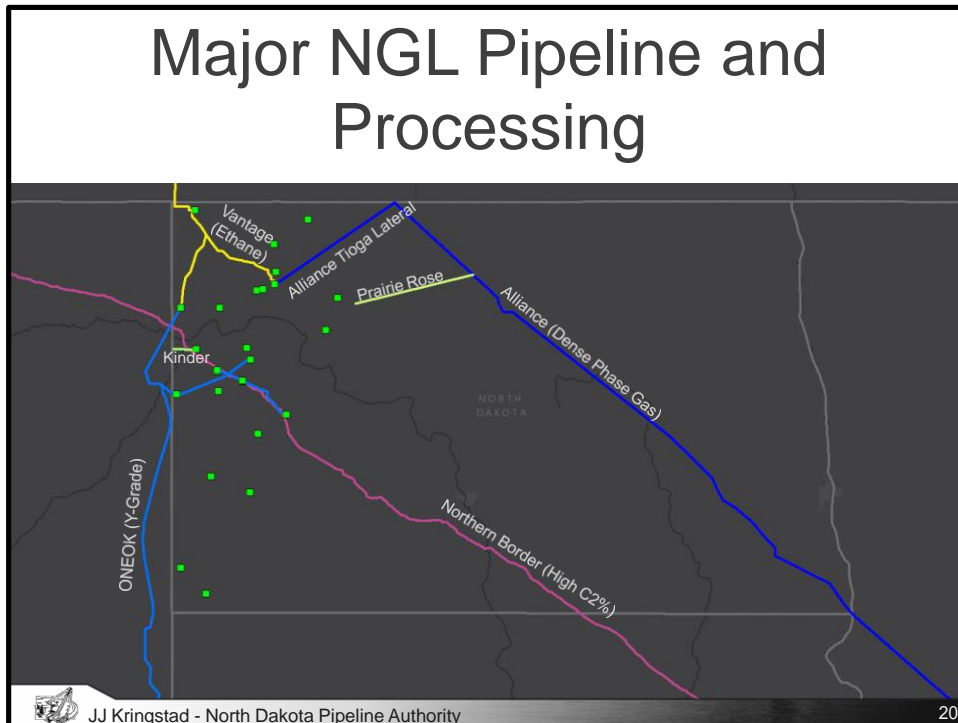
On the natural gas flaring side – flaring now at ten percent – bulk of the flaring is on wells that do have a pipeline connection but the pipe is not large enough to handle all the gas and that is going to continue over the long term -- that will be the gas flaring and gas gathering challenge. Just making sure pipelines in the ground are adequate to meet all the production growth.



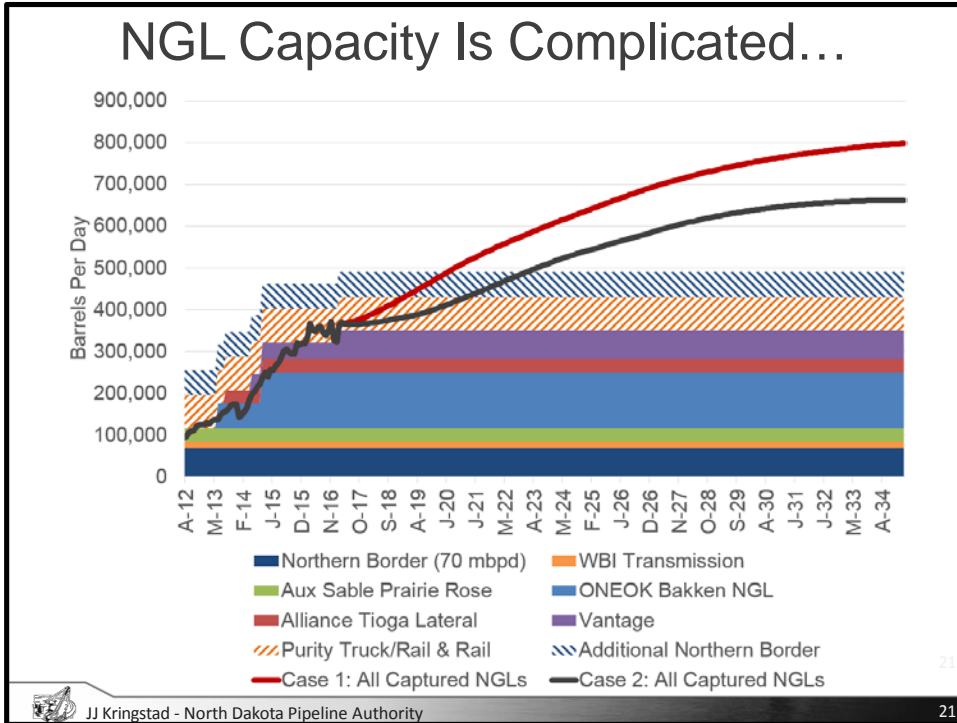
Looking at natural gas processing, there was an announcement recently Oasis went public with a project for 265 million of additional on gas processing at their Wild Basin facility so you will see the 2018-2019 timeframe that large jump up in the peach colored portion of the chart, it is that Oasis expansion. The suspended capacity – those are a couple projects that were put on the table and delayed until the market was ready for that additional capacity. Those are some additional projects that are watching the market waiting for the appropriate time for construction.



Update on the forecast for natural gas liquids – This involves another set of pipelines and another set of challenges for what does North Dakota do with all these natural gas liquids. Roughly 700,000 to 800,000 barrels a day of natural gas liquids is forecast to be produced and needing to find a way to move to market. With our current set of infrastructure, pipelines that are dedicated strictly for natural gas liquids or natural gas – residue lines, Alliance and Northern Border are two of our larger natural gas lines that do carry a significant amount of natural gas liquids along with dry gas.

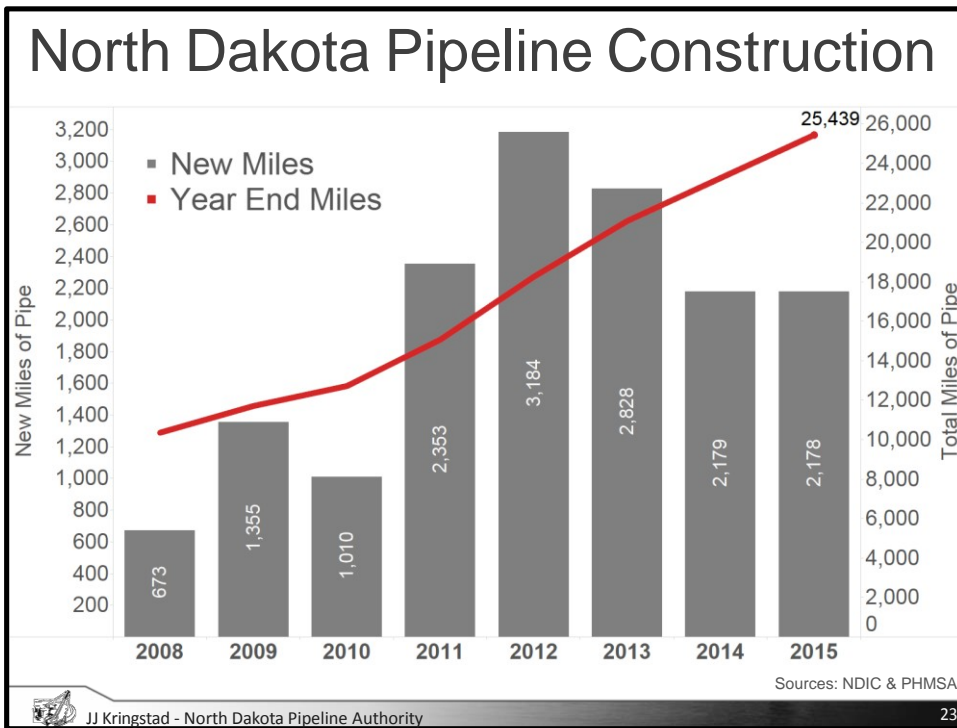


In response to the question of when does capacity become an issue for these NGLs, Mr. Kringstad said as far as purely pipeline take away capacity goes, we are very near our capacity today. We are currently producing about the same of what our pipeline network can handle. In the near term ONEOK is going to be bringing on equipment to the state line facility northwest of the City of Williston and that will add roughly 25,000 barrels per day of ethane capabilities and will help. Over the long term the industry will likely have to address this with additional pipeline projects. He is very active working with the NGL people trying to get some good hard data for them to make decisions on what type of projects, project timing and scope going forward.

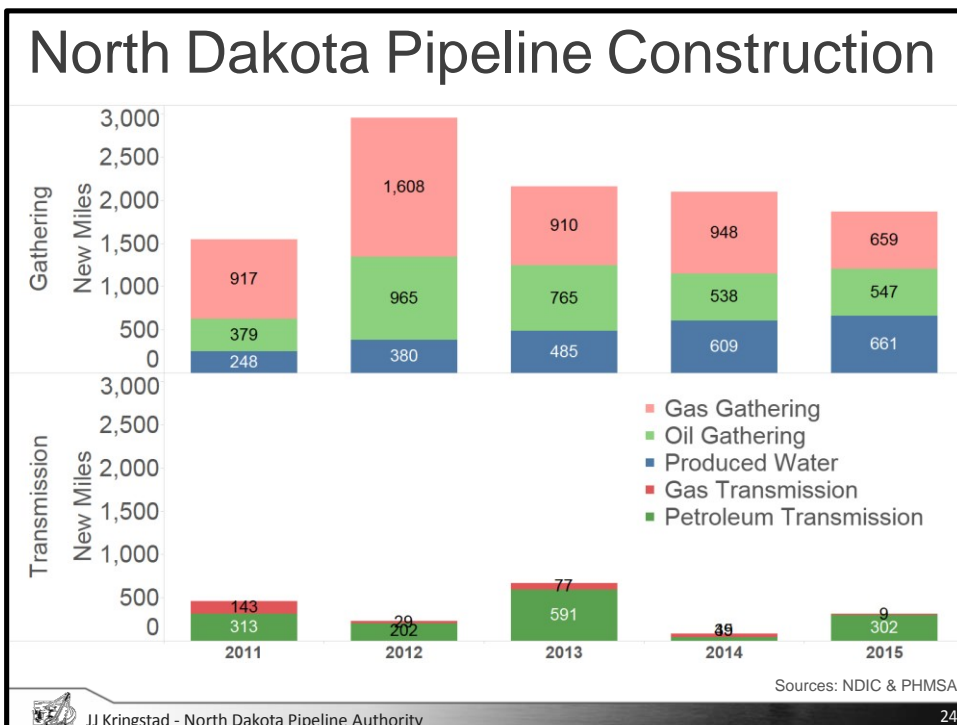


NGL capacity is complicated but it is an immediate need for the Basin. The existing Northern Border is really our outlet right now for a lot of that ethane that's being tucked into that dry gas; we are burning it in our homes in Bismarck and Mandan. At some point we will not be able to tuck more ethane into that line. With production increasing in the State there will be limits on that system. We are going to have to find some alternative solutions--one being in-state use such as a polyethane plant or if there is no in-state use, then new pipeline capacity out of the region.

Construction Update



Update on pipeline construction – 2015 is the most recent information that he can get (in another month or two he will have 2016 data) but you can see even during the slow down period statewide construction was still over 2,000 miles of pipeline each year down from the peak but still a very substantial amount of activity.



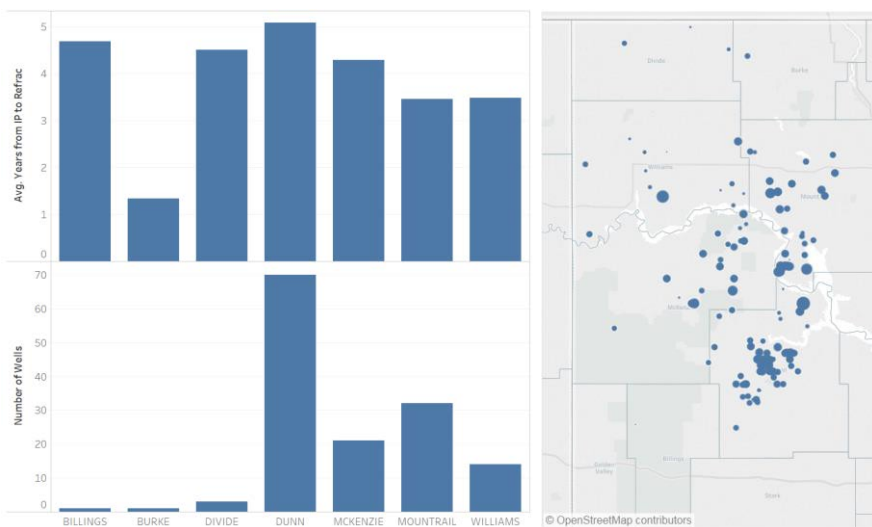
Breaking that down further, gathering construction is on the top, transmission construction is on the bottom. So

the gathering pipeline system you will notice down from the peak but still significant activity taking place. An interesting point, the blue segment that is produced-water gathering miles is the only segment of the gathering industry that continued to grow through the slow down. Those liquids trying to find a method to move off of the roadway systems down into the subsurface.

Bakken Refracs



Refracs In the Bakken*

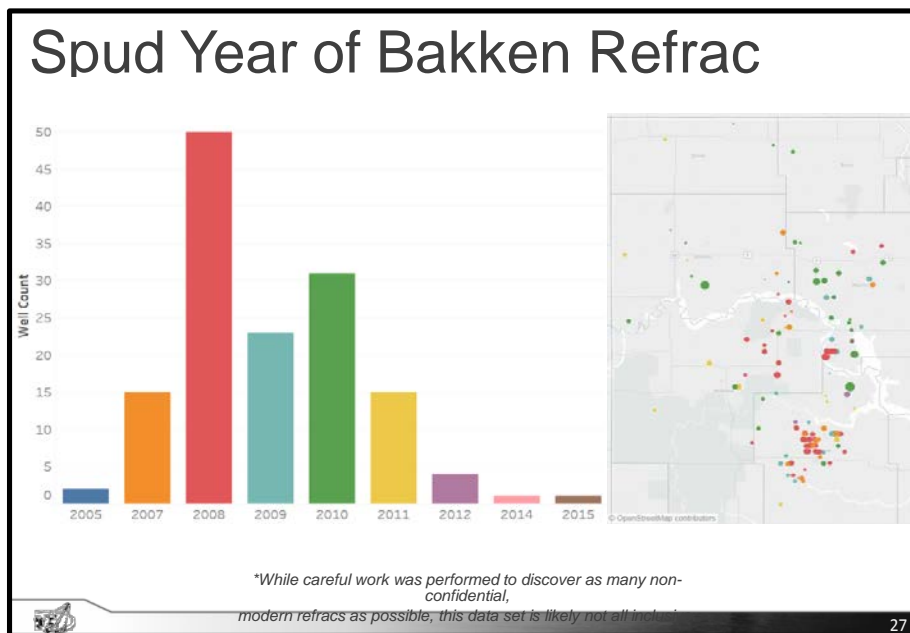


**While careful work was performed to discover as many non-confidential, modern refracs as possible, this data set is likely not all inclusive.*

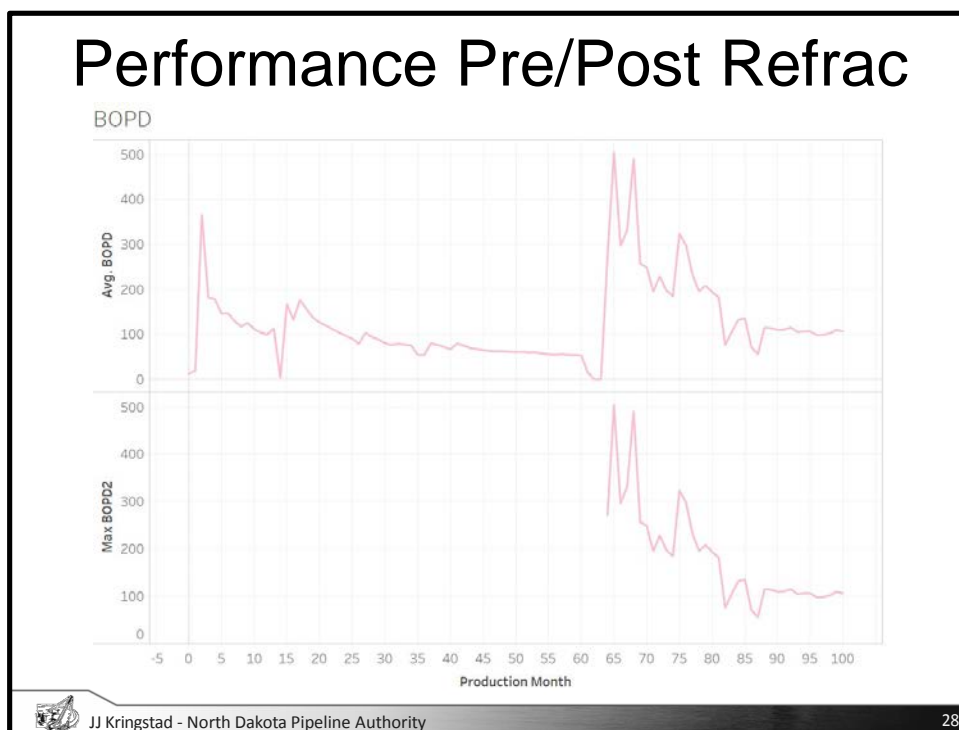


This is a completely new area for him and the midstream people as we are diving into what is next for the Bakken

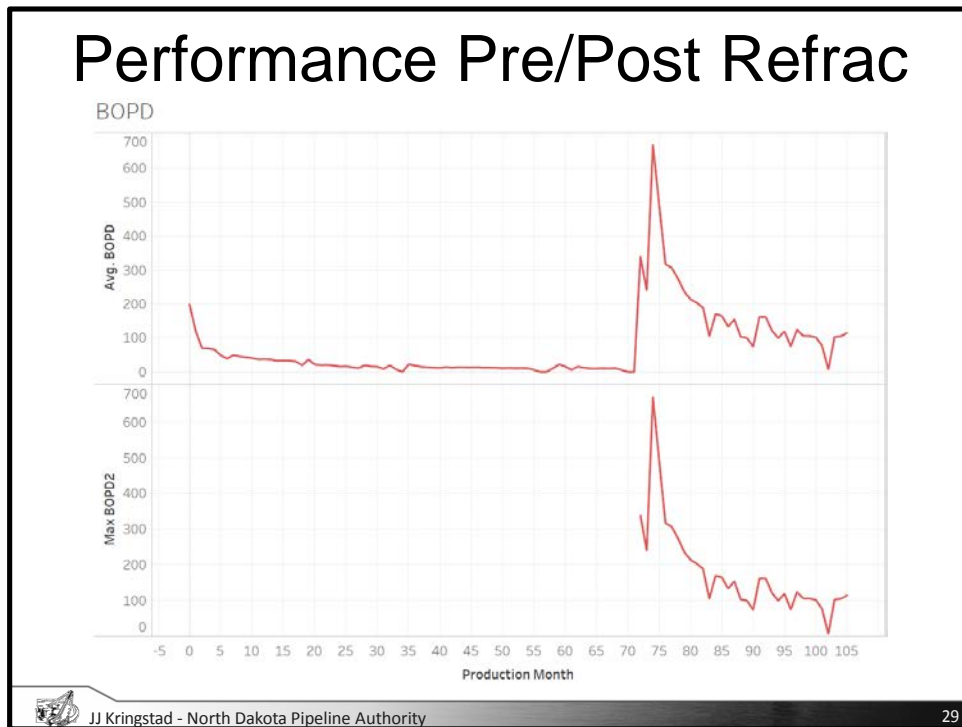
and that is Bakken refracs. It is a term that's been thrown around and he is trying to figure out if it is a reality for North Dakota and what does it mean. He was able to find 140 plus wells that have been refraced meaning they had an original fracture completion job done and at some point in time a year after their original completion they were refraced meaning they had additional fluid and proppant added to the well itself to enhance production of the well. Most of that work was done in Dunn County and most of the wells were typically four to five years in age. That was the target in the industry for the wells that they were going after.



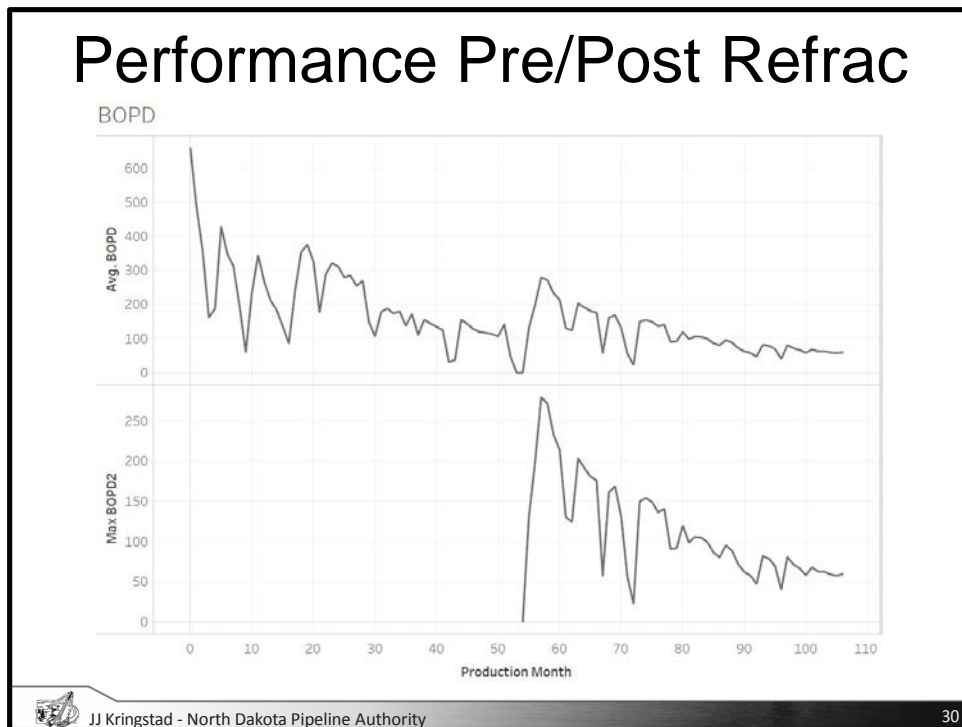
The spud year of those refrac wells – they are targeting those earlier completed wells, the single stage fracs from the early part of the Bakken development in 2008-2010 was the ideal target.



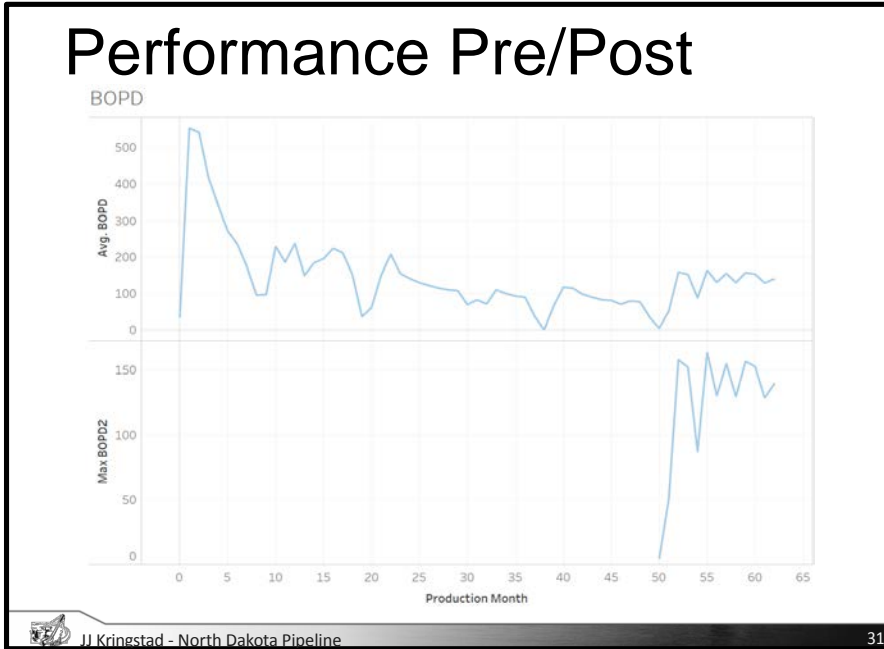
This is what a refrac looks like. You can see the original production on the left hand side in months and about month sixty the well was recompleted. You will see the production is significantly higher than it was even after the original completion of that well. They applied newer technology to that older existing well.



This is another example which is very clear of when the refrac took place.

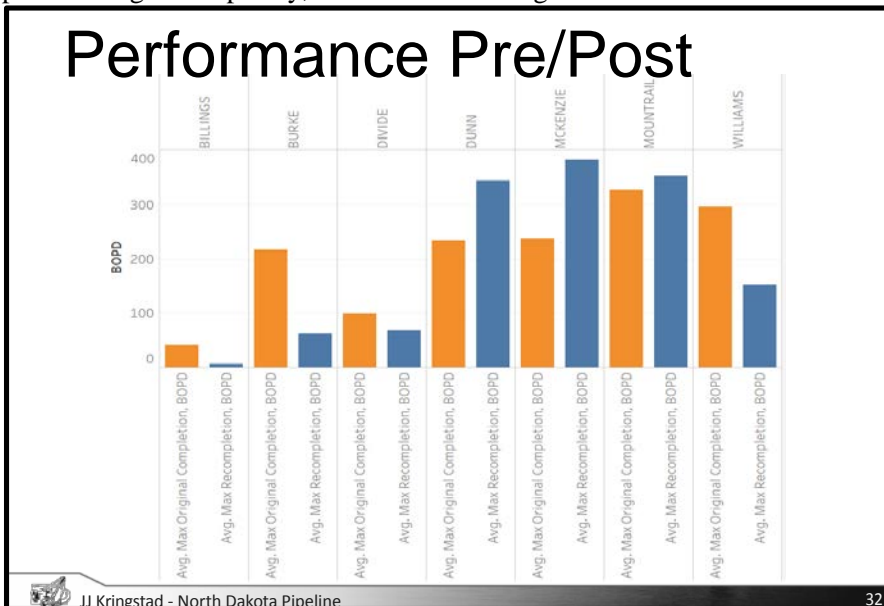


In some cases, very little performance increase. You do see a wide variety, you are not guaranteed with a refrac that you are going to have a great well but there are more examples of it working very well than there are some of the lower performing wells.

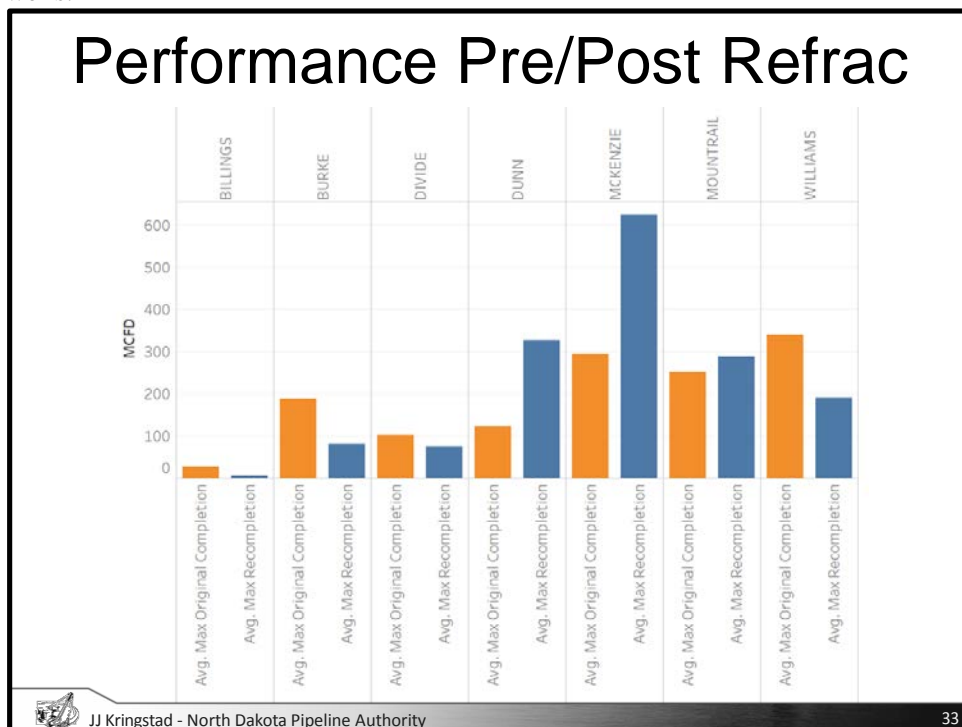


In response to a question regarding if they are refracing in 36 to 40 stages, Mr. Kringstad said they are coming back in with the stage fracturing in many of the 2008 wells, they would have been single stage one frac, now they are coming in and doing the multi stage, high profit, high fluid volumes and getting the better performance out of the wells.

In response to a question he said the second phase of his work is going to be figuring out why a well refrac performed good or poorly, he doesn't know right now what the answer is but he will be working on it.

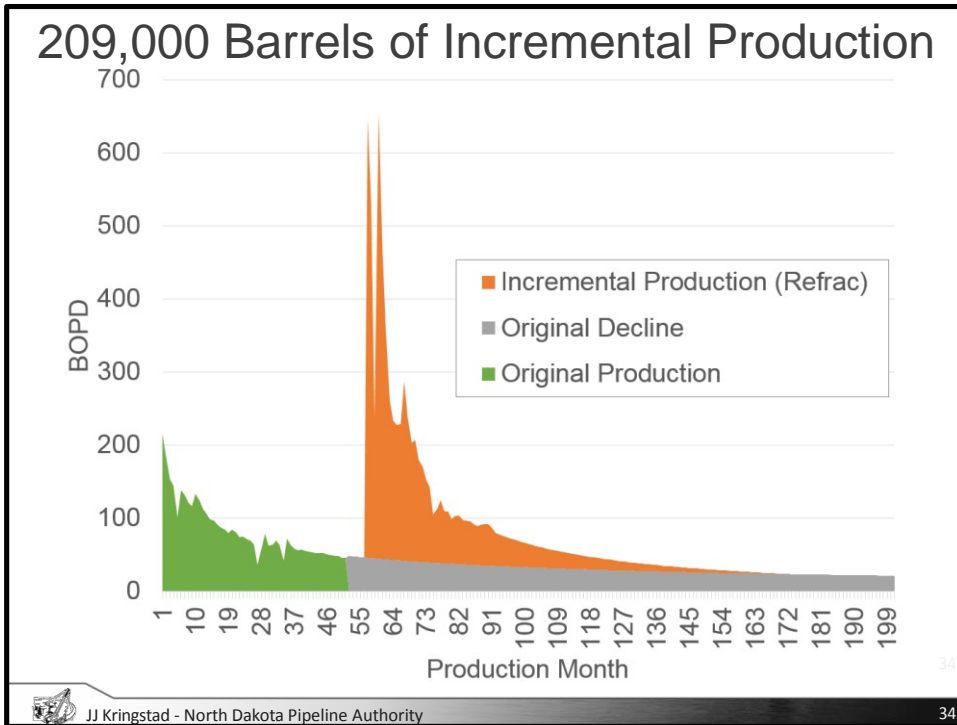


This is looking at the information county by county. Dunn and McKenzie Counties had the most history and the biggest data sets so we can probably ignore some of the smaller counties. In Dunn and McKenzie Counties on average the wells after refrac are performing better than even the best month prior to the refrac. The original refrac best month in orange and the best month on the refrac in blue – on average getting better performance from the wells.

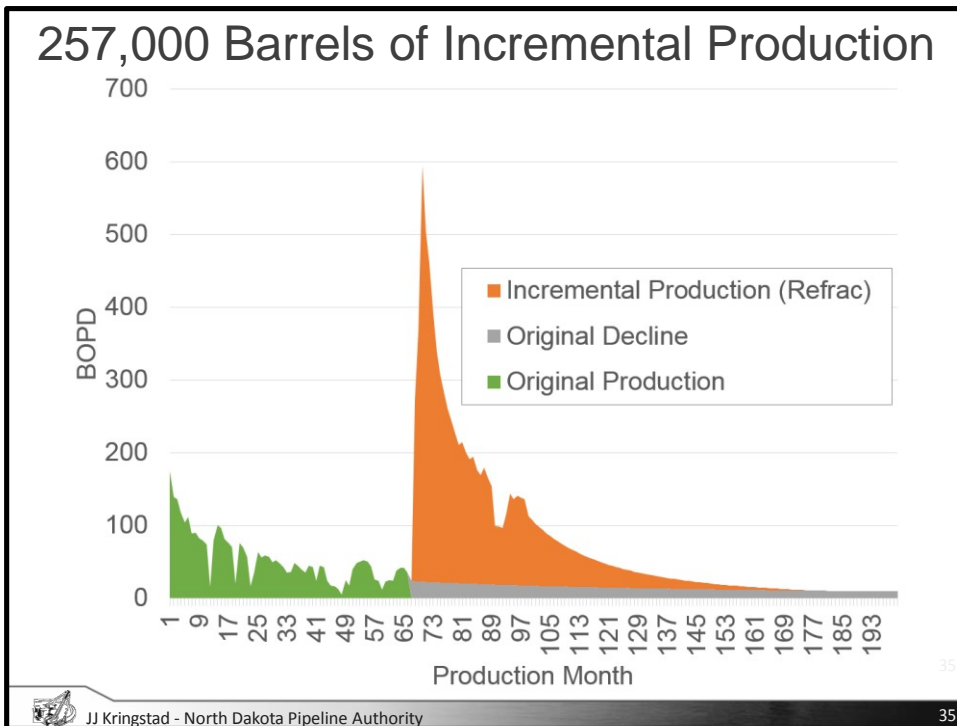


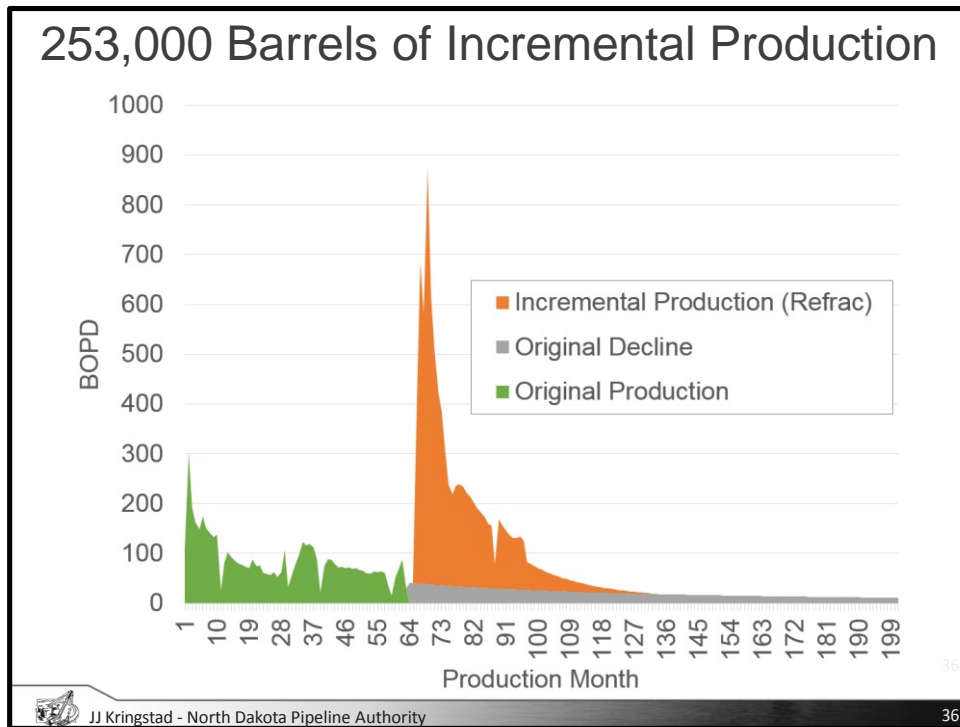
On the gas side even more substantial; more than double the gas performance from the wells on average after the refrac. One thing he was not able to find as of yet but just looking at the research from other plays around the U.S. it is not uncommon for a well to be refraced a third time, a fourth time. So far we are still very, very young in this phase of the development and he expects as the years continue especially if we stay in a lower price environment these refracs will likely stay very attractive to people as we have a substantial inventory of wells.

In response to a question regarding the cost of a refrac, Mr. Kringstad said if they are going to go with all of the stages and the high volume profit, high volume fluid you are looking at about \$3 million to \$3.5 million as opposed to \$6 million to \$6.5 million. Better results for half the price depending upon what they were expecting from where they are going to put their dollars.



The green was the historic performance and the gray we assume that the well declined out over time and was not refraced and the incremental barrels that the refrac brought on line in this example was 209,000 additional barrels brought into the system that people were not anticipating.

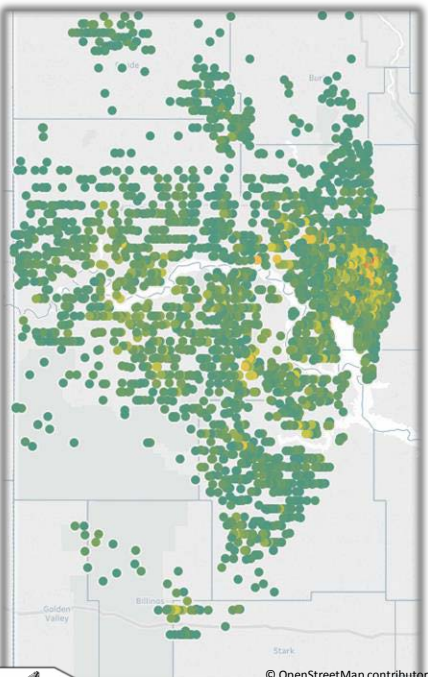




In discussions he has had with people, they are typically looking for a minimum of 200,000 incremental barrels when they look at refrac candidates so it is no coincidence that these are all 200,000 plus examples that he was able to find. What does this mean for the midstream people, the gas gatherers, the pipeline companies, their pipeline systems were designed for the original completion with the expectation that these wells were going to decline out over time and their systems would see a decrease in production from those wells. The midstream people he works with were very excited about this opportunity for more product from their customers/shippers so they will try to figure out what this means for everyone in system design and capacity going forward.

Refrac Candidates

- Refrac selection is based on a number of criteria, many of which are not available in the public domain
- Refracs have been performed with success on a wide range of well ages and performance
- Refracs are designed to address one or more reservoir level issues impacting well performance (e.g. scaling, embedment, proppant rearrangement, fines generation, etc)
- The following work is not intended to imply a well will be refraced, but rather that the wells fit a certain criteria that may make them a near term candidate for refrac.



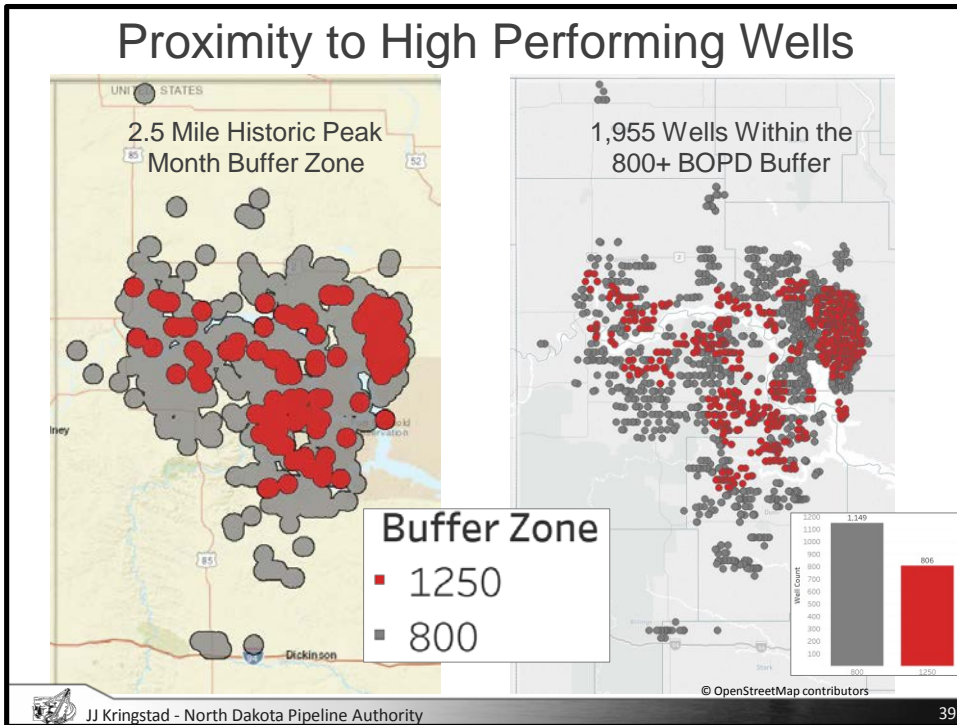
Peak Month Minimum
200 BOPD

3,074 BKN Wells
Spud 2007-2011

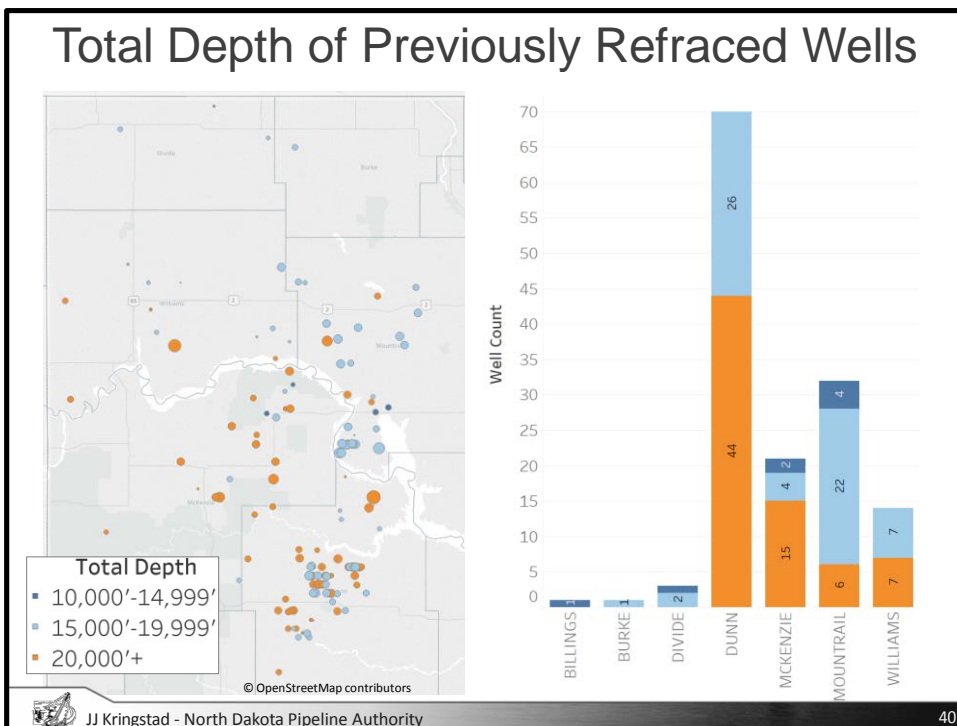
Potential Near term
Refrac Candidates?



My next question was how many refrac candidates do we have in the state? What may be the earliest targets for the midstream companies to focus on when they are working on their systems? Again I can't speak for the companies but I took a look and said, 2007-2011 we have over 3,000 Bakken wells that had at least 200 barrels of oil per day of production. You can see they are spread out all over North Dakota.



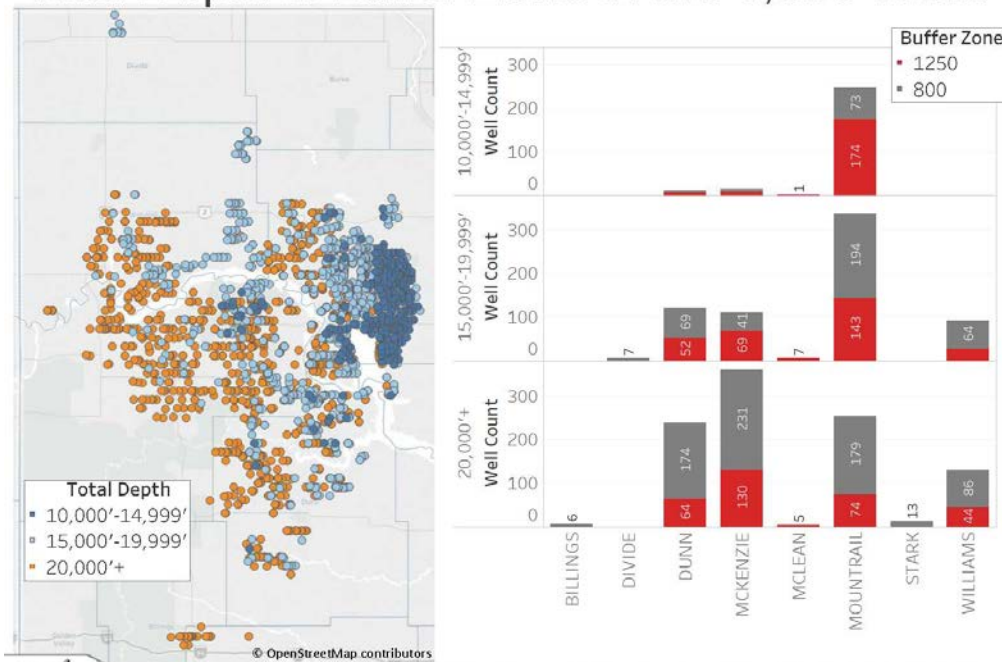
What wells have the best geology that they need to be the first targets? On the left hand side I took a look at my footprint of well performance and said, okay, chop this down to where industry will likely target which is the better geology, better performing areas of the state. And that left me with just over 1900 wells that fit into that 800+ barrel per day footprint.



Then I took a look at what has the industry been doing on the previous refracs? It appears from the data that they

have not been going after the shorter laterals, 640 acre spacing units. Most of the refracs have been on the longer 2 mile laterals and so I took it a step further of those 1955 wells which ones get into the various categories of lateral length. These are the things that we are all working with to try and understand what areas may be the earliest targets for frac. It is going to be dependent upon companies but with the public data sets we have this is really where we are at today with the refracs. This was my very first step of trying to put some numbers behind the frac concept

Total Depth & Buffer Zone of the 1,955 Wells



The production forecast you have seen me produce those are all assuming those wells have just one frac and they decline out over time. I currently do not have refracs built into my forecast model.

Next Steps

- How does ND's production profile shift if/when horsepower is added or reallocated to refracs?
- How do the economics of a refrac compare to a new drill and completion?
- How does ND's midstream industry react to meet shifting production volumes? (Locally & Regionally)



In response to a question, Mr. Kringstad indicated he would be providing information on the return on investment of a refrac well.

In response to questions regarding refracs becoming the new normal and what 1,900 high performing refrac wells might mean to North Dakota and does that have any policy implications, Mr. Helms said there is an interim study that is going to take this issue up. Clearly they are trying to look at if there are tax policy changes, sales tax, extraction tax that sort of thing to incentivize companies to do one, two or three refracs to provide some incentive. The economics in detail haven't been analyzed to determine if it is more economic to drill a new well and multi stage frac or do a refrac to a current well and as technology changes that may shift. The reason we are looking at possible tax incentives is there is no additional foot print when you do a refrac, there is no additional environmental impacts and generally you already have a pipeline there that is gathering the gas and would love to have that rate go back up. There are substantial reasons to encourage that increased recovery. He thought there would be some policy changes in terms of anything we are doing to be in the way in terms of permitting and anything that the tax load was doing to be in the way of increasing recovery.

In response to a series of questions, Mr. Helms stated that to start a refrac it requires a sundry notice be filed with the Commission which is a separate path and we have one or more engineers assigned to approving those. It is not nearly as rigorous as the original well construction because you have already built a well bore that they know is protective of ground water, etc. so it is a much faster process--maybe a two or three week approval at the most. There are inspections of the refracs – in terms of physically onsite inspecting as a field inspector not so much but they have to reevaluate the well bore, pressure test the well bore and/or run casing condition logs, etc. to make sure that whatever has happened over the life of the well has not deteriorated the well bore to where it is not safe to refrac it.

In response to a question regarding if more recently drilled wells with the higher levels of sand or proppant would be candidates for refracs, Mr. Kringstad said he hasn't seen any examples of any high performance wells being fraced yet. All targets have been on lower performing wells but there doesn't seem to be any technical barrier to going after a high performing well – the industry just hasn't gone and refraced something that was already a good

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June 5, 2017

well. Five or ten years from now we could be in a completely different situation.

The Commission thanked Mr. Kringstad for his presentation and indicated they were looking forward to hearing more as he continues his work.

Being no further Pipeline Authority business, Governor Burgum adjourned the meeting at 2:58 p.m. and took up Housing Finance Agency business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on June 5, 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
Jolene Kline, Housing Finance Agency
Max Wetz, Housing Finance Agency
Pat Nagel, Housing Finance Agency
Members of the Press

Governor Burgum called the Housing Finance Agency portion of the Industrial Commission meeting to order at 2:58 p.m. following completion of Pipeline Authority business.

Ms. Jolene Kline, Housing Finance Agency Executive Director, discussed the Housing Finance Agency Advisory Board recommendation on establishing income limits for the FirstHome programs, ND Roots program and Downpayment Cost Assistance (DCA) program as follows:

RE: FirstHome, ND Roots, and DCA Income Limits

The North Dakota Housing Finance Agency Advisory Board recommends that the Industrial Commission approve the attached Exhibit 1, Program Directive 109, as income limits for the FirstHome programs, Exhibit 2 as income limits for the ND Roots program, and Exhibit 3 as income limits for the DCA program effective June 6, 2017.

NDHFA Homeownership Programs Income Limit Proposal

The Department of Housing and Urban Development (HUD) published new median income numbers on March 24, 2017. These numbers are used to establish the Annual Income limits for the FirstHome, HomeAccess, Start, DCA and ND Roots programs. MRB regulations allow the use of the greater of county or state median income. Mortgage Revenue Bond (MRB) regulations and NDHFA policy limit household incomes to:

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

The statewide median income for North Dakota increased \$1,800 (2.3%) to \$77,600 for 2017. This compares to the national median income decrease of \$2,300 (3.4%) to \$68,000.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Housing Finance Agency Advisory Board and approves the following Program Directive 109 as income limits for the FirstHome programs, the income limits for the ND Roots Program and the income limits for the DCA program effective June 6, 2017.

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

PROGRAM DIRECTIVE NO. 109
 MAXIMUM ANNUAL INCOME

The following Program Directive will serve as written notice of the applicable “Maximum” “Annual Income” (as defined in the 1994 Mortgage Purchase Agreement dated as of August 3, 1994) for an Eligible Mortgagor of a Mortgage Loan. These Maximum Annual Income limits are effective for Mortgage Loans in which the Reservation is dated on or after the herein effective date June 6, 2017.

Maximum Annual Income
 FirstHome/Start/HomeAccess

County	Family Size Less than 3	Family Size 3 or More
Williams/McKenzie	89,500	102,925
Burleigh/Morton	88,300	101,545
Stark/Ward	84,000	96,600
Mercer/Oliver	83,600	96,140
All Other Counties	77,600	89,240

Exhibit 2

NORTH DAKOTA HOUSING FINANCE AGENCY

ND ROOTS PROGRAM
 MAXIMUM ANNUAL INCOME

These Maximum Annual Income limits are effective for ND Roots Mortgage Loans in which the Reservation is dated on or after the herein effective date of June 6, 2017.

County	Income Limit
Burleigh/Morton	123,620
Mercer/Oliver	117,040
McKenzie	125,300
Stark/Ward	118,580
Williams	135,380
All Other Counties	108,640

Exhibit 3

NORTH DAKOTA HOUSING FINANCE AGENCY

DCA PROGRAM
 MAXIMUM ANNUAL INCOME

These Maximum Annual Income limits are effective for DCA assisted FirstHome Loans in which the Reservation is dated on or after the herein effective date of June 6, 2017.

FAMILY SIZE*

COUNTY	1	2	3	4	5	6	7	8
Burleigh	46,300	52,900	59,500	66,100	71,400	76,700	82,000	87,300
McKenzie	44,250	50,600	56,900	63,200	68,300	73,350	78,400	83,450
Mercer	46,950	53,650	60,350	67,050	72,450	77,800	83,150	88,550
Morton	46,300	52,900	59,500	66,100	71,400	76,700	82,000	87,300
Oliver	44,550	50,900	57,250	63,600	68,700	73,800	78,900	84,000
Stark	46,350	52,950	59,550	66,150	71,450	76,750	82,050	87,350
Williams	45,050	51,450	57,900	64,300	69,450	74,600	79,750	84,900
All Others	44,050	50,350	56,650	62,900	67,950	73,000	78,000	83,050

*Larger families, check with NDHFA for limits.

Ms. Kline said overall Burleigh County income went down from the prior year by almost \$6,000; Cass was down slightly but the statewide median went up 2.3 percent and the Agency can use the greater of the county income or the statewide median income. If the actual county income is greater than the statewide median income the Agency can rely on last year's number. With this flexibility the Agency is proposing that for Burleigh County the Commission use the 2016 number currently in place rather than implementing the 2017 numbers.

Governor Burgum said from a policy standpoint they are trying to use the flexibility given them to have as high a threshold as possible to be inclusive of the most number of potential applicants. Ms. Kline said that was correct; get the most people into homeownership.

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

Ms. Kline presented the Housing Finance Agency Advisory Board recommendation on approving the Acquisition Cost Limits for the FirstHome Standard, Start, HomeAccess and DCA programs as follows:

RE: NDHFA Homeownership Acquisition Cost Limits

The North Dakota Housing Finance Agency Advisory Board recommends that the Industrial Commission approve the Acquisition Cost Limits for the FirstHome Standard, Start, HomeAccess, and DCA programs per the attached Program Directive 108, effective June 6, 2017.

The current FirstHome acquisition cost limits are \$276,506 for Burleigh, Morton, Stark, and Williams counties and \$255,574 for the rest of the state. There are higher limits available on 2-4 unit existing properties. The Internal Revenue Service released Revenue Procedure 2017-27 that provides for new acquisition cost limits for mortgage revenue bond programs based on the FHA loan limits. The FHA loan limits are adjusted to take into account the differences between average and median home prices and do not differentiate between new and existing properties. These numbers all decreased for 2017.

The IRS determined that nine counties in North Dakota have higher purchase prices than the rest of the state. Billings, Burleigh, McIntosh, McKenzie, Morton, Oliver, Sioux, Stark, and Williams Counties could have limits ranging from \$291,765 in McIntosh County to \$347,059 in Billings County. However, due to income limits of the FirstHome programs most people are not able to afford homes at these price levels. Therefore,

to limit the number of different acquisition cost limits, staff proposes using the Burleigh/Morton County limit of \$273,176 (decrease of \$3,330) for the counties of Burleigh, Morton, Stark, and Williams and \$253,809 (decrease of \$1,765) for the rest of the state.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendation of the Housing Finance Agency Advisory Board and approves the Acquisition Cost Limits for the FirstHome Standard, Start, HomeAccess, and DCA programs per the following Program Directive 108, to be effective June 6, 2017.

NORTH DAKOTA HOUSING FINANCE AGENCY
HOME MORTGAGE FINANCE PROGRAM

PROGRAM DIRECTIVE NO. 108

Area Limits
(Maximum Acquisition Cost)

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

Previously Occupied

	<u>1 Unit</u>	<u>2 Units</u>	<u>3 Units</u>	<u>4 Units</u>
Burleigh	\$273,176	\$349,687	\$422,701	\$525,314
Morton				
Stark				
Williams				
All Other Counties	\$253,809	\$324,966	\$392,800	\$488,117

Previously Unoccupied

	<u>1 Unit Only</u>
Burleigh	\$273,176
Morton	
Stark	
Williams	
All Other Counties	\$253,809

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

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

Effective date of this Program Directive No. 108: June 6, 2017

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

In response to a series of questions, Ms. Kline and Mr. Wetz stated that the Agency does between 1,000 and 1,200 first time homebuyer loans each year and in Burleigh County this would be about 25 percent of the first time homebuyers market.

In response to a question regarding where the other 75 percent of the first time homebuyers go and do they choose an alternative because they don't qualify or the Agency doesn't have the funds, Mr. Wetz said the reason primarily would be that the homebuyer does not qualify for the programs. There are times, however, when the Agency's rate is very close to the market (especially when mortgage rates are so low) and the Agency's rate is not the best option for that borrower so they may choose to go with another source of funding

In response to a question regarding what the total number of mortgages issued in North Dakota is in a year, Mr. Wetz said he did not know but would find out.

Governor Burgum also asked Mr. Wetz to get the 1,100 data by county so the Commission could see how the mortgages are distributed.

Ms. Kline discussed the Housing Finance Agency Advisory Board recommendation on approving the Community Land Trust Pilot Program for up to \$3 million of Housing Finance Agency reserves as follows:

RE: Community Land Trust Pilot Program

The NDHFA Advisory Board recommends the Industrial Commission approve the Community Land Trust Pilot Program for up to \$3 million of Agency reserves. A program description is attached.

CLT is a community-based, 501c3, nonprofit organization with a mission to provide perpetually affordable homeownership opportunities for low to moderate income households. When an income qualified homebuyer purchases a home from the CLT, the CLT retains ownership of the land and executes a ground lease with the purchaser. The ground lease allows a CLT to place certain restrictions on the homeowner to protect the future affordability of the property. A common method is to require that a resale of the property be to income qualified homebuyers approved by the CLT. If a buyer is not available the CLT will often guarantee a buyout, by the CLT, of the property at a fair value. Currently there are two active CLTs operating in North Dakota, one in Grand Forks, and one in Minot.

During the 65th Legislative Assembly (2017-18), House Bill 1297 was introduced to create a program to facilitate lending to Community Land Trusts (CLT) within the State. After discussions with the sponsoring representative, it was determined that the most effective way to implement such a program would be to look to the Agency to fund a pilot program through its bond indenture reserve balance.

The pilot program's goals will be to provide low interest loans to a qualified CLT. The loan proceeds can be used for the acquisition, rehabilitation or demolition and new construction of single family homes. The property must be located in areas identified as urban renewal or infill real estate.

Proposals will be accepted on a first-come-first-serve basis with underwriting criteria designed to ensure full repayment of the loan. The loan will be in the form of an open-ended line of credit with a maximum loan amount of \$1.5 million. The term of the loan will be 12 months with an option to consider up to a 12 month renewal. Each project must demonstrate a reasonable assurance that the loan advance will be fully repaid upon the first sale of the home. On a case by case basis, the Agency may execute a longer term Note with the CLT if full repayment is not achieved.

- Purpose:** Facilitate urban renewal and residential infill and increase capacity of a qualified Community Land Trust (CLT) by providing low interest revolving line of credit loan to a qualified CLT.
- Qualified CLT:** Non-profit CLT registered with the North Dakota Secretary of State which operates within the state of North Dakota. The CLT must demonstrate community support and capacity to undertake activities including but not limited to development experience and financial stability.
- Application:** The CLT is required to meet several conditions, including an evaluation of the CLT's financial strength, current and historical revenue sources and operational experience of the CLT and its management team.
- Eligible Uses:** Expenses associated with the CLT's acquisition, rehabilitation, or demolition and new construction of single-family housing and attached/detached garage(s). Projects must be located in areas identified as of urban renewal or infill real estate.
- Ineligible Uses:** Any expenses associated with structure(s) outside the legal description of the real estate used as collateral for its construction mortgage. Expenses associated with any outbuilding, other than a detached garage, located within the legal description of the real estate used as collateral.
- Financing Structure:** An approved CLT is awarded access to a flexible open-ended credit line in which it may utilize funds for property specific Construction Mortgages. The term of the line will be 12 months with up to a 12 month extension. Long-term gap financing loans required to facilitate the CLT's first sale of real estate may be considered on a case-by-case basis. The flexible open-ended credit line will have a cumulative outstanding credit limit of \$1.5 million for property specific construction mortgages and long-term gap financing, if necessary.
- Available Funds:** Agency will commit up to \$3 million of reserves. At no time shall any single CLT be extended more than \$1.5 million in cumulative program funds.
- Processing Fees:** \$500 due at application for CLT approval. Origination Fee of one percent (1%) of the gross amount of any long-term gap financing note. CLT responsible for all third party costs and recording fees.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Housing Finance Agency Advisory Board and approves the establishment of the Community Land Trust Pilot Program utilizing up to \$3 million of Housing Finance Agency reserves. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

In response to a question regarding if they have an area in Grand Forks they are talking about, Ms. Kline said yes, it is near the Riverside Manor; that is the neighborhood they are looking at. Governor Burgum said he is excited to see Ms. Kline pushing ahead with this program and utilizing existing infrastructure which will increase the property tax base and increase the solvency of our cities. It is great to see the Agency reinvesting in these neighborhoods.

Ms. Kline discussed the Housing Finance Agency Advisory Board recommendation to approve the 2018 Low Income Housing Tax Credit Qualified Allocation Plan as follows: (A copy of the Plan is available in the Commission files.)

RE: 2018 Low Income Housing Tax Credit Qualified Allocation Plan

The NDHFA Advisory Board recommends the Industrial Commission approve the 2018 Low Income Housing Tax Credit Qualified Allocation Plan (attached).

Section 42 of the Internal Revenue Code requires that the Agency allocate Low Income Housing Tax Credits (LIHTC) in accordance with a Qualified Allocation Plan (QAP). A public hearing was held on April 27, 2017. The final draft plan takes into consideration public comments received prior to and during the public hearing and was approved by the Advisory Board during its May 12th meeting.

Details of the significant changes to the QAP are summarized below:

1. Eligible Basis (Section II, Item B, page 2)

Language was added to reiterate the requirements to receive preference and increased basis, and clarified what defines a concerted community revitalization plan. Revitalization plan elements include local approval targeting specific neighborhoods and specifically identifying need for affordable housing within the boundaries of the plan.

2. Maximum Developer fee (Section II, Item C, page 3)

Language was added to limit the combined sum of fees a developer and contractor can receive when they are a related party to twenty percent of the eligible basis calculation.

3. Restriction (Section II, Item K, page 5)

The plan was revised to allow projects with 100 percent of units dedicated to homeless individuals or families and at least 50 percent plus one unit restricted to 30 percent area median income to be eligible for up to 30 percent of the annual tax credit allocation instead of the standard 25 percent.

4. Reserve Accounts (Section II, Item Q, page 6)

The per unit reserve requirement was increased from \$300 per unit to \$350 per unit for senior projects and from \$400 per unit to \$450 per unit for general occupancy projects. In addition, language was added to require that replacement reserves remain with the project for the entirety of the extended use period and may be used only for intended purposes.

5. Tax-Exempt Financed Projects (Section II, Item R, page 6)

The plan was revised to allow projects to apply for the non-competitive 4 percent tax credit allocation and tax-exempt bonds without being subject to a minimum point requirement.

6. Notice to Local Jurisdiction (Section II, Item U, page 7)

Language was added requiring the Agency to give notice to the local jurisdiction where a proposed LIHTC development will be located and allowing a reasonable opportunity to comment on the proposal.

7. Substantial Rehabilitation (Section III, Item C, page 8)

The plan was revised to allow an average of \$15,000 of rehabilitation per unit rather than an actual \$15,000 per unit.

8. Infrastructure and Utility Availability (Section V, Item C, page 9)

Language was added to require applicants to submit evidence that appropriate infrastructure (roads, curbs, and gutter) is in place at the time of the LIHTC application.

9. Broadband Infrastructure (Section V, Item J, page 11)

The plan was revised to include installation of broadband to a project as a threshold item rather than a scoring element.

10. Capital Needs Assessment (Section V, Item L, page 11)

The plan was revised to add adaptive reuse projects to the list of application types requiring a capital needs assessment to be submitted with the application.

11. Qualified Basis per Square Foot (Section V, page 12)

The recommended median qualified per square foot target was updated for 2018 based on the average median calculation from previous two years' applications.

12. Project Rating A. Services the Lowest Income Group (pages 13-14)

Revised the point category to create multiple income targeting options to maximize points for deep income targeted units. This revision will allow projects to maximize points and serve a wider mix of household incomes, while still targeting the lowest income households. Additionally, the definition of gross rents was revised to align with the IRS Section 42 guidelines.

13. Project Rating C. Redevelopment and Revitalization (page 14)

Language was added to expand the eligibility to receive points under this category. Projects that are part of a concerted community revitalization plan or located on a site to be considered brownfield or grayfield may be eligible for points. In addition, it clarified that rehabilitation of existing habitable and occupied housing is not eligible for points under this category.

14. Project Rating D. Permanent Supportive Housing (page 14-15)

Language was added to define frail elderly and provide examples of the types of services that would be deemed appropriate for that special needs population. The scoring category was also revised to create a tiered bonus point category for onsite staffing of permanent supportive services. The tiered approach was suggested by a commenter at the public hearing. The commenter indicated not all populations require 24 hour on-site services and gave an example of Monday through Friday daytime staffing with 24 hour on call crisis providers.

15. Project Rating K. Housing for People 55 and Over (page 17)

Increased the scoring category from 6 to 8 points and removed the bonus points for providing long term supportive services. Projects that target senior populations and provide supportive services can already receive points in the Permanent Supportive Housing category. The bonus points were redundant and gave senior projects a significant advantage over other populations. The reorganization of this pointing category still places an emphasis on senior projects, but reduces the advantage slightly.

16. Project Rating N. Geographic Location (page 18-19)

The scoring criteria was revised to allow the communities of Bismarck and Mandan as well as Fargo and West Fargo to be considered separate geographic locations.

17. Indian Reservation Set Aside (Section VII, Item B, page 18)

The QAP was amended to allow for the highest-scoring, qualified Native American application to be approved up to the 25 percent annual allocation rather than a 10 percent set aside.

18. Final Allocation of Tax Credits (Section IX, Item F, page 21-22)

The QAP was revised to require an executed management agreement, a sample rental application, and a sample rental lease to be submitted with the final allocation package.

Ms. Kline stated that the Plan had gone through a public comment period and public hearing.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Housing Finance Agency Advisory Board and approves the 2018 Low Income Housing Tax Credit Qualified Allocation Plan. (A copy of the Plan is available in the Commission files.) On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Kline reported on the public hearing regarding the 2017 Housing Trust Fund Annual Allocation Plan as follows:

RE: 2017 Housing Trust Fund Annual Allocation Plan

The National Housing Trust Fund (HTF) allocation plan was designed to complement the Federal Low-Income Housing Tax Credit Qualified Allocation Plan (LIHTC). Changes made in the 2018 LIHTC final allocation plan are mirrored in the HTF plan attached. A public hearing was held April 27, 2017 following the LIHTC hearing. No comments were received that exclusively pertained to the HTF plan. The Plan will now be submitted to HUD for approval as part of the North Dakota Consolidated Plan. HUD has 45 days to review the plan and provide

feedback or it becomes final. The Agency will publish the draft plan as attached until formal approval from HUD is received. The application period for HTF coincides with the LIHTC application round which ends on the close of business day on September 29, 2017. Below is a summary of the changes that are applicable only to the HTF plan. A formal notice of funding availability has not been released by HUD, however we anticipate receiving the small state minimum of \$3 million.

1. Recognizable Costs (Section III, pages 4-5)

HUD has not released the 2016 cost figures and the plan will be updated accordingly once released.

2. Affirmative Marketing (Section IV, page 7)

The plan was revised to provide additional information regarding the Affirmatively Fair Housing Marketing (AFHM) requirements and provides a link to a new guidance document published by the Agency.

3. VAWA (Section IV, page 8)

In 2016 HUD released template documents that were required under the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). The plan was updated to provide information on guidance published by the Agency and implement the additional documents as required by VAWA 2013.

4. Tenant Recruitment and Selection (Section V, Item J, page 11)

The plan was revised to add a sample rental application and lease to the list of items submitted to NDHFA. In addition, the plan now specifies that rental applications must request household demographic information, which is required as part of affirmative marketing procedures.

Ms. Kline said this is just a report to the Commission and does not require approval because it is a program that is subject to the North Dakota Consolidated Plan which is a part of the Department of Commerce. This has also gone through a public comment period and public hearing. There are three projects targeted for homeless with one breaking ground in Fargo in two weeks, the Jerimiah Project, another one is the renovation of the Junior High in Mandan and the third one is a homeless shelter in Grand Forks.

Being no further Housing Finance Agency business, Governor Burgum adjourned this portion of the meeting at 3:20 p.m. and the Commission took up Public Finance Authority business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on June 5, 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
DeAnn Ament, Public Finance Authority
Kelvin Hullet, Bank of North Dakota
Members of the Press

Governor Burgum called the Public Finance Authority portion of the Industrial Commission meeting to order at 3:20 p.m. following completion of Housing Finance Agency business.

Ms. DeAnn Ament, Public Finance Authority (PFA) Executive Director, discussed the following Clean Water State Revolving Fund loan requests:

City of Oakes - \$1,060,000 – Ms. Ament stated that the City of Oakes is refinancing their Rural Development loan that provided for the replacement of water and sewer. The PFA will be acquiring the City of Oakes improvement bonds that are payable with special assessments and the Advisory Committee recommend approval of the loan.

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

RESOLUTION APPROVING
LOAN FROM CLEAN WATER STATE REVOLVING FUND

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

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

WHEREAS, the City of Oakes (the "Political Subdivision") has requested a loan in the amount of \$1,060,000 from the Program to refinance a sewer line replacement loan; 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.

City of Wahpeton - \$1,046,000 – Ms. Ament said this is for a major reconstruction project in a portion of the City and will involve the Clean and Drinking Water Programs and the Bank of North Dakota Infrastructure Revolving Loan Fund. The City will issue revenue bonds payable with their sanitary sewer user fees. Based on that information the Advisory Committee recommended approval.

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

RESOLUTION APPROVING
LOAN FROM 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 Wahpeton (the "Political Subdivision") has requested a loan in the amount of \$1,046,000 from the Program to finance water, sewer and road reconstruction; 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. DeAnn Ament discussed the following Drinking Water State Revolving Fund loan request:

City of Oakes - \$4,080,000 – Ms. Ament said the City is refinancing two different Drinking Water loans they have with USDA – one will be improvement bonds backed by special assessments and the other will be revenue bonds backed by their water revenues. Based on the savings the Advisory Committee recommended approval.

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

RESOLUTION APPROVING
LOAN FROM DRINKING WATER STATE REVOLVING FUND

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

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

WHEREAS, the City of Oakes (the “Political Subdivision”) has requested a loan in the amount of \$4,080,000 from the Program to refinance water system improvements loans; and

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

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

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

1. The Loan is hereby approved, as recommended by the Advisory Committee.
2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.
3. The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.
4. The Commission declares its intent pursuant to Treasury Regulations §1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

On a roll call vote, Governor 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 SRF Clean and Drinking Water loan approvals as follows:

Re: Oakes, Clean Water State Revolving Fund
Wahpeton, Drinking Water State Revolving Fund

Under current policy, the Public Finance Authority can make loans under the State Revolving Fund Program in an amount not to exceed \$1,000,000 and under the Capital Financing Program in an amount not to exceed \$500,000 without seeking the final approval of the Industrial Commission. Within this policy, once the loan has been 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 Oakes requesting a \$365,000 loan under the Clean Water State Revolving Fund (CWSRF) Program to finance the relocation of the main lift station to a higher elevation to avoid flooding. Construction will begin and completion in 2017. The entire project will cost \$1,152,852 with FEMA providing a \$787,852 grant. The requested term for the CWSRF loan is 30 years. The City will issue revenue bonds payable with water revenues.

The committee reviewed an application from the City of Wahpeton requesting a \$452,000 loan under the Drinking Water State Revolving Fund (DWSRF) Program to finance the reconstruction of the storm sewer, sewer and water services, trunk sanitary sewer, watermains, signage, sidewalks, curb, gutter and pavement from 1st Street North from Dakota Avenue to 5th Avenue North and 3rd Avenue North from 1st Street to the river. Construction of this project began in May of 2017 with anticipated completion in July of 2018. Total construction costs are estimated at \$2,240,000 with \$1,046,000 financed through the Clean Water SRF, \$286,000 financed by the Bank of North Dakota Infrastructure Revolving Fund and \$456,000 locally provided from the City's sales tax dedicated for infrastructure. The requested term is 25 years. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City will 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 Public Finance Authority's Advisory Committee approved the loans at their May 30, 2017 meeting.

Governor Burgum commented on the work his office along with the Department of Commerce is doing to gather information on the debt local political subdivisions have outstanding. He noted that the information provided today shows that Oakes has a taxable evaluation of \$5 million and debt of \$22 million with 1,850 people to repay that debt. He requested that Ms. Ament assist in this work of understanding the balance sheets of North Dakota cities. He believes the outstanding debt of North Dakota cities will be close to \$2 billion -- Fargo, West Fargo, Dickinson and Williston have over \$1 billion in debt with Fargo leading the way at \$587 million in debt. During the recent session decisions were made to provide funding for local jurisdictions without having any information on whether funding was needed - there were no balance sheets available for those entities. There is missing data and the Commission is being asked to make decisions--following all the rules and going through all the appropriate steps on these programs--without having the information on a macro basis. The costs of special assessments are increasing the costs of land which in turn increases the costs of housing which makes housing unaffordable. The State may be in better financial shape than the cities because of all the debt the cities have taken on.

Ms. Ament noted that all the loans approved today were for repair and replacement. That is primarily what the State Revolving Fund is all about. Over 80 percent of the Authority's loans are repaid with water and sewer revenues and not by improvement bonds which are paid for by special assessments. There are exceptions but in

general the revenue bonds run far ahead of improvement bonds. She indicated local jurisdictions are not required to use the Authority's programs so the Authority only has data on those cities that have come to the Authority for financing. The Authority has also run into situations where there is no available data. Some of the smaller communities have trouble keeping staff to do the financial work. Communities with a population of less than 500 are to turn in a financial report to the State Auditor's Office on an annual basis and when they have contacted that office they find that the community hasn't turned in a report for a number of years. She indicated she would help in whatever way she can.

Being no further Public Finance Authority business, Governor Burgum adjourned the meeting at 3:28 p.m. and took up Lignite Research, Development and Marketing Program business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on June 5, 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
Mike Holmes, Lignite Research, Development and Marketing Program
Lyndon Anderson, Great River Energy
Jason Bohrer, Lignite Energy Council
Members of the Press

Governor Burgum called the Lignite Research, Development and Marketing Program portion of the Industrial Commission meeting to order at 3:28 p.m. following completion of Public Finance Authority business.

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

Lignite Research Fund (314)
Financial Statement - Cash Balance
2015-2017 Biennium
Industrial Commission Meeting June 5, 2017

		Cash Balance
July 1, 2015 Beginning Balance	\$18,375,271.72	
\$.02/ton Revenues through March 31, 2017		\$930,540.93
Coal Trust Fund Revenues through March 31, 2017		\$3,664,005.61
Coal Conversion Tax Revenues through March 31, 2017		\$2,040,437.55
Interest Income through March 31, 2017		\$16,382.10
Repayments & other revenues through March 31, 2017		\$208,021.63
Total Revenues		\$6,859,387.82
Small Research/Educ. Projects Expenditures through Mar. 31, 2017		\$541,223.00
Demonstration Projects Expenditures through Mar. 31, 2017		\$865,713.00
Marketing Expenditures through March 31, 2017		\$1,053,000.00
Litigation Expenditures through March 31, 2017 (net costs)		\$117,757.49
Non-matching Project Expenditures through March 31, 2017		\$760,000.00
Administrative Expenditures through March 31, 2017		\$581,207.95
Total Expenditures		\$3,918,901.44
Cash Balance as of March 31, 2016		\$21,315,758.10
<hr/>		
Outstanding contracted Small Research/Education/Demo Project Commitments	-\$3,515,014.00	

Outstanding contracted Marketing Project Commitment (includes expenditures in 2017-2019)	-\$1,227,000.00	
Estimated Lignite Litigation Costs for 2015-2017 biennium	-\$1,382,242.51	
Outstanding Non-matching project commitment (includes expenditures in 2017-2019)	-\$2,572,250.00	
Outstanding LV 21 Project Commitment	-\$1,367,678.00	
Estimated remaining administrative expenses for 2015- 2017 biennium	<u>-\$168,792.05</u>	
		-\$10,232,976.56
Non-committed Funding		<u>\$11,082,781.54</u>

Estimated Revenues for 2015-2017 Biennium		
\$.02/ton Coal Severance Tax	\$1,100,000.00	
Coal Severance Taxes/Coal Development Trust Fund	\$4,325,000.00	
5% of General Fund Share of Coal Conversion Tax	\$2,000,000.00	
Interest & Other Income	<u>\$825,000.00</u>	
		\$8,250,000.00
Other Designated Revenues		
General Fund One-time Appropriation (Originally \$5,000,000)	\$4,672,500.00	
Expenditures through March 31, 2017	<u>-\$2,313,822.00</u>	
Cash Balance Remaining as of March 31, 2017*		\$2,358,678.00

*This entire amount is under contract along with \$307,500 in the demo \$'s

	2015-2017 Budget	Committed	Balance
Administration	\$750,000.00	\$750,000.00	\$0.00
Non-matching Studies	\$3,000,000.00	\$3,000,000.00	\$0.00
Marketing Project	\$1,200,000.00	\$1,200,000.00	\$0.00
LV 21 Demonstration Projects	\$3,572,866	\$3,572,866.00	\$0.00
Small Research/Education/Non-LV 21 Demonstration Projects	\$6,597,500	\$5,218,150.00	\$1,379,350.00
Litigation Costs (net costs)	<u>\$1,500,000</u>	<u>\$1,500,000.00</u>	<u>\$0.00</u>
	\$16,620,366.00	\$15,241,016.00	\$1,379,350.00

Mr. Mike Holmes, Director of the Lignite Research Program and Technical Advisor to the Commission, discussed the Lignite Research Council recommendations on Grant Round 83 applications: (Copies of the applications are available in the Commission files.) He indicated that all three of the following applications received very good reviews and very good scores. He reviewed and discussed with the Commission the purpose of each of these projects.

“Carbon Capture & Utilization Using ‘VCCSTM Cycle’ Technology - Phase II: Mineralization of Acidic Flue Gas CO₂ via Chemical Reaction with Alkaline Lignite Fly Ash Extraction of Marketable Minerals & Other Commodities from Lignite Fly Ash”; Submitted by Expansion Energy, LLC; Project Duration 16 weeks; Funding Request: \$62,000 (Small Research) - Total Project Costs \$124,000 – He said Expansion Energy’s North Dakota team is driven by Great River Energy. He indicated that this is a CO₂ capture project focused on forming minerals with the carbon while extracting rare earth elements (REE). The project will have three objectives:

- Demonstrate the extent to which alkaline lignite ash can be neutralized by acidic flue gas (in the presence of methanol), converting metal oxides such as CaO into carbonates such as calcium carbonate.
- Determine the extent to which the REE content of the ash leaches into the wet methanol that hosts the VCCS reaction, allowing a decanted stream of wet methanol to be a concentrated “carrier” of REEs
- Determine the extent to which the solid carbonates that are mixed with the other treated solids can be distinguished from the sand, aluminum oxide (and other solids), so as to allow for the mechanical separation of the carbonates. If this Phase II project is successfully completed a subsequent Phase III project would build, deploy and test the Pilot Plan designed in Phase I of these studies.

He stated that all three technical reviewers recommended funding with a score of 198 out of 250 points and the Council voted 17 to 0 to fund it.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Lignite Research Council’s recommendation to fund the grant application “Carbon Capture & Utilization Using ‘VCCSTM Cycle’ Technology - Phase II: Mineralization of Acidic Flue Gas CO₂ via Chemical Reaction with Alkaline Lignite Fly Ash Extraction of Marketable Minerals & Other Commodities from Lignite Fly Ash” and to authorize the Industrial Commission Executive Director and Secretary to execute an agreement with Expansion Energy, LLC to provide a total of Industrial Lignite Research Program funding in an amount not to exceed \$62,000 (small research) with the contingencies that match funding be received from all parties, the Technical Advisor participates in the Advisory Group and that the Technical Advisor reviews the project management plan with the Project Manager (addressing reviewer comments). On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

“Resource Recovery from a Coal-Fired Power Plant to Enhance Agriculture Production in Open Field and Greenhouse Facilities”; Submitted by North American Coal Corporation; Project Duration 14 months; Funding Request: \$150,000 (Small Research); Total Project Costs \$299,557 – Mr. Holmes stated that this project involves collaboration between top North Dakota research facilities (NDSU and EERC) and industry partners to create the potential for delivering a valuable project to the State through research projects to increase agricultural production by recovering resources from lignite-fired power plants. The availability of excess heat and CO₂ at a common location presents a unique opportunity or a link between agriculture and the energy industry. Resources that are not currently being utilized at a lignite power plant could be used to benefit agriculture and will decrease the carbon footprint of the plant. He said all three technical reviewers recommended funding and their score was 202 out 250 so very good reviews. The Council voted 16 to fund; and 1 not to fund.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Lignite Research Council’s recommendation to fund the grant application “Resource Recovery from a Coal-Fired Power Plant to Enhance Agricultural Production in Open Field and Greenhouse Facilities” and to authorize the Industrial Commission Executive Director and Secretary to execute an agreement with North American Coal Corporation to provide a total of Lignite Research Program funding in an amount not to exceed \$149,557 (small research) with the contingencies that match funding be received from all parties, the Technical Advisor participates in the Advisory Group and that the Technical Advisor reviews the project management plan with the Project Manager. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

“Investigation of Rare Element Extraction from North Dakota Coal-Related Feedstocks”; Submitted by Institute for Energy Studies UND”; Request for \$280,000 (Small Research) Total Project Costs \$3,437,500; Duration 1.5 years. Mr. Holmes stated that the overall goal of the proposed Phase II project is to demonstrate at a bench-scale (10 to 20 kg/hr) a high performance, economically viable, and environmentally benign technology to recover rare earth elements from North Dakota lignite coal or lignite-related feedstocks. He said this application received three technical reviewer funding recommendations to fund with a 224 score out of a potential of 250. The Council vote was 17 to 0 to fund.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Lignite Research Council’s recommendation to fund the grant application “Investigation of Rare Element Extraction from North Dakota Coal-Related Feedstocks” and to authorize the Industrial Commission Executive Director and Secretary to execute an agreement with the Institute for Energy Studies UND to provide a total of Lignite Research Program funding in an amount not to exceed \$280,000 (small research) with the contingencies that match funding be received from all parties, the Technical Advisor participates in the Advisory Group and that the Technical Advisor reviews the project management plan with the Project Manager. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

In response to a question regarding what will be known at the end of 18 months, Mr. Holmes said the goal will be to determine the commercial viability of recovering rare earth elements. He indicated that he has requested a one-page double-sided summary of all the important aspects of this work be developed during this project, including the technical and economic prospects identified through this research.

Ms. Fine presented her recommendation regarding the following confidentiality requests:

1. Portion of North American Coal Corporation application
2. Portions of Institute for Energy Studies UND application
3. Reports on Institute for Energy Studies UND project.

RE: Confidentiality determinations

The Lignite Research Program statute - Chapter 54-17.5-06 - allows the Industrial Commission to determine if certain information is confidential.

Mr. Gerard Goven with The Falkirk Mining Company/North American Coal Corporation has requested confidentiality for Appendix D of their application “Resource Recovery from a Coal-Fired Power Plant to Enhance Agriculture Production in Open Field and Greenhouse Facilities”. Mr. Goven 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 North American Coal Corporation’s request and determine that the following information is confidential:

Appendix D to the “Resource Recovery from a Coal-Fired Power Plant to Enhance Agriculture Production in Open Field and Greenhouse Facilities” Application

Dr. Steve Benson with the Institute for Energy Studies UND has requested confidentiality for portions their application “Investigation of Rare Element Extraction from North Dakota Coal-Related Feedstocks” and portions of the reports to be filed on this project. Dr. Benson 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 the Institute for Energy Study’s requests and determine that the following information is confidential:

Portions of the Investigation of Rare Element Extraction from North Dakota Coal-Related Feedstocks application and portions of the reports to be filed on the project.

Dr. Benson has indicated that they will be providing non-confidential reports on their project that will be available to the public.

If the Commission wishes to review the confidential information that has been received, I can provide that information in executive session.

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/Secretary that the following items be determined confidential:

Appendix D to the “Resource Recovery from a Coal-Fired Power Plant to Enhance Agriculture Production in Open Field and Greenhouse Facilities” Application

Portions of the “Investigation of Rare Element Extraction from North Dakota Coal-Related Feedstocks” application and portions of the reports to be filed on the project.

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

Governor Burgum inquired if the ethanol plant in Richardton is working on doing CO₂ sequestration and if this is a way to lower their carbon content to get better points for selling ethanol in California. Mr. Holmes indicated that there is an ongoing project with Red Trail that was partially funded by the Renewable Energy Program. It is his understanding that one of the goals of that research is looking at CO₂ sequestration and by doing that obtaining more renewable energy credits so the plant is able to get a higher value for their ethanol.

Ms. Fine discussed a request for a special round with a submission deadline of July 1, 2017 as follows:

RE: Additional Lignite Research Program Grant Round

The Industrial Commission is in receipt of the attached request from the Energy and Environmental Research Center (EERC) for the establishment of an additional grant round (Round 84). The Lignite Research Program policies allow for the establishment of additional grant rounds by the Industrial Commission.

Mr. John Harju, EERC Vice President for Strategic Partnerships, has indicated that Project Carbon needs to be initiated in early August, 2017 and the regular grant round deadline of October 1 would significantly delay the project.

I have consulted with Mike Holmes, Lignite Research Program Technical Advisor, and he has indicated support for the additional grant round. Therefore, I am recommending the establishment of an additional Lignite Research Program grant round with a deadline submission date of July 1, 2017.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director/Secretary and establish an additional Lignite Research Program Grant Round (84) with a deadline submission date of

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June 5, 2017

July 1, 2017. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Lignite Research, Development and Marketing Program business, Governor Burgum adjourned the meeting at 3:46 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 June 5, 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, WAWSA
Lynn Helms, Department of Mineral Resources
Eric Hardmeyer, Bank of North Dakota
Garland Erbele, State Water Commission State Engineer
Brent Bogar, Jadestone Consulting
Members of the Press

Governor Burgum called the Western Area Water Supply Authority portion of the Industrial Commission meeting to order at 3:46 p.m. following completion of Lignite Research, Development and Marketing Program business.

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

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

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

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

The next 3 pages (pages 2, 3 & 4) I prepared based on the information provided by WAWS staff reflecting April revenues and expenses and net income. There was one principal payment made in April that is highlighted in yellow. Net income for the month of April was \$16,698.71 before making the principal payments. No baseline sales payments were paid because there was insufficient cash to make that payment. **WAWS's auditors were in doing the audit for 2016 and have now indicated that we should no longer treat these payments as a deferred asset in 2017.** When you include the baseline payment expense the net income for the month of April is **-\$383,283.38**. (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 April being \$16,698.71 they were under that number by \$855,051.29.) The Commission will be considering the restructuring of the WAWS debt at the June 5, 2017 meeting.

Page 5 is the balance sheet prepared by WAWS staff as of April 30, 2017. As noted on the Balance Sheet the Accounts Receivables are \$1,561,814.15 which is included in the assets of \$6,306,524.94. The Balance Sheet still includes a Deferred Expense line item as an asset for the 2016 baseline sales payments but the 2017 baseline sales payments are not included in that line item. The liabilities include, within the accounts payable line item, the 2016 baseline sales payments amount plus the 2017 baseline sales payments. **This is the first balance sheet you have seen in 2017 with negative total equity because in previous months we had been including the baseline payments as a deferred expense asset as per the instructions of the auditor.**

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 April and comment on the activity level during April.

Ms. Fine pointed out that the WAWS external auditors have now indicated that the baseline sales payments should no longer be considered as a deferred asset in 2017 and should be an expense each month. She reviewed how this change impacted the 2017 balance sheet. No baseline sales payments are being made because there are not enough revenues to make those payments. This is the first time you are seeing a balance sheet that shows a negative total equity.

It was noted that there was an error in the report and it should have stated sales for the month of April were \$628,387.46 rather than the \$16,698.71 and that WAWS was under sales target number by \$243,362.54.

Mr. Jaret Wirtz gave an update on sales and current activity. He said sales for May will be similar to April with sales picking up slightly -- some road restrictions have been lifted and weather has not shut down oil field activity. Some frack jobs will be starting in June with more sales coming in July and August. He stated there are two reasons why WAWS has been able to make these sales -- the price flexibility the Commission recently approved and surface water allocations being limited because of the drought. Operators are looking for more than one source to meet their water needs. There is definitely an increase in demand for frack water as more frack crews are being mobilized to the region especially in McKenzie and Williams Counties. The Commission will see an increase in June and those sales will be reported at the July meeting.

Ms. Fine stated that Mr. Wirtz will be coming to the Commission at the end of the month with more detailed information regarding pricing but today he is presenting an amendment to a previously approved pricing structure that he would like the Commission to act on today. Mr. Wirtz presented the following memorandum regarding an amendment to the pricing structure approved on October 19, 2016 which dealt with maintenance water sales:

RE: Amendment to Pricing Structure

Last October the Industrial Commission approved the following volume pricing structure that the Western Area Water Supply Authority could offer to potential customers through June 30, 2017:

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

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

Examples of how this pricing structure works is as follows:

Year	Proposed Volume(Barrels)	Actual Volume(Barrels)	Example One		
			Required Minimum(\$)	Actual Yearly Payment(\$)	
2017	200,000	200,000	\$ 50,000.00	\$ 120,000.00	
2018		400,000	\$ 50,000.00	\$ 240,000.00	
2019		600,000	\$ 50,000.00	\$ 360,000.00	
2020		800,000	\$ 60,000.00	\$ 480,000.00	
2021		0	\$ 75,000.00	\$ 75,000.00	
				\$ 1,275,000.00	Total

Example Two

Year	Proposed Volume(Barrels)	Actual Volume(Barrels)	Required Minimum	Actual Yearly Payment	
2017	200,000	50,000	\$ 50,000.00	\$ 50,000.00	
2018		150,000	\$ 50,000.00	\$ 90,000.00	
2019		2,600,000	\$ 50,000.00	\$ 1,200,000.00	
2020		100,000	\$140,000.00	\$ 140,000.00	
2021		100,000	\$108,750.00	\$ 108,750.00	
				\$ 1,588,750.00	Total

Example Three

Year	Proposed Volume(barrels)	Actual Volume(Barrels)	Required Minimum	Actual Yearly Payment	
2017	600,000	600,000	\$ 90,000.00	\$ 360,000.00	
2018		400,000	\$ 90,000.00	\$ 240,000.00	
2019		200,000	\$ 75,000.00	\$ 120,000.00	
2020		200,000	\$ 60,000.00	\$ 120,000.00	
2021		200,000	\$ 52,500.00	\$ 120,000.00	
				\$ 960,000.00	Total

I am currently in discussions with a potential customer who is requesting that WAWS allow for a 10-year contract rather than the 5-year contract previously authorized. The Authority is requesting that the Commission allow the flexibility for the Authority to enter into a contract for 10 years utilizing this pricing structure.

The Authority is preparing information for the Commission to consider and discuss regarding pricing structures at the June 30, 2017 Industrial Commission meeting.

Mr. Wirtz stated that this pricing approach had been put in place last October as more and more companies were making large investments in the infrastructure to get water into their fields. They were looking for some commitment from WAWS that WAWS wouldn't increase the price of water after the company had invested in the infrastructure. Mr. Wirtz reviewed the pros and cons of making a ten-year commitment. He recommended that the Commission approve the flexibility to enter into 10 year contracts.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission amends the \$.60 per barrel Volume Commitment Pricing Structure previously approved on October 19, 2016 to allow the Authority the flexibility to enter into 10 year contracts.

In response to a question regarding if this was the first customer requesting a contract for longer than five years or is it a market trend, Mr. Wirtz said this is the first one but he couldn't say if it was a market trend. Each sale has to be looked at on a case by case basis and a company by company basis. Companies like to have a consistent price for the water. He didn't think it would be the last one. The average sale over the ten year contract is close to a half million barrels a year so you are talking close to five million barrels. It is a significant number over that time that WAWS would be securing.

In response to a question Mr. Wirtz stated that the market price right now is \$.45. In response to a question, Mr. Wirtz indicated that there are some reasons why a company is willing to lock in the higher price of \$.60. Location is a key factor--the WAWS water is closer to the oil field and the company does not have to pay for the costs of transporting the lower priced water from another source that is located farther away; or having a consistent source

of water; or they want a treated source of water for their maintenance needs. There is the possibility that the company believes the price of water is going up but he did not think that is the reason they are willing to enter into these contracts.

In response to a question, Mr. Wirtz stated that even though the life of the well can be 30 years, he believes that once WAWS has provided water for 5 to 10 years the operator will want to enter into another contract with WAWS at the end of that contract period. The volume of sales will be increasing in those fields as more wells are drilled.

The Commission and Mr. Wirtz discussed the risk of fixing a price for a longer period of time, the factors that mitigate that risk, the costs of operations, whether there should be some inflationary increases in years 6 through 10, WAWS bargaining position, what the demand for maintenance water will be in future years, and the need for a base level of revenue to meet the WAWS obligations.

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

Ms. Fine discussed her recommendation regarding the implementation plan for the legislative-directed 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 as follows:

RE: Western Area Water Supply Authority (WAWS) Study

As indicated at your last meeting here is a proposed plan for the implementation of the WAWS study directed in House Bill 1020:

SECTION 11. APPROPRIATION - INDUSTRIAL COMMISSION STUDY - WESTERN AREA WATER SUPPLY AUTHORITY - REPORT TO LEGISLATIVE MANAGEMENT. 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.

The law provides that the Industrial Commission may form a nonvoting Advisory Committee. The statutory role of the Advisory Committee is to:

- Provide input regarding scope of the study
- Receive reports on the status of the study

After visiting with Water Commission staff I am recommending that the Industrial Commission name an Advisory Committee chaired by the State Engineer. I would suggest that additional duties be given to this Advisory Committee:

- Assist with the development of the Request for Proposals
- Serve as a Selection Committee -- review the proposals and make a recommendation to the Industrial Commission.

After looking at a number of options, here are my suggestions for appointment to the Advisory Committee:

Garland Erberle, State Engineer
Lt. Governor Brent Sanford
Pam Sharp, Director, Office of Management and Budget
Lynn Helms, Director, Department of Mineral Resources or his designee
Karlene Fine, Industrial Commission Executive Director/Secretary

The Advisory Committee may also consult with representatives from the Public Finance Authority and Bank of North Dakota on an as needed basis. Mr. Erberle has agreed to provide the staff support for this Advisory Committee.

Attached is a draft timeline if the Industrial Commission should accept my recommendation and name an Advisory Committee. Please provide me with direction as to how you wish to proceed on this study.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director and name the WAWSA Study Advisory Committee as follows:

**Garland Erberle, State Engineer
Lt. Governor Brent Sanford
Pam Sharp, Director, Office of Management and Budget
Lynn Helms, Director, Department of Mineral Resources or his designee
Karlene Fine, Industrial Commission Executive Director and Secretary**

and further direct that the Advisory Committee, in addition to the duties outlined in House Bill 1020, also assist with the development of the Request for Proposals and to serve as a Selection Committee (which would include the review of proposals and making a recommendation to the Industrial Commission). On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Fine said she also attached a timeline for the Commission's information. If everything stays on schedule the Committee would bring a proposed RFP to the Commission at their July 18 meeting and then make a recommendation for the selection of the firm to conduct the study in September. Governor Burgum thanked the members for their willingness to serve on the committee.

Ms. Fine indicated that she will be requesting the WAWS staff to assist in preparing information for the Advisory Committee as well as for the study contractor. Mr. Wirtz stated they would be willing to help.

Mr. Wirtz said he has had some requests for WAWS to do some capital cost sharing. Before developing that option he wanted to know if the Commission would have any interest in that type of transaction. He noted that WAWS had done this a couple of years ago in those instances where the expenditure showed a payback. Because there is not sufficient cash flow in the Industrial Account he indicated that the WAWS Board may be willing to provide the monies from the General Account with the agreement that when the revenues come in they would be paid back. He explained how the concept would work. There was discussion about the pros and cons of these types of transactions -- developing a matrix of the criteria to be used to determine if WAWS should participate in

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cost sharing, guaranteeing WAWS revenues, what percentage of cost share is appropriate, the financial health of the participating company, whether a bond should be required, and whether repayment should be as part of the price of the water. Mr. Wirtz said he would continue to work on this option.

In response to a question, Mr. Wirtz indicated he needed to have some flexibility in setting prices. He is putting together information for the next meeting that he believes will be helpful in explaining the need for that flexibility.

Being no further Western Area Water Supply Authority business, Governor Burgum adjourned the meeting at 4:12 p.m. and took up Student Loan Trust business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on June 5, 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
Eric Hardmeyer, Bank of North Dakota
Members of the Press

Governor Burgum called the Student Loan Trust portion of the Industrial Commission meeting to order at 4:12 p.m. following completion of Western Area Water Supply Authority business.

Ms. Karlene Fine, Industrial Commission Executive Director, discussed the background information regarding the Trust as follows:

North Dakota Student Loan Trust Background Information

History of the Student Loan Trust

The North Dakota Student Loan Trust ("Trust") was created in 1971 for the purpose of acquiring and holding in trust student loans. The creation of the Trust enabled the State of North Dakota to obtain low cost funds (through the sale of tax-exempt bonds) and use those funds for purchasing student loans originated or acquired by the Bank of North Dakota. The Trust would not service the student loans—the loans would be serviced by the Bank of North Dakota. The Trust's student loan portfolio and the Bank's student loan portfolio would be treated the same so the student borrower would not know if their loan was held by the Trust or Bank of North Dakota. Since the Trust was created it has issued over \$900,000,000 in student loan bonds. The Trust, in essence was a liquidity provider for the Bank. The Trust has not been to the bond market since 2004 as the Bank of North Dakota chose not to sell student loans to the Trust but rather hold the student loans in their loan portfolio.

In the early years of the Trust it was able to accumulate income from payments made by the federal government--at that time the federal government was encouraging entities to be in the student loan business. However, as those federal payments went away the income to the Trust each year has been reduced. In recent years the annual income for the Trust has been approximately \$200,000. The assets of the Trust have been used to provide borrower benefits to the student loan borrowers (including a reduction in their fees), funded the North Dakota Guarantee Agency and provided funding for the General Fund.

Structure/Staffing

The Industrial Commission does not have a separate staff for the Student Loan Trust. The Industrial Commission Executive Director and Secretary serves as the Authorized Officer for the Trust. The records for the Student Loan Trust are maintained in the Industrial Commission administrative office and at Bank of North Dakota. The Public Finance Authority has also assisted the Industrial Commission office by drafting the financial statements for the Trust's annual audit.

Bank of North Dakota serves as the Trustee for the Trust. The Industrial Commission's Financial Advisor, Public Financial Management, serves as financial advisor for the Trust. This past December the Industrial Commission entered into four-year agreements with bond counsel -- Kutak Rock -- and an Investment Banker -- Bank of America Merrill Lynch. Last year Bank of North Dakota indicated they may need to sell loans to the Trust in the next year so we needed to have a financing team in place should we need to go to the capital markets.

Outstanding bond issues

As of June 30, 2016 the Student Loan Trust had outstanding bonds in the amount of \$1,000,000. This bond is held by Bank of North Dakota.

Student Loan Trust Assets

As of June 1, 2017 the Student Loan Trust had net assets that total \$17.4 million. Of these assets, \$15.2 million are loans (\$13.7 million in federal loans and \$1.5 million in DEAL loans) with the remaining amount being cash invested in CD's at Bank of North Dakota.

Ms. Fine discussed a request for authorization for the Student Loan Trust Authorized Officer (Industrial Commission Executive Director) to make transfers as outlined in the law during the 2017-2019 biennium as follows:

RE: Student Loan Trust transfers

During the 2017 legislative session there were several bills as noted below authorizing transfers from the Student Loan Trust during the 2017-2019 biennium for an amount in excess of \$16,591,600:

Senate Bill 2003 provides for an appropriation of up to \$465,307 from the North Dakota Student Loan Trust to the State Board of Higher Education for the professional student exchange program (veterinary medical education program), \$539,437 for the Connect ND Campus Solutions, \$500,000 for grants to Tribal Community Colleges and \$13,806,856 for residency positions at the UND School of Medicine and Health Sciences. (total \$15,311,600)

Senate Bill 2004 provides for an appropriation of \$360,000 from the North Dakota Student Loan Trust to the Department of Health for the Dental Loan Repayment Program. (\$360,000)

Senate Bill 2144 provides for an appropriation of \$500,000 from the North Dakota Student Loan Trust to the Department of Commerce for workforce grants to tribally controlled community colleges. (\$500,000)

Senate Bill 2244 provides for an appropriation of \$200,000 from the North Dakota Student Loan Trust to the Board of Higher Education for a dual-credit courses pilot program. (\$200,000)

House Bill 1013 provides for a one-time appropriation to the Department of Public Instruction for the ND Governor's STEM programs in the amount of \$220,000. (\$220,000)

Senate Bill 2014 provides for an appropriation from the North Dakota Student Loan Trust to the North Dakota Industrial Commission. (undetermined at this time)

The Student Loan Trust documents require that all transfers from the Trust be authorized by the Industrial Commission and only after certification by the Trustee regarding the availability of funds to pay for any outstanding bonds.

In order to be in compliance with the Trust documents I recommend that the Industrial Commission authorize the transfers of funds from the Student Loan Trust in the amount as outlined in legislation passed by the 2017 Legislature and authorize the Student Loan Trust Authorized Officer (Industrial Commission Executive Director/Secretary) to take the appropriate steps to implement the transfers.

At a future meeting I will bring a recommendation regarding the Student Loan Trust transfer for the Industrial Commission administrative office.

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/Secretary and authorizes the transfers of funds from the Student Loan Trust in the amount as outlined in legislation passed by the 2017 Legislature and authorizes the Student Loan Trust Authorized Officer (Industrial Commission Executive Director/Secretary) to take the appropriate steps to implement the transfers. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

In response to a question regarding what the balance will be at the end of the biennium, Ms. Fine said approximately \$800,000.

In response to a question, Ms. Fine stated that with this level of transfers the Student Loan Trust activities will essentially cease but the Trust will remain for future use if needed.

Governor Burgum stated the Bank will have transferred \$100 million last year and \$140 million is to be transferred this biennium with \$16 million coming from the Student Loan Trust along with Mill and Elevator as a contributor. The Office of Management and Budget has indicated that there is over \$700 million of what you could consider one time sources. There is a strong presumption that the Mill and Elevator and the Bank will keep on producing profits but this funding from the Student Loan Trust is truly one time because you can't go back to it the next time around. The point is that unless revenues come up efforts to balance the budget next time will be as hard or equally as hard as it was this time because so many one-time resources were used to get to the \$4.3 million state budget. It is a nice variable to contribute in so many different ways from Industrial Commission run activities but it will create some challenges next time around.

Ms. Fine presented a resolution authorizing the Sale of Loans from the Student Loan Trust to the Bank of North Dakota in order to provide liquidity for the transfers authorized by the State Legislature and approved by the Industrial Commission. She said this is a required document to approve the sale of the loans that go to the Bank.

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

RESOLUTION APPROVING THE SALE OR LIQUIDATION OF STUDENT LOANS
HELD WITHIN THE STUDENT LOAN TRUST

RECITALS

WHEREAS, pursuant to the Student Loan Revenue Bonds General Bond Resolution adopted by the Commission on June 27, 1979, as amended and restated as the Second Amended and Restated Student Loan Revenue Bonds General Bond Resolution (1979) adopted by the Commission on June 18, 1997 (the "Original Resolution"), as supplemented by the First Supplemental Resolution adopted December 31, 2002 and as further supplemented by the Second Supplemental Resolution adopted March 24, 2004 (as so amended, restated and supplemented, the "First General Bond Resolution"); and

WHEREAS, the First General Bond Resolution created certain funds and accounts and set forth the use and disbursement of moneys held within those funds and accounts; and

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

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

WHEREAS, the Industrial Commission on December 1, 2004, amended the Third Supplemental Resolution to the State of North Dakota Student Loan Revenue Bonds Second General Bond Resolution and recognized that the Bank of North Dakota is the sole registered owner of the Bonds remaining in the Student Loan Trust; and

WHEREAS, the 2017 North Dakota Legislative Assembly made several appropriations in the total amount of \$16,591,600 from the North Dakota Student Loan Trust, as set out in SB 2003, SB 2004, SB 2144, SB 2244, and HB 1013, all effective July 1, 2017; and

WHEREAS, the Bank of North Dakota, as the sole remaining Bondholder of any Bonds issued by the North Dakota Student Loan Trust, has consented to the sale or liquidation of up to \$16,591,600 of student loans held within the North Dakota Student Loan Trust.

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

1. That any authorized officer may do any and all things necessary or desirable to prepare any student loans held under the North Dakota Student Loan Trust for liquidation or sale to the Bank of North Dakota.
2. The Commission hereby names Karlene Fine, Executive Director and Secretary to the Commission, as its Authorized Officer for the North Dakota Student Loan Trust (the "Authorized Officer") for the purposes set out in this Resolution.
3. The Commission authorizes and directs the officers and employees of the Bank of North Dakota to provide such assistance as the Authorized Officer and counsel to the Commission shall request in order to do all things necessary and proper to carry out the provisions of this Resolution and to prepare the loans for liquidation or sale to the Bank of North Dakota.
4. That this Resolution is effective immediately.

Adopted this 5th day of June, 2017.

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

Being no further Student Loan Trust business, Governor Burgum adjourned this portion of the meeting at 4:17 p.m. and the Commission took up Bank of North Dakota business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on June 5, 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
Eric Hardmeyer, Bank of North Dakota
Tim Porter, Bank of North Dakota
Kelvin Hullet, Bank of North Dakota

Governor Burgum called the Bank of North Dakota portion of the Industrial Commission meeting to order at 4:17 p.m. following completion of Student Loan Trust business.

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

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission close the meeting pursuant to N.D.C.C. §44-04-18.4 to discuss commercial information involving the State Mill's marketing strategies and sales plans and to discuss the Bank of North Dakota's commercial and financial information on a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum closed the meeting at 4:19 p.m. pursuant to North Dakota Century Code 6-09-35 to discuss the items on the agenda under Bank of North Dakota confidential business.

Following the confidential portion of the meeting, the Commission reconvened in non-confidential session at 5:35 p.m.

Following the confidential portion of the meeting, the Commission reconvened in non-confidential session at 6:00 p.m. and it was noted that during the confidential portion of the meeting, it had been moved and seconded that the Bank of North Dakota be authorized to participate in two loans identified as Attachments 30 and 31. In non-confidential session, on a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Bank of North Dakota business, Governor Burgum adjourned the meeting at 6:00 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 June 5, 2017 beginning at 1:00 p.m.
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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

Governor Burgum called the State Mill portion of the Industrial Commission meeting to order at 5:38 p.m. following completion of Bank of North Dakota confidential business and the Commission went into confidential session for State Mill business.

For the closure motion for the Mill portion of this meeting, see the Bank of North Dakota minutes.

Following the completion of the State Mill confidential portion of the meeting, the Commission reconvened in non-confidential session at 5:59 p.m.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve a FY 2018 Capital Plan line item of \$2,150,000 for a portion of the High Speed Grain Receiving System Phase II - Engineering and Land and further authorize Mill management to negotiate terms and, if reasonable terms can be reached, purchase property which will allow for improved Mill operations. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further State Mill business, Governor Burgum adjourned the meeting at 6:00 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 June 5, 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

Governor Burgum called the Administrative portion of the Industrial Commission meeting to order at 6:01 p.m. following completion of Bank of North Dakota business.

Ms. Karlene Fine, Industrial Commission Executive Director/Secretary, presented the following list of legislative interim studies that she will be working on or monitoring:

2017-2018 Legislative Interim Committee Work

- (1) Active participation or attendance at committee meetings*
 - (2) Attend committee meetings and provide input and/or assistance as requested*
 - (3) Monitor committee agenda and if agenda items relate to the Industrial Commission or Industrial Commission agencies, attend meetings and track study activities and results*
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- 1) Administrative Rules Committee - (3)
- 2) Agriculture and Transportation Committee - Soil Conservation Study (3) Because of work with the Outdoor Heritage Fund may attend meetings to get a better understanding of the role of the Soil Conservation Districts
- 3) Agriculture and Transportation Committee - Transportation Funding (3) May attend if discussions involve bonding for infrastructure construction
- 4) Agriculture and Transportation Committee - State Wetlands Bank (3) - Outdoor Heritage Fund may have an interest
- 5) Education Interim Committee - (3) Only if discussions relate to a role for the Bank of North Dakota or Public Finance Authority in providing school construction loans.
- 6) Energy Development - (1) Generally attend all of these meetings as the various studies of this committee usually impact in some way the Department of Mineral Resources, Pipeline Authority, Transmission Authority or the Commission's research programs.
- 7) Government Administration Committee (2) Of particular interest is the study on Job Service North Dakota properties - North Dakota Building Authority has had a role in the past of financing Job Service facilities. Also want to follow the work of the committee on legal notices.
- 8) Government Finance Committee - (1) Generally attend all of these meetings in order to stay current on state revenues and expenditures. This information is needed as the Commission's agencies interact with the rating agencies.
- 9) Health Care Reform Review Committee (2) May need to monitor to keep current on information that may be needed as the Commission's agencies interact with the rating agencies.
- 10) Higher Education Committee - (2) Because of relationship of the Commission's research programs with the University System research entities will want to monitor discussions on impact of reduced funding to research facilities. The research programs also do a considerable amount of work with the EERC.
- 11) Human Services Committee - (3) In the past the Housing Finance Agency has been involved in some of the discussions as they relate to housing.
- 12) Incarceration Issues Committee (2) - Same reason as stated above for Human Services Committee
- 13) Natural Resources Committee (1) - Radioactive waste disposal - Will track this because of potential impact on the Department of Mineral Resources
- 14) Taxation Committees (2) - Tribal taxation and housing issues

- 15) Water Topics Overview Committee (1) - Generally attend all of these meetings because of the Commission's role with the WAWSA.
- 16) Budget Section (2)
- 17) Legislative Audit and Fiscal Review Committee (3)
- 18) Legacy and Budget Stabilization Fund Advisory Board (3)

In addition to legislative interim committee work there are legislative directed studies that are to be completed during the interim. These will require active participation: (1)

- 1) SB 2134 - review of the delineation of the ordinary high water mark (DMR)
- 2) SB 2014 - sediment studies and dredging operations from reservoirs
- 3) SB 2014 - gain sharing program study
- 4) SB 2014 - Bank of North Dakota efficiency study
- 5) HB 1015 - Oil and Gas Valuation (may be studied by the Tax Department)

Being no further Administrative business, Governor Burgum adjourned the meeting at 6:03 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary