

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on August 22, 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  
Other attendees (see list available in the Commission files)  
Members of the Press

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

Ms. Jolene Kline, Housing Finance Agency Executive Director, presented the Supplemental General Authorization Resolution for the North Dakota Housing Finance Agency Housing Finance Program Bonds 2017 Series D - \$80,000,000 and 2017 Series E - \$8,190,000 for the Commission's consideration. The new money is \$80,000,000 and the \$8.1 million is for refunding some bonds from the Agency's 2008 Series. The bond proceeds are expected to fund approximately 493 loans. More than 50% of that \$80 million is already reserved.

In response to a question, Ms. Kline stated that the \$8.1 million is being used to retire some higher cost bonds from a prior bond issue.

Ms. Kline and Mr. Nagel discussed the rates on the bonds and indicated that the mortgage interest rate to the homebuyer will be at 3.45% to 3.80%.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the following Supplemental General Authorization Resolution be approved:**

STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
HOUSING FINANCE PROGRAM BONDS  
HOME MORTGAGE FINANCE PROGRAM  
2017 SERIES D - \$80,000,000  
2017 SERIES E - \$8,190,000

**SUPPLEMENTAL  
GENERAL AUTHORIZATION RESOLUTION**

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

WHEREAS, the Commission adopted the Housing Finance Program General Bond Resolution of 1994, on July 21, 1994, as amended (the "General Resolution") wherein Wells Fargo Bank, National Association,

Minneapolis, Minnesota, was appointed trustee (the "Trustee"), which General Resolution was accepted by the Trustee, and which General Resolution is hereby ratified and confirmed; and

WHEREAS, the General Resolution authorizes the issuance and sale of the captioned 2017 Series D Bonds (the "2017 Series D Bonds") and 2017 Series E Bonds (the "2017 Series E Bonds", and together with the 2017 Series D Bonds, the "Bonds") pursuant to the Act, the application of the proceeds of which will provide funding for the captioned Home Mortgage Finance Program (the "Program") contemplated by the Act in furtherance of the Program for the providing of decent, safe, and sanitary housing for persons and families of low or moderate income; and

WHEREAS, the Commission acting as the Agency, pursuant to that 2017 General Authorization Resolution adopted by the Commission on February 20, 2017 (the "General Authorization Resolution"), regarding the authorization of and the negotiation and sale of the Bonds, appointed as its agents the Executive Director, the Director of Homeownership Programs, and the Chief Financial Officer of the Agency (the "Authorized Officers") for the purpose of negotiation of the terms of sale of the Bonds, subject to the limitations set out in the General Authorization Resolution, and to sign such agreements as are required for the issuance of the Bonds on behalf of the Commission after such terms of sale had been negotiated and to sign such certificates and other documents as are necessary and customary to complete the sale of the Bonds and to enter into an agreement for their sale by the Agency and purchase by the Underwriters (as hereinafter defined, and which are so designated by an Authorized Officer); and

WHEREAS, the Authorized Officers did negotiate the sale of the Bonds on August 16, 2017, within the limitations set out in the General Authorization Resolution as to maximum principal amount, final maturity and maximum interest rate; and

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

- A. 2017 Series D/E Bond Resolution, in substantially final form, attached hereto as Attachment A;
- B. 2017 Series D/E Purchase Contract, dated August 16, 2017 by and between the Commission and the Underwriters, attached hereto as Attachment B;
- C. Preliminary Official Statement with respect to the Bonds, dated August 7, 2017, attached hereto as Attachment C; and
- D. Official Statement, with respect to the Bonds, in substantially final form, dated August 16, 2017, attached hereto as Attachment D.

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

WHEREAS, in the judgment of the Commission, it is advisable that the Agency by its Executive Director, its Director of Homeownership Programs, or its Chief Financial Officer, jointly or severally, be

authorized, and are hereby so authorized, to do all things necessary to complete the transaction described herein, and in the Closing Financing Documents.

**NOW BE IT HEREWITH RESOLVED:**

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

IN WITNESS WHEREOF, this Supplemental General Authorization Resolution has been signed on August 22, 2017.

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

Being no further Housing Finance Agency business, Governor Burgum adjourned this portion of the meeting at 1:03 p.m. and the Commission took up Public 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  
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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  
DeAnn Ament, Public Finance Authority  
Other attendees (see list available in the Commission files)  
Members of the Press

Governor Burgum called the Public Finance Authority portion of the Industrial Commission meeting to order at 1:03 p.m. following completion of Housing Finance Agency business.

Ms. DeAnn Ament, Public Finance Authority Executive Director, presented a Drinking Water State Revolving Fund (SRF) loan request for Traill Rural Water District in the amount of \$3,400,000. She said this is a refinancing of the Traill Rural Water District and the Cities of Mayville and Hillsboro joint powers existing debt. The Advisory Committee recommended approval.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the following resolution be approved:**

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, Traill Rural Water District (the "Political Subdivision") has requested a loan in the amount of \$3,400,000 from the Program to refinance Traill Rural Water District, Cities of Mayville and Hillsboro joint powers debt 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 following loans approved by the Public Finance Authority Advisory Committee:

Re: Lidgerwood, Clean Water State Revolving Fund  
Ross, Drinking Water State Revolving Fund  
Towner, Capital Financing Program  
Jamestown, Clean Water State Revolving Fund  
Traill Rural Water District, 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 Lidgerwood requesting a \$100,000 loan under the Clean Water State Revolving Fund (CWSRF) to finance emergency sewer repairs. Construction is estimated to run from July to October of 2017. Total construction costs are estimated at \$220,000 with CDBG providing \$120,000. The requested term is 20 years. The City will issue revenue bonds payable with sewer revenues.

The committee reviewed an application from the City of Ross requesting a \$785,000 loan under the Drinking Water State Revolving Fund (DWSRF) Program to finance water main improvements. Construction will begin in June of 2017 with completion in September of 2017. This project qualifies for \$589,000 of loan forgiveness; the net loan will be \$196,000. The requested term is 30 years. The average annual payment will be \$8,200. The City will issue improvement bonds payable with special assessments. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City 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. In addition, the City will pledge oil and gas gross production tax (GPT) should special assessments and deficiency levies be insufficient to meet the debt service requirements.

The committee reviewed an application from the City of Towner requesting a \$230,000 loan under the Capital Financing Program to finance the rehabilitation of the City's water tower. Construction is scheduled to begin in September of 2017 with completion November 1, 2017. Projects costs are \$408,567 with \$178,567 being provided by CDBG. The requested loan term is 1 year until the project is on the Intended Use Plan and can be refinanced with the DWSRF. The City will issue revenue bonds payable with water revenues.

The committee reviewed an application from the City of Jamestown requesting a \$900,000 loan under the CWSRF Program to finance the raker building at the wastewater treatment plant. Total construction costs

are estimated at \$900,000. The requested term for the CWSRF loan is 20 years. The City of Jamestown will issue revenue bonds payable with sewer user fees.

The committee reviewed an application from Traill Rural District (District) requesting a \$700,000 loan under the DWSRF Program to finance the first phase of interconnecting with Grand Forks Traill Rural Water District which will allow for additional water capacity, redundancy and allow additional homes to connect to the system. The entire project is \$700,000. The requested loan term is 30 years. The District will issue revenue bonds payable with user fees for this loan.

The Public Finance Authority's Advisory Committee approved the Lidgerwood, Ross and Towner loans at their June 23, 2017 meeting and the Jamestown and Traill Rural Water District loans at their August 16, 2017 meeting.

In response to a question, Ms. Ament stated that each year the Authority receives a Capitalization Grant from the EPA. A portion of the grant (it ranges from 10% to 30%) must be given out as what EPA calls additional subsidization--the Authority calls it loan forgiveness. The Authority's highest ranked project generally qualifies for that loan forgiveness. The reference to a net loan for the City of Ross means that they were eligible for loan forgiveness (in this case \$589,000 of loan forgiveness) so the net loan that the Authority is financing is \$196,000.

In response to a question regarding the Traill Rural District loan, Ms. Ament said this is a separate loan for a new project. They are looking to borrow money so the District can interconnect with Grand Forks. It is a separate financing from the refinancing just approved by the Commission.

In response to a series of questions Ms. Ament indicated that the State Revolving Fund has approximately \$800 million in loans with nearly \$1 billion in net assets. As payments are made on those loans the payments go back into the Fund and are used to make new loans. In addition the State Revolving Fund Program receives annually capitalization grants from EPA (around \$14 million each year) which requires a 20% State match. The Authority bonds for that match. In addition the Authority has the ability to go out and further leverage the program. Through the leveraging of the program the Authority has provided loans such as \$126 million for Williston Waste Water Treatment Plant and \$66 million for Fargo's Water Treatment Plant.

In response to a question, Ms. Ament said the State Water Commission has provided grants to both Grand Forks and Fargo for their water treatment plants and the Authority provided loans to both of those cities to cover the remaining costs of those projects at a 2% interest rate. She indicated that communities first go to the Water Commission to get grant money and then they come to the Public Finance Authority for a loan if it qualifies under the State Revolving Fund Program. She briefly reviewed the process used by the Health Department and the Public Finance Authority in determining whether a project qualifies for a loan under this Program; how a project gets on the Intended Use Plan for consideration and ranking, and the financial review that the Authority does on each project.

In response to a question, Ms. Ament said this is a loan program so the borrower must show the ability to repay. The program is "Aaa" rated by Moody's and the program has not had a default too date so that is very important to the program--to keep that "Aaa" rating. The loan repayments come from user fees, improvement bonds or sales tax revenue bonds issued by the borrower but the majority of the loan repayments come from user fees.

There was discussion about user rates/fees and it was noted that some communities pay a higher user fee but their constituents are willing to do so in order to have good quality water. The water rate/fee is determined at the local level.

Governor Burgum asked that Ms. Ament provide, at a future meeting, additional information about the process that is used in determining which projects are eligible for loans under this program and what information is provided in determining whether the borrower is able to repay the loan. She indicated she would be happy to bring that information to a future meeting.

In response to a question as to whether there were any loans in the Authority's current portfolio that are at risk of not being repaid because of the current economic situation, Ms. Ament stated that she has not had any entity contact her indicating they would not be able to make their payments. They are currently receiving preliminary financial statements from all the borrowers (they are due on September 1). She did note that there are times when they don't get the financial statements on time.

Ms. Ament indicated that there are some funds available under the Drinking Water Program that can be used to provide technical assistance to a community to review their operations and maintenance costs and debt service so they can determine the appropriate water rate for their community.

Being no further Public Finance Authority business, Governor Burgum adjourned the meeting at 1:17 p.m. and took up Lignite Research, Development and Marketing Program business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA

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

Karlene Fine, Executive Director and Secretary

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Also

Present: Leslie Oliver, Governor's Office  
Cassandra Torstenson, Governor's Office  
Jessie Pfaff, Agriculture Department  
Jason Bohrer, Lignite Energy Council  
Mike Holmes, Lignite Research, Development and Marketing Program  
John Harju, Energy and Environmental Research Center  
Other attendees are noted on the list available in the Commission files  
Members of the Press

Governor Burgum called the Lignite Research, Development and Marketing Program portion of the Industrial Commission meeting to order at 1:18 p.m. following completion of Public Finance Authority business.

Ms. Karlene Fine, Industrial Commission Executive Director, presented the LRP Financial Report which is a wrap up of the 2015-2017 biennium. (A copy of the financial report is available in the Commission files.) She noted that there was \$21,425,417.60 in cash at the end of the biennium with \$8,068,772.00 in outstanding commitments. That leaves a balance of \$13,356,645.60 that is uncommitted. She noted that there is sufficient funding available should the Commission decide to award funding for the proposed projects.

Mr. Jason Bohrer, Lignite Research Council Chairman, stated that from a broad picture overview the projects being considered today really line up with the priorities of the lignite industry in the State and have great support from the Lignite Energy Council member companies. Interest in the Lignite Research, Development and Marketing Program is greater than ever throughout the local lignite industry as well as the country.

Mr. Mike Holmes, Industrial Commission Technical Advisor, presented the Lignite Research Council recommendations on Grant Round 84 applications as follows:

LRC-84-A "**Project Carbon**"; Submitted by UND Energy and Environmental Research Center; Principal Investigator: Jason Laumb; Project Duration: 14 months; Total Project Costs: \$12,700,000; Request for: \$3,200,000 and contingency funding of \$2,000,000 (Advanced Energy Technology). (A copy of the application is available in the Commission files.)

Mr. Holmes provided slides to give a back drop because it is one of the Program's larger projects and is critical to the lignite industry road map. It is looking at protecting the lignite industry's existing units by finding a way to capture the carbon and make it available as a commodity for enhanced oil recovery. (The slides are available in the Commission files.) He summarized the slides as follows:

- **The North Dakota Carbon Solutions Needs** include Existing Plant Solutions (Project Tundra); CO<sub>2</sub> Utilization and Storage Solutions (PCOR and Carbon SAFE and EOR Partners) and New/Replacement Solutions (Allam Cycle)
- **Project Tundra - Integrated Solution for Existing Plants** which include:
  - Demonstrates truly "all of the above" energy strategy.
  - Allows utilization of the most abundant fuel in the United States—coal.
  - Allows a continued platform for U.S. Energy Security & Dominance—utilization of coal resources and access to unavailable oil reserves with captured CO<sub>2</sub>.
  - Maintains viability of existing fleet without stranded investment.
  - Provides a solution for carbon globally.
- **Integrated Solution for the Carbon** -- from the mines to the plants, with transportation through a pipeline to the oil and gas fields



- ***Integrated Application*** - additional oil available from the conventional fields; and the potential for Bakken oil.
- ***Project Carbon*** consists of two projects - Project 1 is evaluating how we overcome the barriers of commercial application of all the different aspects of the technology – initial engineering, testing and addressing those barriers as well as the market for CO<sub>2</sub>
- ***Partnership*** - A strong team of industry moving this forward.

Mr. Holmes summarized the Project Carbon effort stating the overall objective is a precursor to Project Tundra. This project is enabling carbon capture, utilization and storage projects to move forward in North Dakota by determining the best capture technology options and system configurations for an existing North Dakota lignite-fired system. Project Carbon will assess the final barriers relating to efficiency and economics for implementation of post combustion capture on the existing fleet of power systems. The reviewers gave it a very high score of 222 out of 250, all three recommended funding the project with 17 of the LRC members voting yes to fund and 0 voting no with one abstaining. His recommendation is to fund with the contingency of getting the approval of the balance of the DOE funding for the full project and that he participates on their advisory team as well as reviewing the project management plan. He stated that he would be heavily involved throughout the project because it is a big effort. It is a cornerstone project for Lignite Research, Development and Marketing Program's roadmap. He reviewed the current status of the federal funding. It was noted that the 2017 Legislature provided additional funding to support the advancement of carbon solutions projects like Project Tundra.

In response to a question, Mr. Holmes indicated that the results of the work will be identifying the best solvent and best technology. The current leading technology is the one used at the Petro Nova plant which uses an amine from Mitsubishi Heavy Industries. They will also receive pre-engineering design information so the architectural engineers are focused on the right concept instead of working on details for something that would be less effective. The project will also identify the best target for the pipeline for CO<sub>2</sub> utilization in the state. There will also be a whole suite of other things that are needed for commercial deployment.

In response to a question Mr. Holmes indicated that the duration of this project is 14 months but in regards to getting to the target of commercialization it would be by no later than 2025. That is with all the research and development working out along the way. Mr. Bohrer pointed out that 18 months ago the primary conversation was about the Allam Cycle and new construction. Now with the recent election and seeing the success in Texas of the retrofit technology, industry is shifting a little more toward the retrofit technology and not rushing into an unproven technology. The industry is being as deliberate as it can be on the Allam Cycle but the science has shifted quicker into place on the retrofit technology. If everything works in 2018-2019 something could be on line in 2021-2022.

There was discussion regarding the capturing of CO<sub>2</sub> -- this project is looking at the capture of CO<sub>2</sub> and using it for enhanced oil recovery (EOR) but the research will also be helpful in the work that is being done at the EERC regarding the storage of CO<sub>2</sub>. The graphic depicts that there is a use for CO<sub>2</sub> for EOR and if there is intermittency then there is a geologic storage opportunity. The CarbonSafe project funded by the Commission is working on the geologic storage aspects--at a site right by the Center mine close to the Milton R. Young plant and another site near Beulah. It was noted that there are a lot of questions about whether or not there is much efficiency in injecting CO<sub>2</sub> into a saline formation and actually retrieving it in reasonable amounts, but it is being looked at. Mr. Holmes noted that the federal effort for 45Q which would allow for a \$30 per ton tax credit for storing the CO<sub>2</sub> adds value to all this work.

There was discussion regarding the CO<sub>2</sub> injection and how often it can be reused and when it is considered stored. Mr. Harju stated the CO<sub>2</sub> injection/storage should be looked at as gross utilization and net utilization. Essentially all of the CO<sub>2</sub> that is purchased and brought to an EOR project will be stored in the subsurface--you might use certain volumes of it multiple times but essentially the CO<sub>2</sub> that is brought to an oil field will

eventually be stored. It was noted that the PCORP team did a study on oil that is extracted using CO<sub>2</sub> and showed that it can be considered to be “green” oil. If you plot the carbon footprint of that oil on a map against oil extracted by other processes it shows it has a lower carbon footprint because of storing that CO<sub>2</sub>--it has a lower net carbon footprint.

In response to a question, Mr. Holmes indicated that the next level of funding to do the planning for commercialization would be closer to \$100 million. There may some smaller projects that could be done to reduce the risk for the final commercialization of the technology but costs will be significantly higher to get to commercialization.

There was discussion about the capital needed for this type of project--this technology has become the number one priority for the industry; challenges in raising capital; and how technology investments are monetized between industries--regulated industries versus non-regulated industries.

In response to a question, Mr. Holmes indicated that the Commission office will be receiving quarterly reports and he would be willing to brief the Commission members at any time.

There was a brief discussion on the pricing of electricity and it was noted that this is one of the issues that the Transmission Authority Director would be looking into--how to convey the true costs of baseload electricity. This is work that needs to be done in conjunction with the Public Service Commission and the Regional Transmission Operators. Mr. Holmes stated that the EERC is working on a project that is looking at energy costs based on selection of energy sources at the regional level. Mr. Harju stated that the DOE is proposing a nationwide grid study focused on the idiosyncrasies that the country has been experiencing in the pricing mechanisms.

**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 “North Dakota Project Carbon” and to authorize the Industrial Commission Executive Director and Secretary to execute an agreement with the University of North Dakota Energy and Environmental Research Center to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$3,200,000 (Advanced Energy Technology) and contingency funding of an additional \$2,000,000 with the following conditions:**

- **the Lignite Research Program funding up to \$3,200,000 be provided prior to final commitment of match funding being received from the federal government;**
- **the Commission receive confirmation of DOE NETL match funding of \$2,500,000 and industry match funding of \$500,000 in cash and the commitment of industry match in-kind funding of \$500,000;**
- **the Technical Advisor participating in the Advisory Group;**
- **the Technical Advisor reviewing the project management plan with the Project Manager; and**

**if the \$6,000,000 anticipated from the federal government is not fully awarded to this project, the additional funding of up to \$2,000,000 may be authorized by the Commission based on a dollar for dollar match and after presentation to the Commission of a revised work scope explaining how this project will be completed with reduced funding. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

LRC-84-C “Development of Low-Cost Rare Earth Element Analysis and Sorting Methods”; Submitted by: Microbeam Technologies Inc.; Principal Investigator: Shuchita Patwardhan; Project Duration: 2 years; Total Project Costs: \$449,534; Request for: \$224,767 (Small Research). (A copy of the application is available in the Commission files.) Mr. Holmes said the rare earth element \$3.5 million project the Commission previously discussed received matching funds from the Department of Energy of \$2.75 million. That project is focused on

rare earth element processing so once you identify that seam of coal or coal ash you then work on a processing technique. The overall goal of this project is to develop novel rare earth element (REE) fingerprinting algorithms via Portable X-ray Fluorescence (pXRF) and gamma ray analysis that will enable low-cost field/mine identification of high REE-content coals and associated sediments, combined with selective mining and on-belt sorting or REE-rich from run-of-mine coals. He reviewed the team of individuals that would be working on the project. Two reviewers said fund, one said consider funding with a high score of 224.3 out of 250. His recommendation is to fund with the contingencies that match funding is received; the Technical Advisor participating in the Advisory Group and the Technical Advisor reviewing the project management plans.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the Lignite Research Council's recommendation to fund the grant application "Development of Low-Cost Rare Earth Element Analysis and Sorting Methods" and to authorize the Industrial Commission Executive Director and Secretary to execute an agreement with Microbeam Technologies Inc. to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$224,767 (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.**

There was discussion regarding the mining of rare earth elements in the United States. There had been one mine in California but it was closed. Mr. Bohrer pointed out that some of the best opportunities for mining rare earth elements are on federal lands and it is difficult to do get a federal permit to open a new mine on federal lands.

In response to a question, Mr. Holmes indicated that the federal government is funding other projects and there are other federal financial opportunity announcements being looked at. In response to a question, Mr. Holmes stated he would provide a summary of the projects that are currently underway in the United States.

In response to a question regarding the relationship between EERC and Microbeam Technologies, Inc. Mr. Holmes provided a history of how and why Microbeam Technologies was formed. Microbeam is now owned by Dr. Steve Benson. UND and the EERC have no ownership in Microbeam. Dr. Benson is also a full-time employee of the EERC and also is associated with the University of North Dakota as a part-time professor with UND's Institute for Energy Studies--mentoring students. In regards to the work being done on rare earth elements the EERC will be conducting their work with Dr. Benson as the project manager and that work will be coordinated with the UND Institute for Energy Studies.

In response to a question Mr. Holmes indicated that Dr. Benson will be doing 56 hours of work for the two-year period on this project. When he is doing that work he would take annual leave from his full-time work at the EERC. This proposed project award is not with the EERC; it is a separate award with Microbeam Technologies. EERC is not involved in this contract.

**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 2:01 p.m. and took up Transmission Authority business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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Jessie Pfaff, Agriculture Department  
Jason Bohrer, Lignite Energy Council  
Mike Holmes, Lignite Research, Development and Marketing Program  
Members of the Press

Governor Burgum called the Transmission Authority portion of the Industrial Commission meeting to order at 2:01 p.m. following completion of Lignite Research, Development and Marketing Program business.

Ms. Karlene Fine, Industrial Commission Executive Director, reported on the resignation of the Transmission Authority Director as follows:

RE: North Dakota Transmission Authority

As you know, Tyler Hamman has been serving as the North Dakota Transmission Authority Director since July 2015. Tyler has decided to pursue other employment opportunities and effective August 18 he resigned as the North Dakota Transmission Authority Director.

Tyler has agreed to come to a future meeting of the Commission to present the Transmission Authority FY 2017 Annual Report that he drafted. He has also provided me with an update on any projects that he has been working on.

The funding for the Transmission Authority Director comes from a contract the Commission has with the Lignite Energy Council. I have been in contact with Jason Bohrer, Lignite Energy Council, to discuss the filling of this responsibility. We will keep you informed as we determine how to best proceed in making sure that the work of the Transmission Authority is continued.

Mr. Jason Bohrer, Lignite Energy Council, stated that he would be putting together a scope of work for the Director position and one of the major focuses will be a directive to look more into energy markets and pricing -- the industry needs that expertise and it would also be a benefit to the State.

Being no further Transmission Authority business, Governor Burgum adjourned the meeting at 2:05 p.m. and took up Department of Mineral Resources business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on August 22, 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  
Lynn Helms, DMR  
Bruce Hicks, DMR – Oil and Gas Division  
Ed Murphy, DMR – Geological Survey  
Hope Hogan, Attorney General's Office  
Other attendees are listed on the attendance sheet available in the Commission files  
Members of the Press

Governor Burgum called the Department of Mineral Resources portion of the Industrial Commission meeting to order at 2:05 p.m. following completion of Transmission Authority business.

Mr. Lynn Helms, Department of Mineral Resources Director, presented proposed orders for the following cases heard on July 26 & 27, 2017:

Case 25844, Order 28259 (A copy of the proposed order is available in the Commission files.) He said Petro Harvester is requesting that the Commission establish three 640 acre spacing units in Burke County near the Rival Field. There was substantial opposition to their proposal; there is another operator in the area named Windridge and they presented evidence that this could potentially harm their correlative rights. There are mineral owners in the area that also objected to the proposal – the proposal would isolate and basically strand a 160 acre tract that mineral owners, Kieffer and Johnson, appeared and objected to. It could also cause some problems for a Hawbaker tract. Staff carefully evaluated Petro Harvester's proposal and came to the conclusion that the evidence they presented was not convincing in regards to isolating the SW/4 of Section 15. It was the conclusion of staff that the best thing to do was to deny this application and then put on the docket a case to cover a larger area of approximately a township and arrive at consistent spacing across that entire larger area. That is what proposed Order 28259 would do – deny Petro Harvester's application and within the order it states the Commission will place on the docket a larger area for appropriate spacing. (A map is available in the Commission files.) This would cover the 160 acre tract that would be stranded, it would also cover the disagreement over how to develop Windridge's minerals and it would look at the whole area rather than doing it a few spacing units at a time. He stated the Commission would then be able to arrive at a much better consistent solution that will prevent waste and protect correlative rights. It is possible, coming out of that hearing, the Commission would approve exactly what Petro Harvester applied for but the staff doesn't have the information and hasn't looked at a big enough area to grant this request at this point in time.

In response to a question, Mr. Helms said by having a hearing on a larger area the staff will be able to ask additional questions and bring more information in so that the Commission can make a better decision than what is in front of the Commission today.

**Case 25844: It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order 28259 issued in Case 25844 denying the Petro Harvester application, be approved this 22<sup>nd</sup> day of August, 2017.**

In response to a question, Mr. Helms reviewed two exhibits from the hearing and discussed the need for looking at an overall plan for the development in this area other than the two options discussed at the hearing which would strand the 160 acre tract.

In response to a question Mr. Helms indicated that Petro Harvester is operating one or two rigs in the area. Petro Harvester has gotten out of the Bakken. They have discovered that all of the rock in the Rival and Midale between these old vertical pools is oil saturated and this new technology is going to allow the production of millions of barrels of oil that wasn't available without that technology. All of the areas in and around these old vertical pools are potentially productive and that is why the staff wants to look at this development on a larger area basis. The new technology is Bakken technology but it is shallower (about 7,500 feet) so it is hard to drill two mile laterals; it is a completely different style of hydraulic fracturing; you have to stay away from water so there are lots of small stages. It is an adaptation of Bakken technology to formations that have produced since the 1950's. It is relatively deep but it is shallow enough that two mile laterals are a challenge.

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

Case 25983, Order 28396 - request for amendments to field rules to allow for an injection/EOR test project (McKenzie Co.) (A map is available in the Commission files.) Mr. Helms said the application is by Samson Oil requesting authority to do an enhanced oil recovery pilot in Foreman Butte Field. The issue before us is this is right next door to the Charbonneau Creek spill so the surface owners in this area – Rodney Wolf and Linda Monson and her son, Jesse Monson, are pretty sensitive to whatever happens out here and they raised a number of concerns about the operation of this enhanced oil recovery pilot. It is a great plan for a pilot to allow Samson to investigate water flooding the Ratcliffe formation in this area. The proposed order addresses all of Jesse Monson's and Rodney Wolf's concerns in the findings and the staff is recommending granting Samson's request and allowing them to do this pilot water flood test. If it is successful, their intention is to unitize the field and go to a field-wide water flood which could double the recovery from this resource but it is too early to tell – so a limited pilot water flood addressing the concerns of the Monsons and Mr. Wolf is appropriate.

**Case 25983: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 28396 issued in Case 25983 approving amendments to the field rules for Foreman Butte-Madison Pool, McKenzie County, creating an establishing an overlapping 1280-acre spacing unit comprised of Sections 17 and 20, T. 151 N., R. 102 W., facilitating an enhanced oil recovery pilot operation and granting temporary authority to utilize the Mays 1-210 H well with a surface location in Section 28, T. 150N., R. 102W., McKenzie County, as an injection well for an enhanced oil recovery pilot operation in the Foreman Butte-Madison Pool, be approved this 22<sup>nd</sup> day of August, 2017.**

In response to a question regarding what the Monson and Wolf concerns were and what the staff is doing to resolve those concerns, Mr. Helms said a lot of Wolf's concerns have to do with Samson as an operator, that they don't believe they have controlled weeds, that they have not maintained sites like the surface agreement requires and those sorts of things. The staff discussed each of those in the findings and have assigned the correction of those issues to the field inspector in this area to make sure those issues will get corrected before the end of the year. The Monson's are concerned about truck traffic, dust and the potential for a produced water spill. Again, those were addressed by Samson as to how they were going to route the water here and the staff believes these issues can be addressed through the Department's inspection and enforcement program. That is what the order states. Samson has no outstanding or history of violations. In regards to concerns raised about ground water contamination the staff has reviewed the well bore and the construction of the well bore is more than adequate to protect groundwater. The only risk here would be if somehow a truck driver made a foolish mistake and put produced water on the ground or tipped the truck over – the well bore construction is more than adequate and the Commission's salt water handling facility rules will cover the other concerns about making sure that the tanks are resistant to produced water corrosion and are set on a pad that has proper containment.

In response to a question, Mr. Helms said they did agree to some extent that the previous operator had allowed the facilities to get into disrepair and there are some facilities in the field that aren't meeting the terms of Rodney Wolf's surface agreement. Samson is agreeable to fixing those problems and the Commission's field inspectors will oversee that through the Commission's inspection and enforcement program.

Mr. Hicks said another one of Samson's plans was to get this water there via truck and Monsons and others didn't want it to be trucked so we are encouraging Samson to run temporary lines out there and utilize pipelines.

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

Mr. Helms discussed his recommendation that the Industrial Commission submit comments on the Bureau of Land Management (BLM) proposed rule to rescind the 2015 final rule on "Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands" and return the affected sections of the Code of Federal Regulations to the language that existed immediately before the published effective date of the 2015 final rule (which is currently being litigated). He said the proposed comments have been reviewed by legal counsel. He noted that the Commission often comments on federal rules they don't like which is appropriate but when the BLM is doing something the Commission agrees with the Commission also needs to comment. In this case the BLM has proposed a rule that would rescind all the harmful effects of their hydraulic fracturing rule which is being litigated in Wyoming and have an injunction against. Rather than wait for a long and potentially expensive court case to play itself out, the BLM under the leadership of Secretary Zinke has proposed this rule which restores the prior form of the BLM operating rules and removes all of the harmful things that were damaging to North Dakota that were in that hydraulic fracturing rule. These proposed comments support Secretary Zinke in this effort. In response to questions he reviewed the aspects of the 2015 rule that impacted the development and regulation of oil and gas development in North Dakota. In response to a question Mr. Helms indicated he would reach out to the MHA Nation leadership and inquire whether they intend to submit comments and make sure they are aware of the comment deadline date.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission, subject to final approval being granted by signature, submit comments due by September 25, 2017 regarding the Bureau of Land Management's proposed rule to rescind the 2015 final rule on "Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands" and return the affected sections of the Code of Federal Regulations to the language that existed immediately before the published effective date of the 2015 final rule. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.** The following letter was approved by signature and forwarded to the Bureau of Land Management.

September 20, 2017

U.S. Department of the Interior  
Director (630)  
Bureau of Land Management  
Mail Stop 2134 LM, 1849 C St., NW  
Washington, DC 20240  
Attention: 1004-AE52  
<http://www.regulations.gov>  
RE: COMMENTS

**BLM HF Rule**

Dear Bureau of Land Management:

The North Dakota Industrial Commission (NDIC) appreciates the opportunity to offer comments on the Bureau of Land Management's (BLM) Oil and Gas: Hydraulic Fracturing on Federal and Indian Lands; Recession Rule that seeks to rescind the "Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands" (2015 final rule).

Currently, there are 53 rigs operating in North Dakota and oil production has increased to over 1 million barrels per day due solely to hydraulically fractured horizontal wells, a significant amount of which are located on federal and Indian lands. The NDIC believes hydraulic fracturing and horizontal wells are key components of energy security and economic growth for the United States.

The NDIC supports rescission of the 2015 final rule because the NDIC already has comprehensive laws and regulations of hydraulic fracturing that require chemical disclosure, ensure adequate groundwater protection, safe hydraulic fracturing practices, and protect the environment.

The State of North Dakota has an enormous interest in rescission of the 2015 final rule and provides the following comments:

**§ 3160.0-3 Authority.**

The NDIC supports the proposal to remove reference to the authority under the Federal Land Policy and Management Act of 1976 (FLPMA) because it does not provide BLM with authority to regulate hydraulic fracturing or underground sources of drinking water. FLPMA is a land use planning statute for public lands and requires BLM to abide by state law governing hydraulic fracturing and underground injection.

North Dakota has a large number of "split-estate" tracts where the federal minerals have been severed from the surface estate which is owned by either the State of North Dakota or private parties. The 2015 final rule inappropriately broadened the authority of the BLM to regulate surface operations for hydraulically fractured wells that penetrate federal minerals but where the United States does not own the surface. Removing the reference to authority under FLPMA will return the BLM rule to the statutory authority intended by Congress.

Due to North Dakota's unique history of land ownership, it is typical for oil and gas spacing units to consist of a combination of federal, state, and private mineral ownership. Even in circumstances where the federal mineral ownership within a spacing unit is small relative to other mineral ownership, the 2015 final rule would require all the oil and gas operators within the unit, as a practical matter, to conduct operations in accordance with the 2015 final rule applicable to the development of federal minerals. Complying with the federal requirements and permitting timelines imposed by the 2015 final rule will substantially delay operations on any spacing units that contain federal minerals. This delay adversely affects the development of all minerals within the unit, including state and private oil and gas minerals, and substantially frustrates North Dakota's efforts to produce nonfederal minerals within a spacing unit. North Dakota Century Code § 38-08-01 requires the NDIC to support the development, production, and utilization of oil and gas while preventing waste and protecting the correlative rights of all owners.

**§ 3160.0-5 Definitions.**

North Dakota supports restoring the previous definition of fresh water. This change will make the BLM rule consistent with North Dakota rules that currently require ground water to be protected to a depth below the Pierre Shale.

The NDIC also supports the removal of annulus, bradenhead, cement evaluation log, confining zone, hydraulic fracturing, hydraulic fracturing fluid, isolating or to isolate, master hydraulic fracturing plan, proppant, and usable water from the definitions and from the operating regulations.

**§ 3162.3-2 Subsequent Well Operations.**

The NDIC supports restoring "perform non-routine fracturing jobs" to the list of activities that require the authorized officer's prior approval and removing the requirement under §3162.3 that all hydraulic fracturing operations be approved by the authorized officer. This amendment will make the revised rule consistent with NDIC rules.



### **§ 3162.3-3 Other Lease Operations.**

The NDIC supports the removal of language added by the 2015 final rule and returning the rule to the exact language it contained prior to the 2015 final rule. This will eliminate unnecessary duplication and interference with enforcement of North Dakota's comprehensive hydraulic fracturing regulations (N.D.A.C. § 43-02-03-27.1).

### **§ 3162.5-2 Control of wells.**

The NDIC supports restoring the term "fresh water bearing" and the phrase "containing 5,000 ppm or less of dissolved solids." North Dakota regulations already require water zones containing 5,000-10,000 ppm tds to be isolated with cement, although the North Dakota regulations allow for waivers and postponement of remedial work upon showing that no contamination will occur.

### **Additional Comments**

The BLM's rescission of the 2015 final rule is consistent with Executive Orders 12866 and 12563 by giving consideration to the fact that many states, like North Dakota, currently regulate hydraulic fracturing and make the 2015 final rule duplicative and unnecessary. Since each sedimentary basin has unique deposits and geologic features which result in unique local environmental and geologic conditions regulating oil and gas development is a role best left to the states.

BLM's rescission of the 2015 final rule is also appropriate because there has been no proven case of ground water contamination from hydraulic fracturing in the United States to date; nor has there been any occurrence of mechanical failures in North Dakota since the NDIC's hydraulic fracturing regulations were implemented.

Signed by the North Dakota Industrial Commission.

Mr. Helms and Mr. Hicks discussed a motion authorizing the Department of Mineral Resources to proceed with the administrative hearing process to publish for hearing and comment draft amendments to general rules of statewide application to conserve the natural resources of North Dakota, to prevent waste, and to provide for operation in a manner as to protect correlative rights of all owners of crude oil and natural gas. (The proposed 2018 amendments are available in the Commission files.)

Mr. Hicks stated that they are proposing amendments to thirty sections of the Commission's rules and regulations. Most of the proposed amendments are "housekeeping" amendments. There were three bills that were passed by the 2017 Legislature that affected nine sections of the rules -- HB 1151, SB 2333 and HB 1043.

- HB 1151 established different limits on spills which impacts 43-02-03-30. This relates to produced water, crude oil and natural gas liquids. If a spill is ten barrels or less and stays on a site that was built after August 31, 2000 then the operator does not report the spill to the Department. If the spill was on a site built prior to that date, then there is a one barrel limit before the operator must report the spill to us.
- SB 2333 involves reclamation of the surface. This is a small change from what was already in the rule. The law requires the operator to reclaim the site to the original condition as it existed prior to the work being done.
- Under HB 1043 there were a number of certifications and incentives that were taken away – the Legislature took these away from industry so they can no longer have horizontal wells, horizontal reentries and two year inactive well incentives on the extraction tax – those were all taken away and, therefore, we are proposing they be removed from the rules.

One other important item is under 43-02-06-01 regarding the royalty statements rules. Former Representative Bob Skarphol indicated that he believes that the royalty owner information statement that was allowed by our rules was much more lenient than the statute itself and after we reviewed it we agreed with him. The proposed amendments

provide that the rules follow the statute itself. In addition, Mr. Helms received input from the Royalty Owners Association regarding some modifications to the rules and those have been incorporated into these proposed rules.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Department of Mineral Resources be authorized to proceed with the administrative hearing process to publish for hearing and comment draft amendments to the general rules of statewide application to conserve the natural resources of North Dakota, to prevent waste, and to provide for operation in a manner as to protect correlative rights of all owners of crude oil and natural gas.**

In response to a question, Mr. Hicks said they want to take these amendments out for public comment and then come back to the Commission with a recommendation. In regards to the royalty statement rule, the administrative code is clear on what has to be on the statement but the deductions are the concern because right now the royalty owner has to write in to the company to get an explanation about the deductions. The statute says the royalty statement has to be clear and precise and the proposed amendments do that.

In response to a question about whether there is a standard royalty owner information reporting statement on a national basis, Mr. Helms said he would be discussing this issue at an upcoming IOGCC meeting the first week of October. He is not aware of any but that doesn't mean it is not out there. This is a rule that has not been touched since 1992 so it is long overdue. He is anticipating a number of comments on that proposed amendment. He said the public hearings will be held on October 11 and 12 in Bismarck, Dickinson, Williston and Minot to allow people to offer input and there is also a written comment period that follows that.

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

Mr. Ed Murphy discussed the Geological Survey Division Quarterly Report (A copy is available in the Commission files.) He summarized as follows:

- During the second quarter industry looked at 72,000 feet of core.
- Photographed 2,750 feet of core generating just about 6,500 photographs for the Oil and Gas subscription site and another 1,900 feet of core were photographed in the box with a tripod resulting in 125 photographs.
- They were awarded \$13.6 million for the Core Library project. The amount spent was \$13.3 million with \$329,289 turned back to the Strategic Investment and Improvement Fund.
- Section 29 of SB 2014 directed the Commission to study the feasibility of coming up with a one stop shop for dealing with lake bed sediments – specifically dredging. Staff has met with the Health and Game and Fish Departments to discuss it and they will meet with the State Water Commission this week. After that he will go out and see what other states are doing, meet with the other State agencies again and then come up with a plan to present to Legislative Management by September.
- Rare Earth Project – he indicated that they began that investigation in the fall of 2015 and provided a map of where they have collected samples. They are working on developing an exploration model that others can use in the future. He commented on some of their findings and noted it appears to be similar to uranium. Their estimate is that the concentration level has to be 300 to make mining economic. Of the 342 samples, 7 samples were above 300 so that is 8%. If you add in some of the ones at 288 and round it up to 300 then the numbers are at ten percent.
- The Survey published 65 landslide maps in the Landslide Program so far in 2017. (He provided a sample of a map and also provided an index map depicting where the studies have been done.) They obtained a drone in May to assist with this program and one of the Survey's surface geologist has been certified as an FAA Part 107 Certified Drone Pilot. He has investigated 33 sites that have slope stability problems, taken 2,400 photographs and 40 videos with more than half the site involving infrastructure, seven involve

pipeline, seven well pads and three involved highways. Mr. Murphy provided some photos taken by the drone of landslides. They are working with the Department of Transportation in identifying landslides and providing information to pipeline companies. They discussed one company that is relocating their pipeline because of the landslide risk information provided by the Survey/Oil and Gas Division.

- He discussed the media coverage they have gotten on their public fossils digs this summer. July 16 the New York Times did a 3-page spread in their Sunday travel section and that resulted in 64 inquiries from around the country. They were able to fill the remaining open spots on the fossil digs -- families from New York State, Connecticut, California, as well as a family from Italy. Mr. Murphy described the discovery of a T-Rex tooth in perfect condition while the NBC crew (Today Show) was filming and twenty minutes later they discovered another tooth which was much bigger. He handed out the two fossils for the Commission to see and handle. Both of the teeth are well preserved. The estimated age is about 66 million years old. The two teeth were taken into the lab right away because the TV crew wanted to film the tooth from the field, into the lab, and eventually on to display. The casts of these two teeth will go on display within the next couple of weeks in the Geologic Time Gallery in the Heritage Center. In response to a question, Mr. Murphy said these two teeth were probably shed because the root is not attached to the tooth. He stated that the force of the bite of these teeth has been calculated to be 12,800 pounds.
- The Survey issued two coal permits during the second quarter, three geothermal permits with all three being commercial and reviewed the number of presentations made by staff over the previous quarter.

The Commission congratulated Mr. Murphy on all the positive national press.

**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 contract negotiations with Wenck Associates for SB 2134 OHWM delineation review. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Governor Burgum stated 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 to 15 minutes. Any formal action by the Commission will occur after it reconvenes in open session. The executive session will begin at 2:56 p.m. Following the executive session the Commission will reconvene in open session."

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#### EXECUTIVE SESSION

##### **Members Present:**

Governor Doug Burgum  
Attorney General Wayne Stenehjem  
Agriculture Commissioner Doug Goehring

##### **Department of Mineral Resources Personnel Present:**

Lynn Helms	Department of Mineral Resources Director
Bruce Hicks	Department of Mineral Resources Oil and Gas Division Assistant Director
Alison Ritter	Department of Mineral Resources Public Information Officer
Ed Murphy	Department of Mineral Resources - Geological Survey

##### **Others in Attendance:**

Matthew Sagsveen      Assistant Attorney General, Office of the Attorney General

Leslie Oliver                    Governor's Office  
Cassandra Torstenson        Governor's Office  
Jessie Pfaff                    Agriculture Department

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Governor Burgum stated that the Industrial Commission meeting is reconvened at 3:16 p.m. and the public has been invited to return to the meeting room. During its executive session the Commission consulted with its attorney(s) regarding contract negotiations with Wenck Associates.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Commission approve Order 28475 issued in Case 26061 which finds:**

- 1. Senate Bill No. 2134 (SB 2134) of the sixty-fifth Legislative Assembly of North Dakota, effective April 21, 2017 created and enacted North Dakota Century Code Section 61-33.1-03 related to the determination of the Ordinary High Water Mark (OHWM) of the historical Missouri Riverbed channel in North Dakota. The legislation directed the Department of Mineral Resources to commence procurement to select a qualified engineering firm and surveying firm to conduct a review that did not have a conflict of interest in the outcome of the review.**
- 2. On July 18, 2017, the North Dakota Industrial Commission (Commission) unanimously approved a motion accepting the recommendation of the OHWM of the Missouri River Bed Proposal Review Committee and authorized Mr. Lynn Helms to negotiate and enter into a contract with Wenck Associates, Inc. (Wenck) to complete the OHWM study authorized by SB2134.**
- 3. The Commission has reviewed supplemental information provided by Wenck in support of its proposal, determines that Wenck does not appear to have a conflict of interest in the outcome of its review and affirms its action of July 18, 2017.**

**It is therefore ordered:**

- 1. The Commission has determined that Wenck Associates, Inc. does not have a conflict of interest in the outcome of the review of the Ordinary High water Mark of the Historical Missouri riverbed channel in North Dakota and directs Mr. Lynn Helms to complete negotiations and enter into a contract with Wenck to complete the OHWM study authorized by Senate Bill No. 2134.**
- 2. This order shall remain in full force and effect until further order of the Commission.**

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

Being no further Department of Mineral Resources business, Governor Burgum adjourned the meeting at 3:18 p.m. and took a short break before taking up Oil and Gas Research 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 August 22, 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  
Lynn Helms, DMR  
Bruce Hicks, DMR – Oil and Gas Division  
Ed Murphy, DMR – Geological Survey  
Brent Brannan, Oil and Gas Research Program  
Other attendees are listed on the attendance sheet available in the Commission files  
Members of the Press

Governor Burgum called the Oil and Gas Research Program portion of the Industrial Commission meeting to order at 3:36 p.m. following completion of Department of Mineral Resources business and a short break.

Ms. Karlene Fine, Industrial Commission Executive Director, provided the OGRP Financial Report as follows:

Oil and Gas Research Fund  
Financial Statement  
**2015-2017 Biennium**  
August 22, 2017

	<u>Cash Balance</u>
July 1, 2015 Balance	\$ 4,419,836.98
Revenues through June 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	\$ 12,335.01
Returned cash	\$ 208.53
Transfer to the Pipeline Authority Fund	\$ (200,400.00)
Expenditures through June 30, 2017	<u>\$(9,706,438.79)</u>
	<b>\$ 6,525,541.73</b>
Outstanding Administration Commitment as of June 30, 2017*	\$ (312,601.26)
Outstanding Commitments on Legislative Studies	\$ (50,000.00)
Outstanding Project Commitments as of June 30, 2017**/****	<u>\$(4,583,516.34)</u>
Balance	<b>\$ 1,579,424.13</b>

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	\$ 2,441,387.53
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>
	\$15,292,757.84
Transfer to Pipeline Authority	\$ (200,400.00)
Administration Commitment*	\$ (522,909.72)

Approved Project Commitments 2015-2017**/****	\$ (6,185,419.00)
Legislative Mandated Studies	\$ (2,000,000.00)
Carried over Project Commitments for 2015-2017***	\$ (4,796,940.00)
<b>Available Funding</b>	<b>\$ 1,587,089.12</b>

**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 \$1,550,000 of the \$6,000,000 commitment to Contract G-040-080 (Bakken Optimization 2.0). The remaining \$4,450,000 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.

Oil and Gas Research Fund  
 Financial Statement  
**2017-2019 Biennium**  
 August 22, 2017

	<u>Cash Balance</u>
July 1, 2017 Balance	\$ 6,525,541.73
Revenues through July 1, 2017 (2% State's share of oil taxes)	\$ 0.00
Revenues from interest income & grant applications	\$ 0.00
Returned cash	\$ 0.00
Transfer to the Pipeline Authority Fund	\$ (325,000.00) Proposed
Expenditures through July 1, 2017	<u>\$ (0.00)</u>
	<b>\$ 6,200,541.73</b>
Outstanding Administration Commitment as of July 1, 2017	\$ (312,601.26) Proposed
Outstanding Commitments on 2015-2017 Legislative Studies	\$ ( 50,000.00)
Outstanding Commitment on 2017-2019 Legislative Study	\$ (500,000.00)
Outstanding Project Commitments as of July 1, 2017*	<u>\$(8,033,516.34)</u>
Balance	<b>\$(2,695,575.87)</b>

Oil and Gas Research Fund  
 Continuing Appropriation Authority  
 2017-2019 Biennium

Uncommitted Balance July 1, 2017	\$ 1,579,424.13
Carried Over Legislative 2015-2017 Project Funding	\$ 50,000.00
Carried Over Unused Administration Allocation	\$ 312,601.26
Income from Project Applications & Interest	\$ 0.00
Returned Commitments	\$ 0.00

Revenues (2% of State's Share of Oil Tax Revenues)	<u>\$10,000,000.00</u>
	\$11,942,025.39
Transfer to Pipeline Authority	\$ (325,000.00) Proposed
Administration Commitment	\$ (312,601.26) Proposed
Carried Over Legislative 2015-2017 Project Fund	\$ (50,000.00)
Approved Project Commitments 2017-2019	\$ (0.00)
Legislative Mandated Studies	\$ ( 500,000.00)
Carried over Project Commitments for 2017-2019*	<u>\$ (3,450,000.00)</u>
<b>Available Funding</b>	<b>\$ 7,304,424.13</b>

**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 \$3,450,000 of the remaining \$4,450,000 of the \$6,000,000 commitment to Contract G-040-080 (Bakken Optimization 2.0) to be expended in the 2017-2019 with \$1,000,000 to be expended in the 2019-2021 biennium.

Ms. Fine stated that there are dollars available to fund this project if the Commission so wishes and that this is a project the Legislature directed be done.

Mr. Brent Brannan discussed the Oil and Gas Research Council Grant Round 43 recommendation: (A copy of the application is available in the Commission files.)

**Pipeline Study Phase III (HB 1347)** - Energy and Environmental Research Center; Principal Investigator: Jay Almlie; Project Duration: 24 months; Total Project Costs: \$500,000; Total Project Request: \$500,000 He said the Legislature directed in HB 1347 that funding be provided for a Phase III of the Phase I and II Pipeline Studies. The application proposed some additional tasks for a little over \$354,000. The total project budget is \$500,000 with no match requirement. The project is a continuation of Phase I and Phase II. Phase III will continue this work by assembling and engaging a stakeholder group comprised of pipeline operators, developing options for risk assessment protocols, analyzing a wide suite of specific risk factors (including in high consequence areas), identifying potential mitigation practices and technologies to address those risk factors and analyzing strategies for continuous improvement. There were no technical reviewers used for this study. The EERC made a presentation at the Oil and Gas Research Council meeting, there were no conflicts of interest and the vote was 7 to 0 to fund at \$500,000. The optional tasks vote was 1 in favor and 6 opposed on Task IV and 0 in favor and 7 opposed on Tasks V – VII.

**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 "Pipeline Study Phase III (HB 1347)" and to authorize the Industrial Commission Executive Director and Secretary to execute a contract with the UND Energy and Environmental Research Center to provide a total of \$500,000 in funding.**

Governor Burgum stated that he is glad to see that we are investing time and research dollars. We have talked about zero tolerance as a policy goal and although that may seem stringent, we don't want one percent of planes to crash and we don't want one percent of pipelines to fail. We want that percentage to be zero. There is so much new technology to improve detection--any time you can use automation to collect data we can reduce risk and

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August 22, 2017

improve outcomes. He is hopeful that the stakeholders will become engaged. If we can get this figured out in North Dakota everybody in the world is going to want to have what we have here.

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

Being no further Oil and Gas Research Program business, Governor Burgum adjourned the meeting at 3:40 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 August 22, 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  
Jaret Wirtz, WAWSA  
Cory Chorne, AE2S  
Steve Burian, AE2S  
Eric Hardmeyer, Bank of North Dakota  
Craig Hanson, Bank of North Dakota  
Other attendees are listed on the attendance sheet available in the Commission files  
Members of the Press

Governor Burgum called the Western Area Water Supply Authority portion of the Industrial Commission meeting to order at 3:40 p.m. following completion of Oil and Gas Research Program business. Governor Burgum expressed how pleased the Commission was to have Mr. Jaret Wirtz at the meeting and the Commission wished him well as he continues his recovery.

Ms. Karlene Fine, Industrial Commission Executive Director, presented the Western Area Water Supply Authority July 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 - July, 2017 & Debt Repayment Report

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

Page 1 prepared by the Bank of North Dakota, reflects debt service payments through the month of July, 2017. In July interest was paid on the BND loan and two Water Commission loans and principal was paid on the \$87.5 million BND loan.

The next 3 pages (pages 2, 3 & 4) I prepared based on the information provided by WAWS staff reflecting July revenues and expenses and net income. The one principal payment made in July is noted on the next to last line on page 3 and in yellow on the net income Page 4. Net income for the month of July was \$678,782.11 before making the principal payment or making any baseline sales payments. When you include the baseline payment expense the net income for the month of July is \$278,800.02. As you will recall from the overall Debt Service spread sheet the breakeven sales monthly number is \$1,057,232 without the baseline sales payments. With WAWS sales for the month of July being \$1,728,553.62 WAWS was over that number by \$671,321.62. This is good news. However, I will point out that there are some accounts payable that need to be paid.

Page 5 is the balance sheet prepared by WAWS staff as of July 31, 2017. As noted on the Balance Sheet the Accounts Receivables are \$3,084,782.12 which is included in the assets of \$8,021,243.78. 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 fourth balance sheet you have seen in 2017 with negative total equity. You will continue to see a negative number until we resolve the issue of the baseline payments.

The Commission recently discussed the WAWSA pricing of water and the Commission indicated they wanted to see the average sale price for the water each month. For the month of July the numbers are: \$0.01362 per gallon or \$ 0.57194 per barrel.

Mr. Jaret Wirtz, WAWSA Executive Director, updated the Commission on sales and current activities. He presented the following charts: (Copies of the Charts are available in the Commission files.)

2017 WAWSA Daily Water Demands: YTD through July 2017  
2017 WAWSA Industrial Demand Summary through July 2017  
2017 WAWSA Industrial Water Sales YTD (through July 2017) & Year End Projection  
Direct Connect Sales @ \$12.75/1,000 Gallons (\$0.54/barrel)

The Commission and Mr. Wirtz reviewed each of the charts in detail and discussed the level of sales, the maximum amount of water that is available for industrial sales, domestic water usage, location of the sales, pricing, level of sales needed to meet the debt obligations, how the pricing options approved by the Commission earlier in the year have resulted in increased sales, impact of the drought on sales, costs of production, sources of water other than the river and the level of sales for maintenance versus fracking operations.

Governor Burgum thanked Mr. Wirtz for all the data that was provided on the charts/graphs. He also expressed his appreciation for the staff continuing to look at production costs and the pricing options based on the new flexibility authorized by the Commission. Mr. Wirtz pointed out that they are continually looking at the costs because whatever the costs are for industrial sales that same cost is charged to the local residents. It is a checks and balance system.

Ms. Fine presented a memorandum on baseline payments and her recommendation as follows:

RE: Western Area Water Supply Authority - Baseline Payments

At last month's meeting you asked if I would get clarification from the auditor on the treatment of baseline payments on the financial statements and information on the baseline sales payments as it relates to the member entities. The auditor provided the attached explanation regarding their rationale on the baseline payments.

With the assistance of WAWS staff each of the member entities were contacted and asked the question as to how they are treating the baseline payments on their financial statements. Each of the entities indicated that the baseline payments were not being reflected on the entity's financial statement as a receivable.

In order to clarify this matter and to have the financial statements clearly reflect how the baseline payments are to be treated, with your approval I would like to contact the Western Area Water Supply Authority Board Chairman and request that the Board meet with each of its member entities prior to November 1, 2017 and request an amendment be executed stating that all baseline payment obligations for calendar years 2016 and 2017 and the first 6 months of 2018 be "discharged". Further that the amendment state that after July 1, 2018 a monthly baseline payment would be made each month only if certain conditions have been met such as all operation and maintenance payments have been made; all contractual and statutory obligations have been paid and sufficient reserves have been adequately funded. (I would like the flexibility to negotiate these details with the Board.)

As you are aware, the current study options include the sale or lease of the industrial water assets or bonding/other financing options for the Bank of North Dakota debt. When these options are pursued it is important the WAWS financial statements present a clear picture of the equity of WAWS.

Ms. Fine indicated that the WAWSA Board took up this issue at their meeting last week and she provided a copy of the Board's actions which shows that they are willing to work with us and take an amendment to the member entities to get the baseline payments discharged as well as to set up a process on a monthly sales basis if all these conditions are met then there could be the potential for a baseline payment. If those conditions aren't met then there is no baseline payment and it doesn't become a payable.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission authorizes its Executive Director and Secretary to work with the Western Area Water Supply Authority Board in obtaining a discharge of the outstanding baseline payment obligations for calendar years 2016 and 2017 by November 1, 2017 and further to seek an amendment to the Western Area Water Supply Authority agreements that monthly baseline payments would be made each month only if certain conditions have been met such as all operation and maintenance payments have been made; all contractual and statutory obligations have been paid and sufficient reserves have been adequately funded. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

There was discussion regarding the baseline payments and how long they should remain in place. It was pointed out that there are a number of issues related to the payments -- legal issues (signed contracts), legislation (SB 2233), payments being made only when certain conditions have been met, and the importance of the WAWSA system to the residents of western North Dakota.

Ms. Fine gave an update on the 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 (WAWA) Study

At your July meeting you were provided with the RFP for the WAWA study. That RFP was advertised in the daily newspapers and posted on the Industrial Commission, Water Commission and OMB Procurement websites. On Friday, August 18, the procurement office received proposals from the following four firms:

Headwaters  
Springsted  
Stantec  
WaterSmart

The Procurement Officer has completed his initial review and the proposals will be distributed to the Study (Review) Committee. They will be evaluating the proposals and making a recommendation to the Commission at your September 29 meeting.

Being no further Western Area Water Supply Authority business, Governor Burgum adjourned the meeting at 3:40 p.m. and took up Bank of North Dakota business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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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  
Todd Steinwand, Bank of North Dakota  
Tim Porter, Bank of North Dakota  
Kirby Evanger, Bank of North Dakota  
Kylee Merkel, Bank of North Dakota  
Other attendees are listed on the attendance sheet available in the Commission files  
Members of the Press

Governor Burgum called the Bank of North Dakota portion of the Industrial Commission meeting to order at 3:40 p.m. following completion of Western Area Water Supply Authority business.

Mr. Eric Hardmeyer, Bank of North Dakota President, provided copies of the College SAVE audit for the year ending December 31, 2016. (A copy of the audit is available in the Commission files.) He stated that the audit had been conducted by Thomas & Thomas out of Little Rock, Arkansas. Mr. Tim Porter, Bank of North Dakota SVP, stated that the audit firm had expressed an unmodified opinion on this audit--a clean opinion. There were no major findings. He noted highlights from the audit:

- Contributions exceed withdrawals by approximately \$6.5 million, \$6.9 million and \$3.2 million during 2016, 2015 and 2014, respectively;
- The College SAVE 529 Matching Grant Program awarded \$293,444, \$273,736 and \$515,041 in matching grants in 2016, 2015 and 2014, respectively, to qualifying account owners. (This was a result of the change in the award amounts -- reduced from \$500 to \$300 per matching grant);
- Net position had increased -- \$388,555,872 in 2015 to \$415,573,796 in 2016.
- Breakdown on the administrative fees - the Bank of North Dakota receives 10 basis points of the fees in their role as Trustee for the Plan.

In response to a question regarding the administrative fees, Mr. Hardmeyer stated that the majority of the fees go to Ascensus College Save -- they serve as the Program Manager and as the recordkeeping and servicing agent. Vanguard Group, Inc. provides investment advisory, fund accounting and related administrative services. Ascensus College Save operates in over 14 other states. Mr. Hardmeyer stated the Bank is satisfied with the value the Bank is receiving for their work.

In response to a question, Mr. Hardmeyer stated that they are not aware of any federal legislation to date that would impact the program negatively. Individuals that participate in this program are not required to be a citizen of North Dakota. There are 32,894 accounts in total - 21,177 of those are North Dakotans. The remaining 11,000+ are from outside of North Dakota. He provided some history on the program and how it has changed over the years.

In response to questions, Mr. Hardmeyer referred the Commission to the last page of the Performance Highlights which give a breakdown on Net Assets, Accounts, Contributions and Grants. It was pointed out that this is a defined contribution program and the State is not carrying any financial risk on the portfolio performance of College SAVE.

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

- Balance Sheet - \$6.9 billion in assets is down just slightly from what had been projected; loans are down from what was budgeted -- some of it is a timing issue; overall equity is up \$15 million from what had been budgeted. Also reflected in these numbers is the \$100 million that went out of equity to the General Fund. In response to a question he indicated that another \$140 million will be coming out -- \$70 million a year (October, 2017 and October, 2018) plus money for the Infrastructure Revolving Loan Fund (\$100 million over the next year). He stated the money is taken out of capital and put into a separate fund because the rate on the loans in the Infrastructure Revolving Loan Fund is 2% with a 30 year term. The Bank did not want to hold those 2% loans on its balance sheet and legislators wanted the dollars dedicated to this Fund.
- Income Statement - \$77,337,000 is a record for June 30. He noted that Bank management had put \$3 million during the first six months into the Bank's provision for credit loss. They will be increasing that amount so that by the end of the year the Bank will have added \$12 million into the provision for credit losses -- twice the amount that had been budgeted. This was being done primarily because of agricultural conditions in the state. He stated it is going to be another good year for the Bank -- the Bank's net income will be higher than last year's number of \$136 million.
- Student loans - There has been a slow-down in the rate of growth of the Deal One portfolio. The numbers are showing that the Bank's rate of growth has peaked and it appears the level of growth is going to plateau.
- Leverage Ratio - The Bank's leverage ratio is 12%. In response to a question he stated that if the \$100 million transferred to the General Fund had not been taken out of capital it would be at approximately 13%. With the transfers scheduled for the next six months he believes the Bank's ratio is going to be about the same at the end of the year because of the level of Bank earnings over the next six months.
- Delinquencies Report - Overall delinquencies continue to come down. The residential portfolio is all FHA, VA guaranteed for the most part. Any increases are attributed to issues out west. Everything else is down from a year ago and the portfolio looks good.
- BND Allowance for Credit Losses - There is a healthy reserve, \$80 million in allowance; \$10 million is unallocated so there is a cushion and the Bank will be adding to the total amount.

In response to a question, Bank management discussed the analysis that they have done on the Bank's loan portfolio in the drought area and for their agriculture portfolio in general. On the eastern side of the state where the majority of the Financial Stability Program loans are, there is very little exposure as a result of the drought. In the western part of the state the Bank has identified all their agriculture loans--by loan and by amount and related industries. The Bank staff indicated they would provide more detailed information on the Bank's loan portfolio that may be impacted by the drought and break it out by drought county. Bank staff discussed how they do their analysis -- problem loan committee meets on a regular basis; risk rating of all loans; and identification of all delinquencies. Staff indicated that the Bank has the ability to restructure loans if needed

Governor Burgum and Commissioner Goehring discussed the reports that they have been hearing from the ranchers and farmers during their drought meetings. Impact isn't just to the rancher and farmer but to the parents because parents may have to co-sign on loans especially if the younger ranchers and farmers have limited equity. They commented on the Hay Lottery Program and the significant need for hay. It was also noted the difficulty farmers and ranchers had experienced in working with the FSA offices to obtain federal support because of a lack of staff. Governor Burgum stated that through Commissioner Goehring's efforts the Secretary of Agriculture arranged for additional staff to be brought into North Dakota to work in the FSA offices and obtained a waiver to the FSA loan requirement regarding the rancher not being able to relocate their cattle.

Mr. Hardmeyer and Mr. Todd Steinwand, Bank of North Dakota SVP, provided an overview of the programs they are developing and the groups that they have been working with to get input on exactly what is needed. There will be two programs; one for livestock producers and one for farmers. They indicated that there is an immediate need for the livestock program--they may want to make an announcement about the program before the next

regularly scheduled meeting of the Commission. In regards to the crop program, it will be developed as the Bank staff gathers more information on federal insurance and what the FSA is going to be doing to assist the farmers and seeing the results of harvest. The Bank staff is continuing to have conversations with the Ag Commissioner's office, both banking associations and their agriculture committees, the stockmen's associations and lenders that are involved in lending to the ranchers and farmers on a daily basis. The key to any program proposed by the Bank is the lead lender and the Bank has a relationship with every bank and credit union in the state so producers will be able to access the programs.

Mr. Steinwand stated that the livestock producers are facing these three options because they don't have enough feed for their cattle:

- Sell down their herds;
- Bring feed in;
- Move their cattle to where the feed is.

The program the Bank is developing will try to address all of those options. In regards to the first point; the Bank's program will have assistance for the producer to rebuild their stocks to their existing levels; will allow a 2 year interest only period and then up to 5 to 7 years afterwards to pay it back. It is designed to be extremely flexible, depending on the age of cattle, what type of operation the rancher has, etc. The lead lenders will have a 25% stake in the loans and will lead the transaction and work with the borrowers. The Bank will take 75% of the note. At this point the groups do not believe an interest rate subsidy is needed -- the more important factor is the structuring of the loan so the livestock producer has time to rebuild their herds.

In regards to the other options the producer is facing, the program is being designed so the borrower can use the loan for purchasing feed, hauling hay, hauling livestock to feed lots, feed lot fees and other expenses related to the drought. It will be a program designed to provide up to \$300 a head for certain cattle, \$100 a head for backgrounding and is going to be flexible with a 3-year amortization of the loan. Normally a local bank would not be able to finance these costs for more than 1 year--bank examiners do not like seeing expenses for feed consumed in one year being financed beyond that one year period. The Bank is still trying to determine how much they will need to take -- possibly up to 90%. These will be smaller loans.

The Bank estimates that the demand could be up to \$30 million for the livestock program.

It was noted that for the younger ranchers and farmers the Bank has an existing program that will work with a couple of revisions. That program does have an interest rate subsidy.

Mr. Hardmeyer presented the non-confidential Bank of North Dakota Advisory Board April 20, May 26 and June 15, 2017 meeting minutes.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission close the meeting pursuant to N.D.C.C. §44-04-18.4 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 4:09 p.m. pursuant to North Dakota Century Code 6-09-35 to discuss the following items listed on the agenda under Bank of North Dakota confidential business:

- Consideration of Bank of North Dakota Advisory Board's recommendation regarding student loans
- Presentation of Non-Accrual Loans Quarterly Recap/Detail
- Presentation of Problem Loans - Adversely Classified Quarterly Recap
- Presentation of Loan Charge-Offs and Recoveries Y.T.D. 6/30/17

- Presentation of Concentrations of Credit Report as of 6/30/17
- Presentation of BND Advisory Board confidential April 20, May 26 and June 15, 2017 minutes.

Individuals present during the confidential session in addition to the Industrial Commission members were:

Leslie Oliver, Governor's Office  
Cassandra Torstenson, Governor's Office  
Jessie Pfaff, Agriculture Department  
Eric Hardmeyer, Bank of North Dakota  
Todd Steinwand, Bank of North Dakota  
Tim Porter, Bank of North Dakota  
Kirby Evanger, Bank of North Dakota  
Shirley Glass, Bank of North Dakota  
Kylee Merkel, Bank of North Dakota  
Karlene Fine, Industrial Commission

**Following the confidential portion of the meeting, the Commission reconvened in non-confidential session at 4:43 p.m. and it was noted that during the confidential portion of the meeting, it had been moved and seconded that the Commission accepts the Bank of North Dakota Advisory Board recommendation and the Bank of North Dakota be authorized to sell its Federal Student Loan portfolio based on the Bank informing North Dakota borrowers of other Bank of North Dakota student loan programs prior to the sale and further that the Bank report back to the Commission on the final sale results. 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 4:44 p.m. and took up State Mill business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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Held on August 22, 2017 beginning at 1:00 p.m.  
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Present: Governor Doug Burgum, Chairman  
Attorney General Wayne Stenehjem  
Agriculture Commissioner Doug Goehring

Also

Present: Leslie Oliver, Governor's Office  
Jessie Pfaff, Agriculture Department  
Vance Taylor, State Mill  
Other attendees are listed on the attendance sheet available in the Commission files  
Members of the Press

Governor Burgum called the State Mill portion of the Industrial Commission meeting to order at 4:44 p.m. following completion of Bank of North Dakota business.

Mr. Vance Taylor, North Dakota Mill President, presented the North Dakota Mill Fourth Quarter and Year-End Financial Report for FY 2017 as follows: (A copy of the report is available in the Commission files.)

**North Dakota Mill**  
**Review of Operations**  
**4<sup>th</sup> Quarter Ended June 30, 2017**  
**Pre-Audit**  
**SUMMARY**

Operations in the 4<sup>th</sup> Quarter led to a profit of \$1,577,968 compared to a profit of \$2,674,649 in last year's 4<sup>th</sup> Quarter. For the year we had a profit of \$9,719,163 compared to \$9,336,618 last year.

	<u>Quarter</u>		<u>Year-to-Date</u>	
	<u>6/17</u>	<u>6/16</u>	<u>6/17</u>	<u>6/16</u>
Profits	1,577,968	2,674,649	9,719,163	9,336,618
Sales	73,644,681	67,390,128	287,986,843	273,637,401
Cwt. Shipped:				
Spring	3,316,341	3,041,895	13,100,785	11,921,855
% to Total	91.0%	91.6%	91.2%	91.8%
Durum/Blends	<u>329,856</u>	<u>279,412</u>	<u>1,262,807</u>	<u>1,070,813</u>
Total	<u>3,646,196</u>	<u>3,321,307</u>	<u>14,363,592</u>	<u>12,992,668</u>
Bag Shipments	619,696	623,536	2,675,452	2,589,012
% to Total	17.0%	18.8%	18.6%	19.9%
Tote Shipments	27,264	31,011	143,867	126,013
% to Total	0.7%	0.9%	1.0%	1.0%
Family Flour Shipments	52,912	40,795	273,459	259,804
% to Total	1.5%	1.2%	1.9%	2.0%
Organic Flour Shipments	31,554	51,707	147,439	189,473
% to Total	0.9%	1.6%	1.0%	1.5%



Wheat Purchased:

Spring	6,320,769	5,969,066	27,151,373	24,096,167
Durum	<u>696,903</u>	<u>527,553</u>	<u>2,484,539</u>	<u>1,999,219</u>
Total	<u>7,017,672</u>	<u>6,496,619</u>	<u>29,635,912</u>	<u>26,095,386</u>

**SALES**

4th Quarter

Sales for the 4<sup>th</sup> Quarter were \$73,644,681 compared to \$67,390,128 last year. Shipments of 3,646,196 cwts. are 324,890 cwts. above last year's 4<sup>th</sup> Quarter. Bag shipments for the 4<sup>th</sup> Quarter are 619,696 cwts. compared to 623,536 cwts. last year. Tote shipments are 27,264 cwts. compared to 31,011 cwts. last year. Family flour shipments of 52,912 cwts. is 29.7% below last year's 4<sup>th</sup> Quarter. Organic flour shipments of 31,554 cwts. is 39.0% above last year.

Year-to-Date

Sales for the fiscal year came in at \$287,986,843. This is 5.2% under last year. Shipments of 14,363,592 cwts. are 1,370,923 cwts. above last year. Year-to-date bag shipments are 2,675,452 cwts. or 86,440 cwts. below last year. Year-to-date tote shipments are 143,867 cwts. compared to 126,013 cwts. last year. Family flour shipments for the year are 273,459 cwts., which is a 5.3% decrease from last year. Organic flour shipments are 147,349 cwts. compared to 189,473 cwts. last year.

**OPERATING COSTS**

4th Quarter

Operating costs for the 4<sup>th</sup> Quarter are \$9,023,217 compared to \$7,472,249 last year, an increase of 20.8%. Operating cost per cwt. of production is \$2.52 compared to \$2.42 last year, an increase of 4.1%.

Year-to-Date

Year-to-date operating costs are \$31,961,487 compared to \$27,047,530 last year, an increase of \$4,913,956. Operating costs per cwt. of production for the year is \$2.25 compared to \$2.20 last year.

**PROFITS**

4th Quarter

For the 4<sup>th</sup> Quarter we experienced a profit of \$1,577,968 compared to a profit of \$2,674,649 last year. Gross margins as a percent of gross sales for the Quarter was 14.6% compared to 15.2% last year, an increase of 0.6%.

Year-to-Date

For the year we had a profit of \$9,719,163 compared to profits of \$9,336,618 last year. Gross margins as a percent of gross sales for the year were 14.7% compared to 13.4% last year, an increase of 1.3%.

Risk Management Position

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

**Position Report  
30-June-17**

Period	Hedge Ratio
Sep-17	1.0
Dec-17	1.1
Mar-18	0.9

May-18	0.7
Jul-18	0.9
Sep-18	1.3
Dec-18	1.3
Net Position	0.9

Mr. Taylor responded to a number of questions from the Commission regarding the percentages, margins, market conditions in regards to organic sales, amount of bulk shipments, impact of the new G-Mill beginning operations during the year, risk management, debt levels and how they relate to the transfers to the General Fund and yields.

Mr. Taylor indicated he would provide some additional detail at the next meeting on the questions raised at the meeting regarding the gross margins, sales deductions, and operating expenses. He will also provide a map of mill locations across the United States and the sourcing of wheat.

Mr. Taylor presented the following information regarding the Mill transfers: He noted that the transfers had taken place on July 24, 2017.

**North Dakota Mill  
 FY 2017 Transfers**

	<u>Dollars</u>	<u>Percent</u>
FY 2017 Profit	\$ 9,719,163.39	
Ag Product Utilization Fund	\$ 485,958.17	5.0%
General Fund	\$ 4,616,602.61	50% of remaining profits
Total Transfers	\$ 5,102,560.78	

54-18-19. Transfer of North Dakota mill and elevator profits to general fund. (Effective through June 30, 2019)

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

Transfer of North Dakota mill and elevator profits to general fund. (Effective after June 30, 2019) The industrial commission shall transfer to the state general fund fifty percent of the annual earnings and undivided profits of the North Dakota mill and elevator association after any transfers to other state agricultural-related programs. The moneys must be transferred on an annual basis in the amounts and at the times requested by the director of the office of management and budget.

54-18-21. Annual transfer.

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

Mr. Taylor presented the following information on the 2017 Gain Sharing Plan Results:

Gain Sharing Plan Results FY 2017				
Goal	Gain Sharing Goals		Actual Results	
	%	Goals	Actual	%
<u>Part 1: No payout under \$2 million profits</u>				
<b>CWT per Man Hour - Productivity</b> <i>(Total cwts flour produced/total manhours)</i>	<b>1.00%</b>	<b>\$34.50</b>	<b>\$38.54</b>	<b>1.00%</b>
<b>Cost per CWT (before gainsharing exp.)</b> <i>(Operating costs (before gain sharing expense/total cwts flour produced )</i>	<b>1.00%</b>	<b>\$ 2.15</b>	<b>\$ 2.13</b>	<b>1.00%</b>
<b>Yield</b> <i>(Total flour produced/total wheat ground)</i>	<b>1.00%</b>	<b>77.2%</b>	<b>77.5%</b>	<b>1.00%</b>
<b>Safety Record - points</b> <i>5 points no time lost accident 10 points lost time accident 2 points each lost day</i>	<b>1.00%</b>	<b>165</b>	<b>30</b>	<b>1.00%</b>
<u>Part 2: No payout under \$4 million profits</u>				
Profits (before gain sharing expense)				
1% per \$1 million profit (before gain sharing expense)			\$11,502,248	11.50%
Potential Gainsharing Payout				<u>15.50%</u>

Mr. Taylor indicated that the Gain Sharing Program easily pays for itself and adds to the Mill's profits. In response to a question he indicated that this program is not part of any negotiations with the employees. It is developed by management and presented to the Commission for their consideration and then given to the employees. It is a management tool to encourage the employees to work harder. He reviewed the changes from the prior year and stated that reaching these goals would require a lot of extra effort by all the employees.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the North Dakota Mill Gain Sharing Program for FY 2018 be approved as follows:**

**NORTH DAKOTA MILL  
GAIN SHARING PROGRAM  
FY 2018**

- Eligibility – all full-time employees on June 30, 2018 that worked a minimum of 1,000 hours during the program year are eligible.
- No pay out of any bonuses if profit before gain sharing expense accrual does not exceed 2.0 million dollars.
- No payout on the profit part of the plan if profit before gain sharing expense accrual does not exceed 4.0 million dollars.
- Payout will be calculated as a percent of earnings from July 1, 2017 to June 30, 2018.
- Goal numbers were set to reflect current realities for the new plan year.
- Goal numbers were set by the General Manager and are attainable with effort.

The plan consists of two independent parts. 4% potential payout is from exceeding gain sharing goals and an uncapped potential payout is from profits.

For the year ending June 30, 2018 the goals are as follows:

**Gain Sharing 1<sup>st</sup> Part - 4% Bonus Potential\***

**Goals**

Cwt./man-hour (includes all hours)	36.5
Cost per cwt. (before gain sharing exp.)	\$2.17
Yield	77.2%
Safety Record	165 Points

\*4% bonus potential if all numbers are met or exceeded. Each goal is worth 1% of the 4%.

**Gain Sharing 2<sup>nd</sup> Part - Uncapped Bonus Potential**

**Profits (before gain sharing expense accrual):**

2.0 million = 0.0% bonus pay out

4.0 million = 4.0% bonus pay out

Each additional 1.0 million in profits = 1.0% additional bonus payout.

NOTE: The 1<sup>st</sup> Part of the gain sharing goals begin to payout at a profit (before gain sharing expense accrual) level greater than \$2.0 million. The 2<sup>nd</sup> Part of the Gain sharing Goals begin to payout at a profit (before gain sharing expense accrual) level greater than \$4.0 million.

**EXAMPLE #1:**

The mill makes \$2.0 million profit (before gain sharing expense accrual) and we exceed the goal for cwt./man-hour and cost/cwt. but not the safety record or yield. The total bonus received would be 2% for goals + 0% for profit = 2.0%.

**EXAMPLE #2:**

The mill makes \$4.0 million profit (before gain sharing expense accrual) and we exceed the goal for cwt. /man-hour, cost/cwt., and the safety record but not the yield. The total bonus received would be 3% for goals + 4.0% for profit = 7.0%.

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

The Commission and Mr. Taylor discussed this year's crop and the impact the drought will have on the crop and availability of wheat. Mr. Taylor noted that portions of the state had high yields which will balance out those

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areas of the state that were impacted by the drought. There was discussion about the quality of the crop and the Mill's pricing based on that quality.

Being no further State Mill or Industrial Commission business, Governor Burgum adjourned the meeting at 5:08 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA

A handwritten signature in blue ink, appearing to read "Karlene Fine". The signature is fluid and cursive, with a large initial "K" and a long, sweeping underline.

Karlene Fine, Executive Director and Secretary