

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on October 25, 2018  
Bank of North Dakota Executive Board Room – 1200 Memorial Highway - 12:30 p.m.

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

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

Governor Burgum called the Industrial Commission meeting to order at 12:30 p.m. Mr. Eric Hardmeyer, Bank of North Dakota President, welcomed the Commission and meeting attendees to the Bank. The Commission then took up Industrial Commission administrative business.

### **INDUSTRIAL COMMISSION ADMINISTRATION**

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, noted that the September 27, 2018 Industrial Commission meeting minutes are not available for approval at this time as they are being reviewed by counsel.

### **RENEWABLE ENERGY PROGRAM**

Ms. Fine presented a financial summary report for the Renewable Energy Program. (A copy of the report is available in Commission files.) Ms. Fine stated that the uncommitted cash is \$ 3.7 million as of the end of August 31, 2018.

Mr. Shawn Kessel, Interim Commerce Commissioner and Renewable Energy Council Chairman, and Ms. Andrea Pfennig, Deputy Industrial Commission Executive Director, presented the Renewable Energy Council recommendations on the following grant round 38 applications:

R038-A - "Integrated Carbon Capture and Storage for North Dakota Ethanol Production - Phase III"; Submitted by EERC with Red Trail as a partner; Project Duration is 18 months; Total Project Costs \$2,650,000; Amount Requested \$500,000. The third phase of a five phase project, the objective of this phase is to initiate field research plans developed during Phases I & II. Tasks include: 1.) Preparation of CO<sub>2</sub> capture process designs to provide the foundation for a formal engineering designs of the CO<sub>2</sub> capture system and other CCS infrastructure. 2.) Initiation of monitoring & characterization plans for reservoir. 3.) Preparation of CCS Permit application package. 4.) Evaluation of economic viability by continuing assessment of evolving Low Carbon Fuel (LCF) & other incentive programs. 5.) Execution of outreach plans created in Phase II. The Renewable Energy Council voted unanimously to approve the funding.

Commissioner Goehring disclosed that he is an investor with Red Trail and would abstain from voting.

**It was moved by Attorney General Stenehjem and seconded by Governor Burgum that the Industrial Commission accepts the recommendation of the Renewable Energy Council to fund the grant application "Integrated Carbon Capture and Storage for North Dakota Ethanol Production - Phase III" and authorize the Industrial Commission Executive Director/Secretary to execute an**

**agreement with the Energy and Environmental Research Center to provide a total of Industrial Commission Renewable Energy Program funding in an amount not to exceed \$500,000. On a roll call vote, Governor Burgum and Attorney General Stenehjem voted aye. Commissioner Goehring abstained. The motion carried.**

R038-B - "Fargo's Smart Energy Ramp"; Submitted by e-Smart Systems US, Inc.; Project Duration is 18 months; Total Project Costs: \$610,000; Amount Requested: \$305,000. The project objective is to demonstrate how a Smart Clean Energy Package that includes renewable energy and artificial intelligence (AI) can add value, cost-effectively attract tenants, and enhance economic development while making efficient use of the utility grid in a public-private partnership. A guide will be developed for developers and cities on how to cost-effectively include such a package in the design of future new construction or remodels to further enhance economic development. The Renewable Energy Council unanimously recommended approval of the funding.

Governor Burgum stated the Kilbourne Group is contributing cash and in-kind and, although he is no longer a member of management, he will abstain from voting.

In response to a question, Ms. Pfennig stated the current phase is solar, but a future second phase could consist of roof top wind. Although it is a 15 kilowatt system, it is not just a demonstration project but will be taking all the data elements and devising future implementation for a package system. The parking ramp is for mixed use.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Renewable Energy Council to fund the grant application "Fargo's Smart Energy Ramp" and authorize the Industrial Commission Executive Director/Secretary to execute an agreement with e-Smart Systems US, Inc. to provide a total of Industrial Commission Renewable Energy Program funding in an amount not to exceed \$305,000. On a roll call vote, Attorney General Stenehjem and Commissioner Goehring voted aye. Governor Burgum abstained. The motion carried.**

Ms. Fine presented a request for consideration of confidentiality for portions of the business sensitive information including customer information and economic deliverables related to the "Integrated Carbon Capture and Storage for North Dakota Ethanol Production - Phase III."

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Industrial Commission Executive Director/Secretary and determines that the following information is confidential and that the reporting to the Commission related to this information be provided in separate confidential reports. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

#### **PUBLIC FINANCE AUTHORITY**

Ms. DeAnn Ament, PFA Executive Director, presented the following Drinking Water State Revolving Fund Program loans for the Commission's consideration:

All Seasons Water Users District is requesting \$1,738,000 for connecting their water source from system four to system one. The project is eligible for \$748,000 of loan forgiveness equating to a loan amount of \$989,000. The State Water Commission has provided a \$4.9 million grant with a total project cost of \$6.6 million. The system will benefit 412 users from system one. A 20 year loan term has been requested. The system currently provides water to 1,510 residential users and one bulk user. A water rate increase of

\$8 over the next two years will provide an additional \$144,960 which will cover the debt service on the loan.

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, the All Seasons Water Users District (the "Political Subdivision") has requested a loan in the amount of \$1,738,000 from the Program to connect system four water supply to system one; 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.**

The City of Cando is requesting \$2,044,000 to refinance a bond issued in 2013 and reimburse Northeast Regional Water District for connecting to its system. A 20 year loan term has been requested. The city's sales tax and water revenues have been pledged for repayment.

In response to a question, Ms. Ament stated the population of Cando is 1,200 and the entire population is on the same system.

**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, the City of Cando (the "Political Subdivision") has requested a loan in the amount of \$2,044,000 from the Program to refinance 2013 bonds and reimburse Northeast Regional Water District for connection to their system; 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.**

The City of Mandan is requesting funds to replace pre-cast concrete pipes and pump system upgrades in the amount of \$1,889,000. The State Water Commission granted \$2,580,000. The population serviced is 22,228 plus water is provided to the Missouri West water system which services 7,500 users. A 20 year loan payment has been requested. Regular rate reviews are conducted and rates increased \$.90 per user in 2018 with plans for an additional increase of \$1.45 per user in 2019. The rate increases will generate revenue of \$207,000, annually.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring 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, the City of Mandan (the "Political Subdivision") has requested a loan in the amount of \$1,889,000 from the Program for pump station upgrades and pipe replacements; 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 regarding loans under \$1,000,000 approved by the PFA Advisory Committee for the following entities: City of Lisbon (Drinking Water SRF) - \$725,000, Stutsman Rural Water District (Drinking Water SRF) - \$800,000, and City of Arthur (Clean Water SRF) - \$11,000 loan. (A copy of the memorandum is available in the Commission files.)

#### **DEPARTMENT OF MINERAL RESOURCES**

Mr. Lynn Helms, Director of the Department of Mineral Resources, presented proposed orders for the following cases for the Commission's consideration:

Cases 26905 (proposed Order 29347) and 26906 (proposed Order 29348) involve concerns of a landowner in regards to the temporarily abandoned (TA) status of certain wells in the South Fryburg Tyler Unit. The wells have been in TA status for seven years as allowed in the law. The landowner wants the TA status rescinded. The wells were part of a Tyler formation water flood--one well was an injection well. The location of the wells is in an agriculturally used area. Scout Energy Management is the operator and put in a request to extend the TA status for three years citing a proposed EERC project in a neighboring oil field to the north and a neighboring Enhanced Oil Recovery pilot project that will be testing gas injection by Southwest Production Corporation in the neighboring Tracy Mountain Unit south of these wells. When questioned at the hearing, Scout Energy Management had not contacted the parties involved to discuss the projects or the timelines. Staff determined these were not valid reasons to leave the wells in TA status. However, the operator had received an extension which will expire July 23, 2019. The staff's recommendation in proposed Order 29347 and Order 29348 would deny Scout Energy Management's request for an extension of the TA status and the TA status which would then expire July 23, 2019. By that date, the operator will have to either return the wells to production, plug or reclaim the wells.

Commissioner Goehring stated he is pleased the Legislature has dealt with the issue of abandoned wells and to allow an opportunity for the surface owner to bring the matter before the Commission. This is an area that may need more discussion with the Legislature when wells have no activity for many years and continue to hinder a surface owner's ability to farm the land.

Mr. Helms noted that this is a careful balancing act to determine if there is a legitimate reason to keep a wellbore in existence. There has been a dramatic drop in the number of conventional wellbores in the State that could be used for CO<sub>2</sub> enhanced oil recovery. He indicated that during the next rulemaking process (which takes place after each legislative session) the staff will be looking at the TA rules and considering additional requirements for maintaining the surface well site. If the surface site is not properly maintained then the TA status could be revoked.

In response to a question, Mr. Helms stated when wells are in abandoned status companies are allocated a sixth month period to either plug the well or put the well back into production. If the well stays in abandoned status, the company must post a full cost plugging and reclamation bond and are then given six months to plug it. The company would have the construction season of the following year to clean up the well.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 29347 issued in Case 26905 revoking the temporarily abandoned status at end of current extension 7/24/2019 of the Scout Energy Management LLC #16-19 SFTU well (File No. 12179) located in the**

**SESE of Section 19, Township 131 North, Range 100 West, Fryburg Field, Billings County, North Dakota with six months to plug the well or return to production by 1/24/20, be approved this 25<sup>th</sup> day of October, 2018. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 29348 issued in Case 26906 revoking the temporarily abandoned status at the end of current extension 7/24/2019 of the Scout Energy Management LLC #10-30 SFTU well (File NO. 13634) located in the NWSE of Section 30, Township 139 North, Range 100 West, Fryburg Field, Billings County, North Dakota with six months to plug the well or return to production by 1/24/20, be approved this 25<sup>th</sup> day of October, 2018. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Case 26917 (proposed Order 29473) involves a permit dispute between two oil companies. EOG Resources owns and operates wells and PetroShale Inc. made acquisitions of working interests and permitted wells in the spacing unit. PetroShale started surface construction so the permits would not be suspended as requested by EOG Resources. The issue is a legal question because there is a joint operating agreement signed by PetroShale's predecessor that designated EOG Resources as the operator of the unit. The Court sent the matter over to the Industrial Commission with the question, does the Commission have jurisdiction over joint operating agreements and the determination of who should be the operator. The proposed order states that the Industrial Commission does not have jurisdiction over joint operating agreements.

In response to a question, Mr. Helms stated if approved the dispute will go back to McKenzie County District Court because it is a private joint operating agreement and the Commission does not exercise jurisdiction. If the Court determines the agreement applies to the spacing unit, the case could then come back to the Commission to make a determination on operatorship or permit revocation if a well has not been drilled.

In response to a question, Mr. Helms stated PetroShale has majority ownership with 50.1% and EOG has 45% ownership. However, the joint operating agreement designates EOG as the operator of the spacing unit. The JOA decision needs to be rendered first by the court. If the Commission adopts the proposed order, the matter will go back to the court. Depending on the court decision, the Commission may see the matter again.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 29473 issued in Case 26917 dismissing Case 26917 with the explanation of why it is being dismissed be approved this 25<sup>th</sup> day of October, 2018. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Helms stat the previous month the Commission had approved Order 29315 in Case 26494. Subsequent to that approval a few typographical errors have been found and it had been brought to the staff 's attention that the size of one tract involving the federal government was off by .51 acres. The proposed order corrects the typographical errors and the size of that tract. Mr. Helms indicated that XTO (the operator for the proposed units) is satisfied with the Commission's order and plans to pursue the ratifications of the units. It was noted that the area for these units is 29,000 acres. The change of .51 acres increases the federal government's ownership by that amount and collectively reduces the other owners' percentage by that amount.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Corrected Order 29315 issued in Case 26494 be approved this 25<sup>th</sup> day of October, 2018. On a roll**

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

Mr. Helms stated a notice of intent was posted to review the oil conditioning Order 25417. Part of the notice was the opportunity for parties to request hearings. A total of five requests were received requesting a public hearing. Mr. Helms recommended that a hearing be scheduled on November 13, 2018 for testimony to be added to the written record on the case before a decision is rendered.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of Department of Mineral Resources Director Lynn Helms and schedule a hearing on November 13, 2018 regarding proposed amendments to Order 25417 outlining oil conditioning standards for the Bakken, Bakken/Three Forks, Three Forks, and Sanish Pool Field Rules.**

Commissioner Goehring noted that one of the requests is discussing stabilization rather than conditioning. If the Commission were to require stabilization it would result in a significant impact on the landscape of North Dakota with the installation of small refineries.

In response to a question, Mr. Helms indicated the hearing will be held at DMR in the hearing room and it will be live streamed. Individuals are not allowed to participate by phone, but may in person or through submission of written testimony. The hearing will begin at 9:00 a.m.

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

Mr. Helms introduced the topic of an update on gas capture. The gas capture policy has been in place since July of 2014 when Order 24665 was signed and amended most recently in April. He noted it was timely for the Commission to hear what the current situation is regarding gas capture, how the gas capture policy got to this point, and why this is an ongoing issue.

Mr. Justin Kringstad, North Dakota Pipeline Authority Director, provided a PowerPoint presentation of Gas Capture Information including a history of oil and gas production over the past few years and the investment made in gas processing facilities during that time frame. (A copy of the presentation is available in Commission files.) His presentation included slides:

- 2015 NDPA Outlook vs Actual
- Bakken and Three Forks Well Performance
- Solving the Flaring Challenge - pie chart
- Flaring by Category - July 2018
- Capturing the 14% (Additional Compression)
- Capturing the 14% (Looping Pipelines)
- Capturing the 14% (Frequent Pigging)
- Upcoming Expansion
- Solving the Flaring Challenge with graphics showing the existing and planned plant capacity

In response to a question, Mr. Kringstad stated a total of eight facilities are currently being built or expanded in the next 18 months--1.1 BCFD new plant capacity. The amount of capital the private sector is investing is \$1.7 billion in plants and related infrastructure with another \$1.4 billion in natural gas liquid transmission for a total of \$3.1 billion.



In response to a question, Mr. Kringstad stated a separate graph has been modeled out now that the actual numbers are known. Technology shifts have allowed producers to almost double their rate of production to 1,000 cubic feet per day, per well. He noted that on slide two all the wells in a county are calculated out by the aggregate average of the wells.

Mr. Helms stated when oil prices were low the operators migrated to the core area so it had three times as many wells and the rate of production increased. McKenzie County had the majority of wells and saw much greater production.

Mr. Helms indicated that Fort Berthold is lagging in gas capture. Analysis was done to determine why that is the case. The reason the gas capture is lagging on Fort Berthold is not due to technological advancements, but because it is located at the far end of the gas gathering system. There are no gas plants on Fort Berthold because it is a Direct Implementation (DI) area where the EPA directly implements the Clean Air Act on those portions of land and any approvals for a gas plant would have to be approved in Washington DC. Air quality permits cannot be issued by the State. In addition, he pointed out that it takes between 6-9 months and substantial funding to acquire rights of way anywhere. The time frame for Fort Berthold to acquire a right of way is a year and a half.

Mr. Helms stated there is not a one size fits all solution and it will depend on what is causing the flaring and where it is located geographically.

In response to a question, Mr. Kringstad stated companies are initially in compliance and committing 100% of gas production to the plant. Once a new well is implemented, the pressure increases in the system which causes flaring and the other wells using the system to be out of compliance because the system was not designed to hold additional capacity.

It was stated that under current Commission rules, the older wells that were initially in compliance now are flaring because when additional high pressure wells using new technology come on line it forces the older wells to flare and those wells are then penalized. The State is regulating issues that the companies have no control over and then gas plants see less gas being produced which attracts less capital to build plants. It was indicated that one of the first issues from a regulatory standpoint is to determine the effects on capital and trying to attract more capital to the State. Mr. Helms agreed that the regulatory policy needs to be reviewed again -- it was revised in April when oil prices were still low and now the situation has changed.

Mr. Kringstad reviewed steps that the industry is taking to add compression to the gathering systems--adding booster compressors, compressor stations, etc. These are expensive investments and take time to get done.

In response to a question, Mr. Kringstad stated there are thousands of miles of gas capture lines in the State (in excess of 20,000 miles). The industry is now looping the pipelines and continually adding more lines.

Mr. Helms noted the Bureau of Indian Affairs has determined that the right-of-way for the original pipeline does not allow for additional pipelines to be laid in that right-of-way. As a result, the Bureau is requiring the operators to go through the entire process again and they are taking the most restrictive interpretation on the right-of-way agreements.

Mr. Kringstad noted additional pigging is required especially in the winter when lower ground temperatures causes more liquids to drop out. He commented that road limitations can also impact the issues related to gas flaring.

Mr. Helms indicated that currently, because of the shortage of gas processing facilities, certain facilities are issuing capacity allocations or informing customers their gas will need to be flared so another customer's gas can flow through for the month and vice versa. In response to a question, Mr. Helms stated if a capacity allocation is issued by a facility operator that causes a producer's gas to be flared for the month there is no recourse to the producer. He stated a force majeure occurs when, for example, a compressor burns down or a pipeline ruptures. Capacity allocation is a contractual issue and is currently not addressed in the current policy.

Mr. Helms stated in fully developed spacing units in the core areas that oil to gas ratios are extremely high, but the rate of increase may drop.

The Commission discussed the following points involved in dealing with the flaring issue:

- Need for capital to ensure the construction of additional infrastructure;
- Impact of new and improved technology and techniques including fracking methods;
- Right of way issues;
- Need for workforce;
- Changing oil and gas ratios;
- Production levels; and
- Gas line capacities.

Mr. Helms presented an Infographics on Gas Capture document. (A copy of the document is available in the Commission files.) It includes some of the slides presented by Mr. Kringstad and the DMR Monthly Gas Capture graphic. The DMR graphic depicts information from 2005 and includes the level of oil production, natural gas production, gas oil ratio, percent of gas captured, and capture investment (\$4.7 billion).

It notes as background:

- From 2014-2017 midstream built over 1 BCFD of processing capacity following the high case projections (NDPA projection)
- Actual gas production followed 2015 low case scenario until 2017
- Technology innovations resulted in well performance that exceeds the high case scenario in 2017 and ongoing

Ongoing Issues:

Seeing increased frequency of new high-producing wells and historically compliant wells in non-compliance due to their location on the same gathering system. Intensifying the issue includes:

- Advancements in technology: Underestimating well performance;
- Government Process: Federal right-of-way delays; and
- Location of wells: Problem occurring across western North Dakota, however, increasing most in non-core areas & on Fort Berthold Reservation.

In response to a question, Mr. Helms stated a model was run which showed that with the midstream investments being made and the oil & gas ratio at 2014-2015 levels approximately 95% of gas would have been captured and there would have been plenty of capacity.

It was noted that because of technology improvements and production exceeding expectations, challenges arise from a gas capture standpoint. The prior framework did not expect the additional production and what made sense previously may now cause unintended effects. It was stated that North Dakota was #20 in the nation in natural gas production when Bakken production started and now we are #8 and it is

anticipated North Dakota will be #5 or #6. North Dakota is increasing its oil production and natural gas production.

In response to a question, Mr. Helms stated that oil production decreased while gas production increased and because natural gas prices followed oil prices there was limited investment. Gas capture follows investments.

Mr. Helms stated at one time gas capture was at the 60% level of 1.5 MCFD with the highest at 90%+ -- currently in the 80% levels of 2.5 MCFD. The State is capturing record amounts.

In response to a question, Mr. Helms stated that the Bentek Study in 2012 simulated these levels of oil gas ratios going forward using the 1980's Bakken wells. The problem is that there is not a good model to predict how quickly the gas will be captured. It depends on how much is being drilled and the location and those are private investment decisions.

Mr. Kringstad stated looking historically at how the Bakken reservoir performs in Elm Coulee and then in Billings County the current oil & gas ratio did not reach the high levels until years after the peak.

Governor Burgum stated the issue is to try and attract capital investment relative to other alternative uses. The Commerce Department has been working on ideas to capture and ship gas to other markets. The State needs to look at additional uses for gas.

In response to a question Mr. Kringstad stated he anticipates between 7-8 years from now there being a constraint on take-a-way capacity.

Mr. Helms stated within that time frame, the State needs to look at various conversion methods such as converting gas into electricity and transferring it through a wire versus a pipe, building another pipeline, storing it somewhere, compressing the natural gas or petro-chemically processing it into plastic which can then be moved out on rail cars.

In response to a question, Mr. Helms verified there is a location in Tioga that is utilizing enhanced oil recovery (EOR) and should have results next year as to the effectiveness of utilizing gas to re-pressure the reservoir and recover more oil. In addition companies are using a lot of the gas for running engines, heating frack water, and running electricity on the rigs, but the amount utilized is small in comparison to what is being produced. However, everything needs to be considered.

The Commission discussed the issues that had been outlined and noted that to meet these challenges and be competitive with other oil plays in the United States requires action by the State (Industrial Commission and Department of Commerce), industry, federal government and the Three Affiliated Tribes. It was noted that the gas capture plan/policy was developed by working with an industry task force and other partners. There will always be ups and downs, but the approach should always be to look at the final goal. These challenges can be met and strategies developed by working together.

It was the consensus of the Commission that Mr. Helms and Mr. Kringstad work with the industry task force which includes operators, gatherers, processors, end users, federal contacts, and the Commerce Department to prepare revisions to the gas capture policy along with identifying alternative uses of natural gas. It was suggested to also develop a list of recommendations that could be considered as the Commission works with federal officials and MHA such as right of ways and EPA permits.

Mr. Helms indicated that Hope Hogan is leaving the Attorney General's Office and joining the Office of Administrative Hearings as an Administrative Law Judge. She will no longer be able to serve as a

Commission hearing examiner. He provided a resolution for the Commission's consideration naming Nici Meyer as a hearing examiner and restating the other hearing examiners. The Commission welcomed Ms. Meyer. Attorney General Stenehjem thanked Hope Hogan for the work she has done for the Industrial Commission and the Department of Mineral Resources.

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

**RESOLUTION OF THE  
INDUSTRIAL COMMISSION OF NORTH DAKOTA  
NAMING HEARING EXAMINERS**

**Whereas, Section 38-08-04.1 of the North Dakota Century Code provides that the Industrial Commission may use hearing examiners under such rules and regulations as the Commission may prescribe; and**

**Whereas, Section 43-02-03-93 of the North Dakota Administrative Code provides that the Commission may by motion designate and appoint qualified individuals to serve as examiners,**

**NOW, THEREFORE, the Industrial Commission rescinds all prior appointments of examiners and designates and appoints the following individuals to serve as the Commission's examiners as it relates to the Commission's responsibilities under Chapter 38-08 of the North Dakota Century Code:**

**Nici Meyer, Assistant Attorney General  
David Garner, Assistant Attorney General  
Matt Sagsveen, Assistant Attorney General  
Lynn D. Helms, Director, Department of Mineral Resources and Director, Oil and Gas Division  
Bruce Hicks, Assistant Director, Oil and Gas Division  
Mark Bohrer, UIC and Treating Plant Manager, Oil and Gas Division  
Michael Ziesch, EGIS Staff Officer, Department of Mineral Resources  
Dave McCusker, Petroleum Engineer, Oil and Gas Division**

**This Resolution shall be effective as of October 25, 2018.**

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

Mr. Helms provided the Oil and Gas Division 2019 Hearing Schedule for consideration.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the 2019 Oil and Gas Division Hearing Schedule be approved as follows:**

**INDUSTRIAL COMMISSION  
OF NORTH DAKOTA**

**Tentative Schedule for Oil & Gas Hearings 2019  
Bismarck, North Dakota  
DMR Conference Room**

**1000 East Calgary Ave**

<b><u>Hearing Date</u></b>	<b><u>Docket Closing Date</u></b>
<b>January 16, 2019</b>	<b>December 14, 2018</b>
<b>January 17, 2019</b>	
<b>February 20, 2019</b>	<b>January 18, 2019</b>
<b>February 21, 2019</b>	
<b>March 20, 2019</b>	<b>February 15, 2019</b>
<b>March 21, 2019</b>	
<b>April 24, 2019</b>	<b>March 22, 2019</b>
<b>April 25, 2019</b>	
<b>May 22, 2019</b>	<b>April 19, 2019</b>
<b>May 23, 2019</b>	
<b>June 26, 2019</b>	<b>May 24, 2019</b>
<b>June 27, 2019</b>	
<b>July 24, 2019</b>	<b>June 21, 2019</b>
<b>July 25, 2019</b>	
<b>August 21, 2019</b>	<b>July 19, 2019</b>
<b>August 22, 2019</b>	
<b>September 25, 2019</b>	<b>August 23, 2019</b>
<b>September 26, 2019</b>	
<b>October 23, 2019</b>	<b>September 20, 2019</b>
<b>October 24, 2019</b>	
<b>November 20, 2019</b>	<b>October 18, 2019</b>
<b>November 21, 2019</b>	
<b>December 18, 2019</b>	<b>November 15, 2019</b>
<b>December 19, 2019</b>	
<b>January 15, 2020</b>	<b>December 13, 2019</b>
<b>January 16, 2020</b>	

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

Mr. Helms presented the following two legislative concepts for possible submission during the upcoming legislative session:

- Amendments to 38-08-04.8 and 38-08-04.9 regarding confiscation of equipment. Currently there are gaps in the law of what the Commission is able to confiscate and sell to cover reclamation costs. These amendments would allow the Commission to confiscate all the items of value that

the Commissions has a bond on and are responsible for reclamation of and be able to sell to recoup the costs of the reclamation.

- Coordination of civil and criminal penalties between the Oil and Gas Division and the Department of Environmental Quality. If one or the other or both assess a civil penalty, it would be coordinated as opposed to independently doing it.

The Attorney General stated some entities may want a global settlement and this might make the process more difficult and possibly affect parallel proceedings. Mr. Helms stated Dave Glatt has concerns about how this could impact primacy with the EPA. He went on to note the importance of working together if there are civil penalties and/or enforcement actions on a single violation. There is also the possibility of being set against one another by the violator.

The Commission indicated Mr. Helms should prepare bill drafts for these two concepts and bring them to the Commission for their consideration at the November meeting.

**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(s) regarding adversarial proceedings in the following matter: Case No. 09-2018-CV-00089, Sorum, et al v. State of North Dakota, et al. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

Governor Burgum reminded the Commission members and those present in the executive session that the discussion during executive session must be limited to the announced purpose for entering into executive session which is anticipated to last between 15 and 30 minutes.

Governor Burgum stated that the Commission was meeting in executive session to consult with the Commission's attorney(s) regarding Case No. 09-2018-CV-00089 and noted that any formal action by the Commission would occur after it reconvened in open session.

Commission members, staff, DMR staff, and Special Assistant Attorney General(s) and staff remained, but the public was asked to leave the room. The executive session began at 2:27 p.m.

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## EXECUTIVE SESSION

### **Members Present:**

Governor Doug Burgum  
Attorney General Wayne Stenehjem  
Commissioner Doug Goehring

### **Others in Attendance:**

Leslie Oliver	Governor's Office
Lt. Governor Sanford	Governor's Office
Reice Haase	Governor's Office
Lynn Helms	Department of Mineral Resources
Bruce Hicks	Department of Mineral Resources - Oil and Gas Division
Katie Haarsager	Department of Mineral Resources
Daniel Gaustad	Pearson Christensen Law Firm
Andrea Pfennig	Industrial Commission Office
Karlene Fine	Industrial Commission Office

The Industrial Commission reconvened in open session at 2:37 p.m. and the public was invited to return to the meeting room. Governor Burgum noted that during its executive session the Commission consulted with its attorney regarding Case No. 09-2018-CV-00089.

Mr. Hicks provided an update on the posting of a \$700,000 bond that was part of an order for the Northeast Foothills Madison Unit. Scout was required to file the bond and within two weeks of signing the order the amount was increased to the required total even though Scout was given 30 days to get the bond in place.

### **HOUSING FINANCE AGENCY (HFA)**

Ms. Jolene Kline, HFA Executive Director, presented a Housing Finance Agency Advisory Board recommendation to increase ND Roots Program income limits from 140% of area median income to 200% of area median income. There is a section in the Century Code that allows for the development of programs to meet housing needs in developing communities. A couple of Advisory Board members who are also lenders along with other local individuals brought up the issue that there is a gap pertaining to people who make a moderate income having trouble receiving financing on the secondary market and down payment assistance. Currently, there are no programs that address this issue. In December, the Bank of North Dakota pulled out of purchasing Gate City mortgages. This left Gate City without a secondary market. This would provide an optional secondary market for local banks to sell mortgages under the Roots Program.

In response to a question, Ms. Kline and Dave Flohr, Housing Finance Agency, provided some background on the development of the Roots Program since it was implemented in 2002.

In response to a question, Ms. Kline stated there are no acquisition cost limits under the program; it is driven by the debt coverage ratio. There are caps on the mortgage amounts based upon the type of loan. On a conventional mortgage, the highest amount on a loan amount is \$453,000 and \$291,000 if it is FHA.

In response to a question on how much volume is expected with this change, Ms. Kline stated before the restrictions were lifted on the initial Roots Program only 317 households were helped during the 12 year period. From August of 2014 to current, 927 households have been helped. The Agency staff does not know what the volume will be going forward with this change in policy. The mortgages will be securitized with Ginnie Mae or the Agency will do taxable bond issues to fund them so the Agency isn't limited by their funding source.

Ms. Kline stated individuals currently living in entry level homes want to move up, but are having trouble with financing because they do not have the 20% down payment required by a conventional lender. This change will allow the Agency to assist these current residents by expanding their options.

Ms. Flohr indicated the servicing stays local or with the bank that originates the loan, but the risk is mitigated to other investors besides the Agency.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Housing Finance Agency Advisory Board and increase the income limits for the ND Roots Program to 200 percent of the greater of statewide median income or county median income. On a roll call vote, Governor Burgum,**

**Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Ms. Kline presented the final report on the Community Homes project bond sale. A copy of her report is available in the Commission files.

Ms. Kline presented the Housing Finance Agency Third Quarter Report. (A copy is available in Commission files.) Her report included information on:

- Homeownership - FirstHome reservations are up 68% from 2017 numbers; 129 Bank of North Dakota home loans were transferred to the Agency totaling \$26.5 million; foreclosure rates continue to trend below national averages; just under 10,000 loans are being serviced by the Agency
- Property Management
- Planning and Housing Development; - just closed the funding rounds for Low Income Housing Tax Credit Program, Housing Trust Fund and the Housing Incentive Fund - applications are being reviewed by staff. The programs were all oversubscribed. There was a significant shift in the applications from new construction to rehabilitation. The Opening Doors Program was implemented. This Program is insurance used to help landlords take risks with people coming out of prison or poor credit scores. If there is a loss of revenue or undue damage, the program will step in and make the landlord whole from the loss sustained. The Minot Disaster Resiliency Program is used to help administer some of the Federal funds received. HFA has partnered with the program and closed on the first loan. There is a total of \$3 million that can be awarded. The project is for an individual who purchased a home, but could not afford the mortgage for the home. If the individual stays in the home for a designated amount of time, the loan will be forgiven.
- Public Affairs

In response to a question regarding references under the Housing Incentive Fund, Low Income Housing Tax Credit, and the Housing Trust Fund to funding for chronically homeless, Ms. Kline stated when there is permanent supportive housing for the homeless there cannot be any debt because there is not enough income to service the debt. The same projects are being funded by using all three of the programs. Homeless people cannot afford to pay rent, but there are ongoing expenses related to the ongoing operations of the project. Permanent supportive housing has to be coupled with services from the social services side which benefits both the individual and social services. There are no deadlines for how long an individual can stay in this housing, but the objective is to transition these individuals out to free up the units for others in need.

#### **NORTH DAKOTA MILL**

Mr. Vance Taylor, North Dakota Mill President and CEO, introduced Mr. Ed Nagel, State Auditor's Office. Mr. Nagel presented the North Dakota Mill and Elevator Association Audit for fiscal year 2018.

Mr. Nagel indicated the audit includes comparative statements for the prior fiscal year. He stated that the financial statements for 2017 and 2018 are fairly stated in accordance with generally



accepted accounting principles. He reviewed the financial statements and stated there were no internal control weaknesses, compliance findings or recommendations; it was a clean audit.

Mr. Nagel indicated this would be his last presentation on the Mill audit as he was retiring from state government after forty years of service. The Commission thanked Mr. Nagel for his service to the citizens of North Dakota.

Mr. Taylor provided the first quarter financial report as follows.

**North Dakota Mill  
 Review of Operations  
 1<sup>st</sup> Qtr. Ended  
 September 30, 2018**

**Summary**

The Mill experienced a profit of \$3,852,696 in the first quarter compared to a profit of \$3,410,950 last year resulting in a 13% increase.

	<u>9/18</u>	<u>9/17</u>
Profits	\$ 3,852,696	\$ 3,410,950
Sales	78,999,318	80,693,514
 Cwt Shipped:		
Spring	3,455,421	3,459,396
% to Total	93.7%	92.8%
Durum	<u>233,641</u>	<u>267,255</u>
Total	<u>3,689,062</u>	<u>3,726,651</u>
 Bulk Shipments		
%	3,005,173	3,047,121
% to Total	81.5%	81.8%
 Bag Shipments		
%	643,469	645,464
% to Total	17.4%	17.3%
 Tote Shipments		
%	40,420	34,066
% to Total	1.1%	0.9%
 Family Flour		
%	82,853	105,801
% to Total	2.2%	2.8%
 Organic Flour		
%	35,355	36,986
% to Total	1.0%	1.0%
 Wheat/Durum Bought:		
Spring /Winter	7,530,120	8,102,797
Durum	<u>474,643</u>	<u>701,311</u>
Total	<u>8,004,763</u>	<u>8,804,108</u>

**Sales**

Sales for the first quarter were \$78,999,318 compared to \$80,693,514 last year, a decrease of 2.1%. The price of grain settled with suppliers at the Mill for the first quarter of the year at \$0.31 per bushel lower than last year. Shipments of 3,689,062 cwts. in the first quarter are 37,590 cwts. below last year. Bag shipments of 643,469 cwts. are 0.3% below last year. Family flour shipments reached 82,853 cwts., a

decrease from last year's first quarter shipments of 105,801 cwts. Organic flour shipments were 35,355 cwts., a decrease of 1,631 cwts.

**Operating Costs**

Operating costs for the first quarter were \$8,677,461 compared to \$8,163,545 last year, an increase of 6.3%. Total flour production for the first quarter was 0.1% below last year's first quarter. Operating cost per cwt. of production was \$2.32 per cwt., compared to \$2.18 last year, an increase of 6.4%.

**Profits**

The Mill had profits of \$3,852,696 in the first quarter compared to \$3,410,950 last year, an increase of 13.0%. Gross margins as a percent of gross sales for the quarter was 16.3% compared to 14.6% last year.

**Risk Management Position**

The table below shows our hedge ratio by futures month going forward. As the table shows each futures month listed indicates the mill continues to be closely matched in each period.

**Position Report  
30-Sep-18**

<b>Period</b>	<b>Hedge Ratio</b>
Dec-18	1.0
Mar-19	1.1
May-19	1.0
Jul-19	1.0
Sep-19	1.0
Net Position	1.0

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the provisions of N.D.C.C. § 44-04-18.4 the Industrial Commission proceed into executive session to discuss commercial information including the North Dakota Mill's marketing strategies and sales strategies within the proposed 2019 Strategic Plan. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

Governor Burgum reminded the Commission members and those present to limit their discussion during the executive session to the announced topic. Governor Burgum noted that the executive session is anticipated to last 15 to 20 minutes. Following the executive session, the Committee will reconvene in open session. Commission members and employees of the North Dakota Mill will remain, but the public is asked to leave the room. The executive session began at 3:11.

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STATE MILL EXECUTIVE SESSION

**Members Present:**

Governor Doug Burgum  
Attorney General Wayne Stenehjem  
Agriculture Commissioner Doug Goehring

**State Mill Personnel Present:**

Vance Taylor           State Mill  
Ed Barchenger         State Mill

**Others in Attendance:**

Lt. Governor Brent Sanford

Leslie Oliver	Governor's Office
Reice Haase	Governor's Office
Jessie Pfaff	Agriculture Department
Andrea Pfennig	Industrial Commission Office
Karlene Fine	Industrial Commission Office

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Governor Burgum reconvened the meeting at 3:52 p.m. and the public was invited to return to the meeting room.

Mr. Taylor presented the FY2019 non-confidential Strategic Plan.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approve the following North Dakota Mill FY2019 Strategic Plan**

**North Dakota Mill & Elevator  
Strategic Plan FY 2019**

**Our Mission:**

**The mission of the North Dakota Mill & Elevator is to promote and provide support to North Dakota agriculture, commerce, and industry. Provide superior quality, consistency, and service to our customers. Grow the business and provide a profit to our owners – the citizens of North Dakota. Conduct our business with the highest integrity so that our employees, customers, suppliers, and owners are proud to be associated with the North Dakota Mill & Elevator.**

**FY 19 Goals and Objectives**

**Goal 1: Promote and Support North Dakota Agriculture, Commerce, and Industry**

**Objective 1A: Increase North Dakota Mill Demand for Conventional and Organic Spring Wheat and Durum**

**Objective 1B: Develop and Market New Agriculture Products**

**Objective 1C: Work with the Dakota Pride Cooperative, NCI, and other Agriculture Organizations**

**Objective 1D: Identify and Target New Export Opportunities**

**Goal 2: Identify and Respond to Emerging Issues in the Flour Milling Industry**

**Objective 2A: Respond to Changing Grain Market Conditions and Volatility**

**Objective 2B: Respond to Competitive Threats in the Milling & Baking Industry**

**Objective 2C: Develop a Strategy to Meet Grain Purchasing Needs**

**Objective 2D: Manage Transportation Costs to Maintain Competitiveness**

**Objective 2E: Address Customer Issues**

**Objective 2F: Focus and Rapidly React to Current Issues**

**Goal 3: Maximize Profit Potential**

**Objective 3A: Increase Gross Margins**

**Objective 3B: Minimize Plant Costs**

**Objective 3C: Minimize Freight Costs**

**Objective 3D: Upgrade Technology**

**Objective 3E: Improve Infrastructure**

**Objective 3F: Explore Expansion Opportunities**

**Goal 4: Grow Our Customer Base**

**Objective 4A: Maintain a Consistent High Quality Product**

**Objective 4B: Continue to Improve Our High Level of Customer Service**  
**Objective 4C: Identify and Target New Customers and Markets**  
**Objective 4D: Maintain and Leverage Our FSSC 22000 Certification**  
**Objective 4E: Optimize Marketing Strategies**

**Goal 5: Invest in Our Employees**

**Objective 5A: Promote Workplace Safety**  
**Objective 5B: Improve the Retention of our Workforce**  
**Objective 5C: Recruit Quality People**  
**Objective 5D: Enhance Workplace Communications**  
**Objective 5E: Improve Job Performance through Training**

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

Mr. Taylor provided an update and photographs of the construction projects and the infrastructure improvements that have been taking place. He noted that everything is within budget and close to being on schedule for completion. In response to a question, he stated that the water ponds were needed for drainage purposes.

**WESTERN AREA WATER SUPPLY (WAWS)**

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the WAWS September Financial Report and Debt Reduction Report. (A copy of the report is available in the Commission files.) The net income for the month of September was \$438,000 after making the principal payment. Sales exceeded the breakeven number by \$796,000.

Mr. Curtis Wilson, Executive Director for WAWS, provided an update on sales and current activity through September and provided a handout. (A copy of the handout is available in the Commission files.)

Mr. Wilson noted that there has been an increase in industrial sales, especially in the northern part of the system and that is anticipated to last through the first of the year. He commented on a significant contract that WAWS had entered into with a private water provider that includes the replenishing of a water storage lake. It is a beneficial partnership for both parties. The private provider wants to use WAWS water because of the quality of the water.

Mr. Wilson stated there have been no breaks or interruptions in service that would cause issues with either a frack or maintenance water.

Mr. Wilson presented a request from the Western Area Water Supply Authority Board for payment of capital costs for parallel construction of three miles of line which is partially complete and for the modifications of pump stations. (A map was provided showing where the work is being done.)

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the capital improvement costs for two pipeline/pump upgrade projects, and Keene Loop and Watford City pump improvement projects totaling \$2,205,519.56 be approved for payment from the Western Area Water Supply Authority industrial account. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

The Commission and Mr. Wilson discussed having a long-term strategic and capital plan for WAWS. Mr. Wilson indicated the Board has identified their future needs and the related costs. It was pointed out the importance of having water available to meet water demands in the future. Mr. Wilson stated the Board is working with their engineers on the plans and development of a model. Already identified is the need for expanding the water treatment plant in the next few years. He indicated he is planning to meet with independent water producers and to work with them on meeting the increased regional water needs. To be successful, water needs to be properly managed and scheduled which will also increase the ability to deliver.

Governor Burgum stated there is an opportunity for synergy with WAWS as both a wholesaler and provider for both fracking and maintenance water. Independent water producers can either retail the water or get unprocessed water from other sources.

Mr. Wilson commented on the various treatments of water that are taking place by the companies compared to what WAWS does at the plant.

#### **TRANSMISSION AUTHORITY**

Due to time constraints, Transmission Authority business was not taken up at this meeting.

#### **BANK OF NORTH DAKOTA**

Due to time constraints, the meeting order was modified.

Mr. Eric Hardmeyer, Bank of North Dakota President, presented the 2019 BND Holiday Schedule for consideration.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approves the Bank of North Dakota 2019 Holiday Schedule as follows:**

#### **BANK OF NORTH DAKOTA 2019 HOLIDAY SCHEDULE**

**The 2019 holidays will be observed by the Bank of North Dakota and the Federal Reserve Bank of Minneapolis and its Helena Branch on the following dates:**

<b>New Year's Day .....</b>	<b>Tuesday, January 1</b>
<b>Martin Luther King Jr. Day .....</b>	<b>Monday, January 21</b>
<b>Presidents Day .....</b>	<b>Monday, February 18</b>
<b>Memorial Day .....</b>	<b>Monday, May 27</b>
<b>Independence Day.....</b>	<b>Thursday, July 4</b>
<b>Labor Day .....</b>	<b>Monday, September 2</b>
<b>Columbus Day .....</b>	<b>Monday, October 14</b>
<b>Veterans Day .....</b>	<b>Monday, November 11</b>
<b>Thanksgiving Day .....</b>	<b>Thursday, November 28</b>
<b>Christmas Day.....</b>	<b>Wednesday, December 25</b>

In response to a question, Mr. Hardmeyer confirmed the holiday schedule is the same as the Federal Reserve, but is different from the State in that it does not include Good Friday and adds Columbus Day.

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

Pursuant to N.D.C.C. 6-09-35, the Industrial Commission entered into executive session. Governor Burgum reminded the Commission members and those present in the executive session that the discussion during executive session must be limited to those items listed on the agenda which is anticipated to last between 15 and 30 minutes. It was noted that any formal action by the Commission would occur after it reconvened in open session. Commission members, their staff, and BND staff remained, but the public was asked to leave the room. Governor Burgum closed the meeting at 4:17 p.m. pursuant to N.D.C.C. 6-09-35 to discuss the following items:

- Non-Accrual Loans Quarterly Recap/Detail
- Problem Loans - Adversely Classified Quarterly Recap
- Loan Charge-Offs and Recoveries - 9/30/2018
- Problem Loan Update
- Presentation of Confidential Bank of North Dakota Advisory Board August 16, 2018 meeting minutes
- Other Bank of North Dakota confidential business (as defined under N.D.C.C. 6-09-35)

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BND EXECUTIVE SESSION

**Members Present:**

Governor Doug Burgum  
Attorney General Wayne Stenehjem  
Agriculture Commissioner Doug Goehring

**Bank of North Dakota Personnel Present:**

Eric Hardmeyer            Bank of North Dakota  
Todd Steinwand           Bank of North Dakota  
Kirby Evanger             Bank of North Dakota

**Others in Attendance:**

Lt. Governor Brent Sanford  
Leslie Oliver              Governor's Office  
Reice Haase                Governor's Office  
Jessie Pfaff                Agriculture Department  
Andrea Pfennig             Industrial Commission Office  
Karlene Fine                Industrial Commission Office

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The meeting reconvened in open session at 4:53 p.m. Governor Burgum invited the public to return to the meeting room. He noted that during its executive session, the Commission made a motion regarding three Bank of North Dakota loan applications. **On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Hardmeyer introduced Ms. Katie Williams from Eide Bailly. Ms. Williams reported on the following June 30, 2018 audits:

- Ag PACE Fund,
- PACE Fund,
- Rebuilders Loan Program,
- Medical Infrastructure Loan Program,
- Addiction Counselor Internship Loan Program,

- Infrastructure Revolving Loan Fund, and
- School Construction Assistance Revolving Loan Fund.

Ms. Williams stated that all seven of the audits have an unmodified clean opinion. There were no findings or non-compliance. Governor Burgum thanked Ms. Williams for her work on the audits.

In response to a question, Mr. Hardmeyer stated \$25 million of the Bank's capital had been appropriated to be used on buydowns for these loan programs. He is anticipating that all those buydown dollars will be utilized during the biennium. Next biennium the Bank is proposing to increase the buydown dollars from \$25 million to \$41 million based on the anticipated usage for those programs. The \$41 million will come out of BND's capital.

Mr. Hardmeyer provided a copy of the Third Quarter 2018 Performance Highlights. (A copy is available in the Commission files.)

- Balance Sheet - deposits continue to grow, but loan volume is down from where it was projected. There is limited activity in commercial loans; residential activity is down because the Bank has, for strategic reasons, decided to book fewer fixed rate mortgages. The Bank has \$6.8 billion in assets which is higher than what had been projected.
- Income Statement - As of September 30, 2018, the Bank's net income is \$122,891,000 which is the fourth best profit in the Bank's history. By year end, net income is estimated to be \$155 to \$160 million in profits. The provision for loan losses will be increased to \$12 million by year end to offset any agricultural or energy issues that might occur.

Mr. Todd Steinwand, SVP Bank of North Dakota, stated although the amount of loans is similar to the prior year, the dollar amounts have decreased due to the decrease in large projects such as hotels and apartment buildings. State institution loans have also decreased because loans for WAWS and the Adjutant General were done last year and additional loans were not needed this year.

Mr. Steinwand indicated that although farmers are spending less money, there has been an increase in the beginning farmer real estate loans. Student loan volumes are down due to a decrease in the Federal loans interest rates versus the Bank's Deal loan interest rates.

Mr. Kirby Evanger, SVP Bank of North Dakota, provided a summary of the Bank's credit quality and loan allowances noting that the allowance is up \$4.3 million from last quarter--transfers to the allowance for loan losses had been increased due to an uptick in non-accruals and adversely-classified loans. Currently, unallocated reserves are at 10% which is up from 6% last quarter due to the limited deterioration of loans. Allowance percentage is at 1.95% compared to the ND average of 1.37%.

Mr. Evanger also commented on the Credit Quality - Delinquency report. He indicated that delinquencies are down overall largely due to a decrease in the Bank's student loan portfolio. The Federal student loan portfolio was sold which had a higher level of delinquency. Residential is down, but there has been a slight increase in agricultural which is still below the State average.

Mr. Hardmeyer presented the non-confidential Bank of North Dakota Advisory Board August 16, 2018 meeting minutes for the Commission's information.

## **NORTH DAKOTA BUILDING AUTHORITY**

Ms. Fine presented a resolution for the Commission's consideration which would add DeAnn Ament as a North Dakota Building Authority Authorized Officer.

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

**INDUSTRIAL COMMISSION OF NORTH DAKOTA  
DESIGNATION OF AUTHORIZED OFFICERS**

**WHEREAS, the Industrial Commission of North Dakota, acting as the North Dakota Building Authority (the "Commission"), pursuant to and in accordance with N.D.C.C. Chapter 54-17.2 (the "Act") has issued evidences of indebtedness, and**

**WHEREAS, the Commission has previously named Joe Morrissette, Director of the Office of Management and Budget, and Karlene Fine, Industrial Commission Executive Director/Secretary as its Authorized Officers; and**

**WHEREAS, DeAnn Ament, Executive Director of the Public Finance Authority, has been providing financial services to the Building Authority and has extensive background in the capital markets and it would be beneficial to have more backup for the Building Authority;**

**THEREFORE, BE IT RESOLVED:**

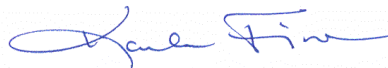
- 1. The Commission names DeAnn Ament and renames Joe Morrissette, and Karlene K. Fine as its Authorized Officers (the "Authorized Officers") to do all things necessary and convenient in carrying out the responsibilities of the Commission as stated in the 2010 Series A & B Resolution, 2012 Series A Resolution and the 2017 Series A Resolution and as set out in N.D.C.C. Chapter 54-17.2.**

**Effective and Dated this 25<sup>th</sup> day of October.**

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

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 5:04 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary