

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on April 17, 2018 beginning at 11:00 a.m.
Coteau Room and Governor's Conference Room - State Capitol

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

Also Present: Lt. Governor Brent Sanford (portions of the meeting)
Leslie Oliver, 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 11:00 a.m. in the Coteau Room.

DEPARTMENT OF MINERAL RESOURCES

Mr. Lynn Helms, Department of Mineral Resources Director, introduced Joel Toso, Senior Water Resources Engineer of Wenck Associates, who introduced Kale Van Bruggen, from Rinke Noonan Law Firm. Mr. Toso and Mr. Van Bruggen provided a presentation regarding the Ordinary High Water Mark (OHWM) of the Missouri River Bed Review (Review). The presentation is attached to these minutes as Attachment A. Mr. Helms indicated that the full Review would be available on the Department of Mineral Resources website this week.

Attorney General Stenehjem clarified that the purpose today is to present the findings to the Commission. There will be a public hearing at a later date when the public will have an opportunity to provide comments.

Mr. Toso stated that the outline for today's presentation includes:

- Introductions
- Review project understanding and approach
- OHWM definition
- Data sources and compilation
- OHWM delineation methodology
- Results
- Questions

Mr. Toso and the Commission discussed various aspects of the Review.

Mr. Helms described the process of what will happen next as follows:

- Notice of the availability of the Review and the public hearing scheduled for June 26, 2018, will be published in newspapers within the next seven days.
- The Review will be posted on DMR's website with links to the TIF files and Shape Files. This will be available on Friday.
- There will be a 60 day comment period. There will be an opportunity to review comments before the public hearing. Comments may be submitted to the e-mail address listed on the website. All comments become open record.

- Following the public hearing, the Department of Mineral Resources staff will consult with Wenck staff and prepare recommendations in the form of an order for the Industrial Commission's consideration.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Department of Mineral Resources proceed as outlined in N.D.C.C §61-33.1-03 (6) with the publication of a notice of the availability of the Wenck Associates Inc. Review findings ("Review") in all the daily newspapers, post a link to the Review on the Department of Minerals Resources website, provide an opportunity for submission of comments and hold a public hearing on Tuesday, June 26, 2018 (sixty days after the publication date). On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum thanked Mr. Toso and his team for their hard work on the project and thanked Mr. Helms for his coordination of the project.

Mr. Helms presented proposed orders for the following cases: (Copies of the proposed orders are available in the Commission files.)

Case 26103, Order 28515 and Case 26436, Order 28862 – Mr. Helms stated that these two cases could be considered together as they are essentially identical and involve the same parties concerning the same matter. This involves a dispute between two operators -- Lime Rock Resources III-A (Lime Rock) and Statoil. Lime Rock requested that the Commission prohibit Statoil from refracturing wells that are producing at economic rates. They also ask that the Commission deny Statoil the right to collect a risk penalty if Lime Rock does not participate in the refracturing operations. He indicated that the proposed orders would deny Lime Rock's request and would not prohibit Statoil from refracturing the wells. The Commission does not prohibit operators from conducting operations on wells unless the operations would result in waste or harm to correlative rights. These refracturing operations did not meet those criteria. A review of the statutes for risk penalties found that the risk penalty cannot be applied to refracturing operations as the refracturing operations are not drilling or completion operations.

Case 26103: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 28515 issued in Case 26103 determining that a risk penalty may not be imposed on Lime Rock Resources III-A, L.P.'s working interest for the refracturing operations performed on the Russell 10-3 #1-H well and the Weisz 11-14#1-H well be approved this 17th day of April, 2018. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 26436: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 28862 issued in Case 26436 determining that a risk penalty may not be imposed on Lime Rock Resources III-A, L.P.'s working interest for the refracturing operations performed on the Russell 10-3 #1-H well and the Weisz 11-14#1-H well be approved this 17th day of April, 2018. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 26446, Order 28874 – Mr. Helms stated that this case involves an approval previously given by the Commission to construct a treating plant. He indicated the construction of this treating plant has been involved in litigation and the Commission previously granted a one year extension of the permit following the end of the litigation to construct the treating plant. The company has not begun construction and there appears to now be some dispute over ownership of the surface. The proposed order will cancel the permit and rescind the order granting that approval. The proposed order also establishes deadlines regarding the reclamation of the plant site.

Case 26446: It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order 28874 issued in Case 26446 rescinding Order No. 22215 and Director’s Order No. 521 be rescinded and establishing dates for reclamation of the site, be approved this 17th day of April, 2018. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 26463, Order 28891 – Mr. Helms indicated that this case involves a review of the operations of the Tracy Mountain-Tyler Unit and possible termination of the Unit. He stated that the new operator of the Unit has not been diligent in maintaining and operating the unit. They have restarted water injections and sought and received approval from the Commission to try gas injection in the unit to continue enhanced oil recovery. Based on the operations that have taken place, the Commission does not have the legal jurisdiction to terminate the Unit. However, there are six wells within the Unit that are out of compliance. The proposed order establishes a deadline of October 31, 2018 for those wells to be brought into compliance. In addition two wells have been plugged and abandoned but the well sites and the access road have not been reclaimed. This order establishes a deadline of October 31, 2018 for the reclamation of those sites and the road. This is the primary concern of the surface owner. He noted that there are penalties that may be applied if compliance is not achieved by the deadline, October 31, 2018. Mr. Hicks noted that the proposed order also states that the operations of the Unit will be reviewed by the Commission in March of 2019.

Case 26463: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 28891 issued in Case 26463 affirms the Tracy Mountain-Tyler Unit, directs that reclamation be completed on two well sites and access road and directs that certain abandoned wells be brought into compliance by October 31, 2018, and further directing that the operations of the Unit be reviewed in March 2019, be approved this 17th day of April, 2018. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Justin Kringstad, Pipeline Authority Director, gave a presentation on North Dakota’s gas capture infrastructure and outlook. (A copy of the presentation is available in the Commission files and is posted on the Pipeline Authority website.) His presentation included:

- Production Outlook
 - Technology
 - Markets
- Gathering
 - Capacity
 - Connections
- Processing

- Capacity
- Location
- Transmission
 - Dry Gas
 - Natural Gas Liquids

Governor Burgum thanked Mr. Kringstad for his presentation. He stated that the reduction in the number of days to connect to a gas line is great news and commended the private sector for their significant investment in infrastructure for processing. Production is almost at its peak in terms of oil production and industry is producing twice the amount of gas with the same amount of oil. With 2-2.5 million barrels of oil and 4-4.5 MCF of natural gas that is a ratio of approximately 2:1. This is key when discussing flaring. The fact that gas capture numbers are up when production has doubled is a credit to the industry.

Mr. Helms discussed proposed changes to the Industrial Commission Order 24665 Policy/Guidelines. He distributed an “over-strike” version of the Policy/Guidelines. (A copy is available in the Commission files.) He also presented a power point presentation of the recommendations from the Petroleum Council Task Force. (A copy of the presentation is available in the Commission files.) He noted that industry’s 2018 capital investment decisions are resting on the Commission’s decision regarding these proposed amendments. He commended the industry for the investments they have made and his staff for their diligence in monitoring the guidelines. As a result, over three years flaring has been reduced from 36% to 12%.

Mr. Helms reviewed each of the recommendations from the Petroleum Council’s Gas Capture Task Force and each of the proposed changes in the Commission’s Guidelines. He explained how each of the changes would be implemented by the staff.

Mr. Helms noted that there will be a meeting in Bismarck on April 25 with industry, Ft. Berthold Reservation, the BIA, and other stakeholders to discuss right-of-way permits. Governor Burgum thanked Lt. Governor Sanford and Indian Affairs Commissioner Scott Davis for their work in this area.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission amends the North Dakota Industrial Commission Order 24665 Policy/Guidance to read as follows:

North Dakota Industrial Commission Order 24665 Policy/Guidance
Version 041718

Policy Goals:

1. reduce the flared volume of gas
2. reduce the number of wells flaring
3. reduce the duration of flaring from wells

Action items:

1. require a sworn affidavit that operator has provided Gas Production Forecast data to midstream gas gathering companies and developed a Gas Capture Plan for increased density, temporary spacing, and proper spacing cases
2. require Gas Capture Plans for all applications for a permit to drill filed by an operator who has failed to meet gas capture goals in any of the most recent three months

3. semi-annual meetings with midstream gas gathering companies
4. semi-annual Gas Capture Improvement Plan meetings with operators who have failed to meet gas capture goals three or more of the most recent six months
5. annual review of gas capture goals, gas capture progress, and extenuating circumstances to be presented by Department of Mineral Resources each December
6. track flaring on/off the Fort Berthold Indian Reservation
7. report capture status versus goals.

The initial horizontal well drilled in each spacing unit should be allowed to produce at its maximum efficient rate, regardless if the well is connected to a gas gathering system. An operator may make application to designate gas produced from up to six new horizontal wells drilled in a previously undrilled township or in a township outside the Bakken core area that averages less than 60% gas capture during the most recent two months as stranded gas. Wells designated as producing stranded gas should be allowed to produce at maximum efficient rate and the operator should be allowed to remove the first year of gas production from each stranded gas well from the total monthly volume calculation. Allowing such wells to produce at a maximum efficient rate will allow valuable information to be obtained in order to make decisions regarding future well and infrastructure requirements in the spacing unit.

Commission production records indicate the majority of gas flared in North Dakota is from wells already connected to a gas gathering system. Such wells should not be excluded from gas capture goals adopted by the Commission.

Well payout and economics should not be used to determine production restrictions.

Some flared gas contains components that if improperly combusted could cause air quality degradation and health issues.

On the Fort Berthold Indian Reservation, many Bakken Pools are also within the jurisdiction of the Mandan Hidatsa and Arikara (MHA) Nation and Bureau of Land Management (BLM). In some cases, companies must comply with MHA Nation, BLM, and Commission rules. The Commission should work with federal and tribal authorities to ensure that restrictions imposed herein provide clarity and protection of correlative rights for the oil and gas companies operating in the respective jurisdictions.

The Commission establishes the following gas capture goals:

- 74% October 1, 2014 through December 31, 2014
- 77% January 1, 2015 through March 31, 2016
- 80% April 1, 2016 through October 31, 2016
- 85% November 1, 2016 through October 31, 2018
- 88% November 1, 2018 through October 31, 2020
- 91% beginning November 1, 2020

The gas capture percentage is calculated by summing monthly gas sold plus monthly gas used on lease plus monthly gas processed in a Commission approved beneficial manner, divided by the total monthly volume of associated gas produced.

In order to allow operators the maximum flexibility to manage their drilling, operation, and gas capture plans within the gas capture goals established by the Commission, the Commission will evaluate compliance with the gas capture goals statewide, by county, by field, then by well for each operator.

1. All infill horizontal wells, including overlapping spacing units, completed in a Bakken, Bakken/Three Forks, and/or Three Forks Pool are allowed to produce at a maximum efficient rate for 90 days.
2. The operator is allowed to remove the initial 14 days of flowback gas from the total monthly volume calculation.
3. The operator is allowed to remove 46 days of initial production test gas (subsequent to the initial 14 days of flowback gas) from the total monthly volume calculation.
4. The operator is allowed to remove from the total monthly volume calculation gas volumes flared from wells already drilled and completed on the date a force majeure event occurs if the event is properly documented in writing by the gas gathering company.
5. An operator is allowed to accumulate credits for LNG utilization, CNG utilization, and volumes of gas captured during the most recent six months in excess of the current gas capture goal.
 - a. The commission may apply all or a portion of the credit to a month in which the operator cannot meet the current gas capture goal upon application by the operator.
 - b. Credits cannot be transferred to another operator.
 - c. Unused credits expire after six months.
 - d. Credits may be applied only if one or more of the extenuating circumstances exist.
6. The Commission recognizes the following as surplus gas being utilized in a beneficial manner that may be considered as captured gas:
 - a. Equipping the well(s) with an electrical generator that consumes surplus gas
 - b. Equipping the well(s) with a system that intakes the surplus gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting the propane and heavier hydrocarbons
 - c. Equipping the well(s) with other value-added processes as approved by the Director which reduce the volume or intensity of the flare by more than 60%.

If an operator is unable to attain the Commission's gas capture goals at maximum efficient rate, well(s) will be restricted to 200 barrels of oil per day if at least 60% of the monthly volume of associated gas produced from the well is captured, otherwise oil production from such wells shall not exceed 100 barrels of oil per day.

Flexibility will be provided in the form of temporary exemptions from production restrictions for up to one year if an operator files a request on a sundry notice and provides the documentation necessary to validate one or more of the following extenuating circumstances:

1. surface landowner, tribal, or federal government right-of-way delays
2. temporary midstream down-time for system upgrades and/or maintenance
3. federal regulatory restrictions or delays
4. safety issues
5. delayed access to electrical power
6. possible reservoir damage

A summary of temporary exemptions approved and denied will be provided in Oil and Gas Division Quarterly Reports.

Flexibility in the form of temporary exemptions from production restrictions may be considered for other types of extenuating circumstances after notice and hearing if the effect of such flexibility is a significant net increase in gas capture within one year of the date such relief is granted.

Penalty provisions:

Production and flaring data is two months old when filed (Jan 2014 data filed Mar 2014) and data is frequently amended.

Timely communication between operators and midstream companies as well as with the Commission is of the essence. Lack of compliance with the following requirements will be considered violations:

1. Failure to file an application for hearing with the Commission within the month following the month in which the operator was unable to attain the Commission's gas capture goals and oil production exceeded production restrictions may result in a civil penalty of \$1,000 per month up to a maximum of \$12,500 per month beginning at \$1,000 the first month and doubling each additional month that the operator is in violation.
2. Failure to implement production restrictions within the month following the month in which the operator was notified by Commission staff that gas capture goals were not attained and oil production from listed well(s) is to be restricted will result in a verbal notice of violation. The Commission will issue a written notice of violation with a compliance deadline if an operator fails to implement production restrictions for a second month. A third month in violation of production restrictions may result in a civil penalty of up to \$12,500 per well for each day the well has been in violation.

Attorney General Stenehjem noted he was very pleased that industry did not request to reduce the goals, but rather came in with realistic requests.

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

Mr. Helms recommended the Commission submit the following comments to the Bureau of Land Management (BLM) regarding 43 CFR Parts 3160 and 3170 RIN 1004-AE53 BLM Waste Prevention, Production Subject to Royalties, and Resource Conservation Rescission or Revision of Certain Requirements. He stated that the majority of the comments would be in support of rescinding a rule that North Dakota has litigated against. There are still a couple of provisions that the Commission would be asking BLM to revise.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approves the submission by no later than April 23, 2018 of the following comments on 43 CFR Parts 3160 and 3170 RIN 1004-AE53 BLM Waste Prevention, Production Subject to Royalties, and Resource Conservation Rescission or Revision of Certain Requirements.

April 17, 2018

U.S. Department of the Interior

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Director (630), Bureau of Land Management
Mail Stop 2134LM, 1849 C St., N.W.
Washington, D.C. 20240
Attention: 1004-AE53.

Dear Bureau of Land Management:

The North Dakota Industrial Commission (NDIC) appreciates this opportunity to provide comments on the Bureau of Land Management proposal to revise the Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule (2016 final rule).

The NDIC specifically comments in support of the proposal as follows:

43 CFR 3162.3–1(j)—Drilling Applications and Plans

The NDIC **supports the proposal to rescind 43 CFR 3162.3–1(j)**. The NDIC already has rules to regulate gas capture, therefore the BLM is correct in concluding that there is limited (if any) benefit to the waste minimization plan requirement of § 3162.3–1(j).

43 CFR 3179.7—Gas Capture Requirement

The NDIC **supports the proposal to rescind 43 CFR 3179.7 and replace** the 2016 final rule's capture percentage requirements and address the routine flaring of associated gas by deferring to State or tribal regulations where possible and codifying the familiar NTL–4A standard for royalty free flaring as a backstop where no applicable state or tribal regulation exists. The NDIC already has rules to regulate routine flaring of associated gas.

43 CFR 3179.8—Alternative Capture Requirement

The NDIC **supports the proposal to rescind 43 CFR 3179.8**. The NDIC already has rules to regulate gas capture. The BLM is correct in concluding that if § 3179.7 is rescinded, there is no need for § 3179.8

43 CFR 3179.11—Other Waste Prevention Measures

The NDIC **supports the proposal to rescind 43 CFR 3179.11**. The NDIC already has rules for limiting production in order to prevent waste. The BLM is correct that § 3179.11 could easily be misread to indicate that the BLM has plenary authority to curtail production or delay or condition APDs regardless of the circumstances.

43 CFR 3179.12—Coordination with State Regulatory Authority

The NDIC **supports the proposal to rescind 43 CFR 3179.12**. Because the BLM is proposing to revise part 3179 in a manner that defers to state and tribal requirements with respect to the routine flaring of associated gas, there is less concern that part 3179 could be applied in ways that state regulatory agencies find to be inappropriate. The NDIC appreciates that the BLM recognizes the value of coordinating with state regulatory agencies, and agrees that it is no longer necessary to include a coordination requirement in part 3179.

43 CFR 3179.101—Well Drilling

The NDIC **supports the proposal to rescind 43 CFR 3179.101**. The NDIC already has rules for safely controlling gas reaching the surface as a normal part of drilling operations. The BLM is correct that § 3179.101 would be duplicative under revised part 3179.

43 CFR 3179.102—Well Completion and Related Operations

The NDIC **supports the proposal to rescind 43 CFR 3179.102**. The NDIC already has rules for safely controlling gas reaching the surface during well completion, post-completion, and fluid recovery operations after a well has been hydraulically fractured or refractured. The NDIC agrees with the BLM that applicable EPA regulations adequately address the loss of gas associated with unconventional well completions.

43 CFR 3179.201—Equipment Requirements for Pneumatic Controllers

The NDIC **supports the proposal to rescind 43 CFR 3179.201**. The NDIC agrees with the BLM that analogous EPA regulations will adequately address the loss of gas from pneumatic controllers, many operators will adopt low-bleed pneumatic controllers even in the absence of §3179.201 requirements, and the oil and gas exploration and production industry continues to pursue reductions in methane emissions on a voluntary basis.

43 CFR 3179.202—Requirements for Pneumatic Diaphragm Pumps

The NDIC **supports the proposal to rescind 43 CFR 3179.201**. The NDIC agrees with the BLM that the analogous EPA regulations in 40 CFR part 60, subpart OOOOa, will adequately address the loss of gas from pneumatic diaphragm pumps and industry is reportedly making ongoing efforts to retire old leak-prone equipment, including pneumatic pumps, on a voluntary basis.

43 CFR 3179.203—Storage Vessels

The NDIC **supports the proposal to rescind § 3179.203**. The NDIC agrees with the BLM that the analogous EPA regulations in 40 CFR part 60, subparts OOOO and OOOOa, will adequately address the loss of gas from storage vessels on Federal and Indian leases as more and more of them are covered by the EPA regulations over time.

43 CFR 3179.301 Through 3179.305—Leak Detection and Repair

The NDIC **supports the proposal to rescind §§ 3179.301 to 3179.305**. The NDIC agrees with the BLM that the analogous EPA regulations in 40 CFR part 60, subpart OOOOa, will adequately address the loss of fugitive gas on Federal and Indian leases over time, as new facilities come online and more and more existing facilities are reconstructed or modified and become covered by the EPA regulations. The NDIC also agrees that it is inappropriate to apply §§ 3179.301 to 3179.305 to all wellsites equally because wellsites that are not connected to deliver gas to market would not achieve any waste reduction because sales from the recovered gas would not be realized. The NDIC agrees with the BLM that the potential fugitive gas losses from marginal oil wells (with production rates fewer than 10 bbl per day or 15 bbl per day) would be substantial enough to warrant maintaining a LDAR program with semi-annual inspection frequencies.

43 CFR 3179.401—State or Tribal Requests for Variances from the Requirements of This Subpart

The NDIC supports the proposal to rescind § 3179.401 because it believes that the variance process established by this section will no longer be necessary in light of the BLM's proposal to codify NTL-4A standards and the NDIC strongly supports the BLM proposal to defer to State and tribal regulations for the routine flaring of associated gas, as explained in the discussion of proposed § 3179.201.

43 CFR 3179.2 Scope

The NDIC strongly recommends that this section of the proposed rule be rewritten to exclude: "State or private tracts in a federally approved unit or CA". Mineral ownership of North Dakota lands upon which oil and gas development has occurred consists of approximately 85% private lands, 9% federal lands, and 6% state lands. Many of the private lands in North Dakota upon which oil and gas development has occurred are split estate lands, with more than 30% of the potential development on

private surface involving federal minerals and therefore subject to the proposed rule. North Dakota has a unique history of land ownership that has resulted in a significant portion of the state consisting of split estate lands that could be adversely affected by the proposed rule. Unlike many western states that contain large blocks of unified federal surface and federal mineral ownership, the surface and mineral estates in North Dakota were at one time more than 97% private and state owned as a result of the railroad and homestead acts of the late 1800s. However, during the depression and drought years of the 1930s, numerous small tracts in North Dakota went through foreclosure. The federal government, through the Federal Land Bank and the Bankhead Jones Act, foreclosed on many farms taking ownership of both the mineral and surface estates. Many of the surface estates were later sold to private parties with some or all of the mineral estates retained by the federal government. This resulted in a very large number of small federally-owned mineral estate tracts scattered throughout western North Dakota. Those small federal mineral estates impact more than 30% of the oil and gas spacing units that are typically recognized as a communitized area (CA) by the BLM. There are a few large blocks of federal mineral ownership, for which the federal government has trust responsibility and also manages the surface estate through the U.S. Forest Service or Bureau of Indian Affairs. These are on the Dakota Prairie Grasslands in southern McKenzie County and northern Billings County as well as on the Fort Berthold Indian Reservation. See map, Exhibit 1. Even within those areas, federal mineral ownership is interspersed with a "checkerboard" of private and state mineral or surface ownership. Therefore, virtually all federal management of North Dakota's oil and gas producing region consists of some form of split estate. Because most wells in North Dakota's unconventional Bakken play have a two-mile horizontal lateral, the production of oil and gas from the various tracts is commingled down hole, and many have central tank batteries which commingle the production from the private, state, and federal mineral interests contained within the spacing unit. Under the proposed revision, many wells in established spacing units with minority federal interests in approved CA will continue to be subject to the rule.

43 CFR 3179.3 Definitions and Acronyms

The NDIC supports the proposal to keep, in their entirety, four of the 18 definitions that appear in existing § 3179.3: "Automatic ignition system," "gas-to-oil ratio," "liquids unloading," and "lost oil or lost gas." The NDIC also supports: changing "re injection" to "injection" in the definition for capture; changes to the definition for "gas well;" adding a new definition for "oil well;" adding a new definition of "waste of oil or gas;" and removing the following¹² definitions from the existing regulations because they are no longer needed because they pertain to requirements in existing part 3179 that the BLM is proposing to rescind: "Accessible component," "capture infrastructure," "compressor station," "continuous bleed," "development oil well," "high pressure flare," "leak," "leak component," "liquid hydrocarbon," "pneumatic controller," "storage vessel," and "volatile organic compounds (VOC)."

43 CFR 3179.6 Venting Limitations

The NDIC recommends that this section of the proposed rule be withdrawn and BLM work within NDIC regulations to prevent venting as an active participant in any hearings scheduled for venting exceptions on federal wells. The proposed rule revision duplicates, in part, North Dakota's prohibition of venting natural gas. However, the proposed rule revision allows venting in several explicit circumstances. The NDIC's regulations do not provide explicit exceptions when venting is allowed but allow the NDIC to grant an exception after notice and public hearing. Any exception granted by the BLM will likely create a direct conflict with North Dakota's ability to administer its oil and gas regulatory program.

Other Venting or Flaring

43 CFR 3179.201 Oil Well Gas

The NDIC supports proposed § 3179.201(a) intention to defer to state and tribal statutes and regulations that provide a reasonable assurance to the BLM that operators will not be permitted to engage in the flaring of associated gas without limitation and that the waste of associated gas will be controlled. The NDIC commends the BLM for analyzing the statutory and regulatory restrictions on venting and flaring in the 10 states constituting the top eight producers of Federal oil and the top eight producers of Federal gas, which collectively produce more than 99 percent of Federal oil and more than 98 percent of Federal gas and the explicit recognition of North Dakota's gas capture efforts. The NDIC agrees with the BLM finding that each of these states have statutory or regulatory restrictions on venting and flaring that are expected to constrain the waste of associated gas. The NDIC believes that the language of proposed § 3179.201(a) achieves that intent.

43 CFR 3179.301 Measuring and Reporting Volumes of Gas Vented and Flared

The NDIC supports proposed § 3179.301(a) that would require operators to estimate or measure all volumes of lost oil and gas, whether avoidably or unavoidably lost, from wells, facilities, and equipment on a lease, unit PA, or CA and report those volumes under applicable Office of Natural Resources Revenue (ONRR) reporting requirements. **The NDIC supports proposed § 3179.301(b)**, which would permit the operator to: (1) estimate or measure the vented or flared gas in accordance with applicable rules, regulations, or orders of the appropriate state or tribal regulatory agency; (2) estimate the volume of the vented or flared gas based on the results of a regularly performed GOR test and measured values for the volume of oil production and gas sales, to allow BLM to independently verify the volume, rate, and heating value of the flared gas; or (3) measure the volume of the flared gas. **The NDIC believes proposed § 3179.301(c) which would allow the BLM to require the installation of additional measurement equipment whenever it determines that the existing methods are inadequate to meet the purposes of part 3179 is too broad and vague, and is unnecessary.**

The State of North Dakota is ranked 2nd in the United States in production of oil and gas. North Dakota produces approximately 350 million barrels of oil per year and 400 billion cubic feet of natural gas per year.

The NDIC has jurisdiction to administer North Dakota's comprehensive oil and gas regulations found in North Dakota Administrative Code chap. 43-02-03. These rules include regulation of the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and chemical treatment of wells, including hydraulic fracturing; the spacing of wells; operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the ND UIC Program; and all other operations for the production of oil or gas.

As noted, the NDIC is supportive of many of the proposed changes. However, the potential adverse impacts of three of the provisions of the proposed rule on North Dakota's ability to administer its oil and gas regulatory program are significant and the State of North Dakota intends to defend its sovereign jurisdiction over oil and gas regulation in any manner necessary.

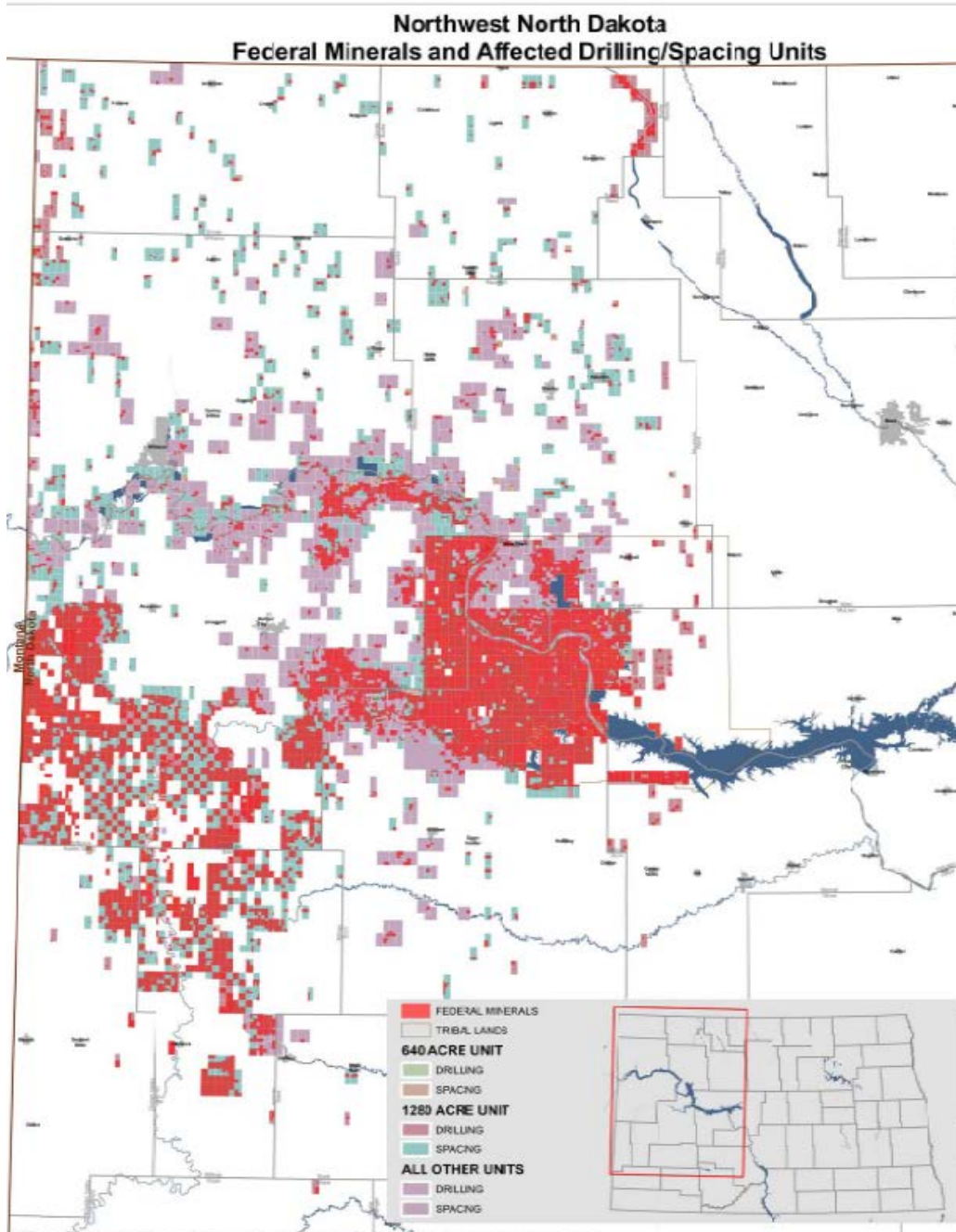
Sincerely,
North Dakota Industrial Commission

Doug Burgum, Chairman
Governor

Wayne Stenehjem
Attorney General

Doug Goehring
Agriculture Commissioner

Exhibit 1



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

Mr. Helms requested that the Commission approve a welcome letter for the 2018 Williston Basin Petroleum Conference that the Petroleum Council and the Commission, through the Geological Survey, are co-hosting. There are more than 1500 registered for the Conference.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approve a welcome letter for the 2018 Williston Basin Petroleum Conference. (A copy of the letter is available in the Commission files.) On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Under other business, Mr. Helms stated that Order 28926 and 28927 which were approved last month had typographical errors. The word “not” needs to be inserted on page 5 of the findings.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring to make a technical correction to the findings in the previously approved orders. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum noted that the Secretary of Interior may come to 2018 Williston Basin Petroleum Conference. It would be great to have an individual that understands our topography and the issues that we are addressing. Mr. Helms stated that if he is able to attend it will be a good opportunity follow up on the right of way issues.

Governor Burgum commended Mr. Helms and his staff, including Kevin Connors, on being the first state to receive Class VI primacy.

The Commission took a temporary recess while they relocated to the Governor’s Conference Room.

The Commission reconvened in open session at 1:05 p.m. in the Governor’s Conference Room.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that pursuant to 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 into 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 Case No. 09-2018-CV-00089, Paul Sorum et.al. vs. the 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 stated that the discussion during executive session must be limited to the announced purpose for entering into executive session which is estimated to last 30 minutes and the executive session will begin at 1:08 p.m. Following the executive session the Commission will reconvene in open session.

EXECUTIVE SESSION

Members Present:
Governor Doug Burgum

Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Department of Mineral Resources Staff:
Lynn Helms Department of Mineral Resources
Bruce Hicks Department of Mineral Resources

Others in Attendance:

Brent Sanford Lt. Governor
Leslie Oliver Governor's Office
Jessie Pfaff Agriculture Department
Daniel Gaustad Special Assistant Attorney General
Andrea Pfennig Industrial Commission

Governor Burgum stated that the Industrial Commission meeting is reconvened at 2:01 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 Case No. 09-2018-CV-0008 and no other action is necessary other than the guidance that was provided during executive session.

WESTERN AREA WATER SUPPLY

Mr. Jaret Wirtz, Western Area Water Supply Authority (WAWSA), Todd Pokrzywinski, WAWSA, and Kim Schilke, WAWSA, joined the meeting.

Ms. Karlene Fine, Industrial Commission Executive Director/Secretary, gave a financial report on WAWSA for the month of March. (A copy of the report is available in the Commission files.)

Mr. Wirtz provided an update on WAWSA activities and reviewed the charts. (The update is available in the Commission files.) The handout included the following three charts:

- WAWSA Cumulative 2018 Actual and Budgeted Industrial Revenue - Thru March 2018
- 2018 WAWSA Industrial Water Sales YTD Year End - YTD Totals through March
- 2018 WAWSA Monthly Budgeted and Adjusted Industrial Sales Forecast

Mr. Wirtz noted that they are ahead of schedule through March and selling more than anticipated. If annual sales of \$20 million are achieved, \$6 million would be available for the Commission to apply to principal or put in reserves as deemed appropriate.

In response to a question, Mr. Wirtz stated that the demand for water and the amount being used per well is driving the increase in revenue.

Mr. Wirtz stated that he will be resigning as the WAWSA Executive Director in the near future. He introduced Todd Pokrzywinski who will be serving as the interim Executive Director and Kim Schilke, CFO, who joined the meeting by phone. He indicated that WAWSA is in a good position for 2018 and 2019 going forward with the number of take or pay contracts in place. He stated that all parties involved

in the baseline sales agreements have approved the amendment with no changes. The Commission should see the adjustment on the balance sheet in either May or June.

Mr. Wirtz stated they are continuing to develop plans to sell additional water including the Watford City reuse water. If they are able to do so, it may require an increase in the reimbursement rate for that area.

Mr. Wirtz also noted that WAWSA is in discussions with the Bank of North Dakota regarding some interim financing while they are getting their State Revolving Fund loan finalized. This is financing needed for domestic operations construction.

Governor Burgum thanked Mr. Wirtz for his service and getting WAWSA through the challenges of the past few years.

BANK OF NORTH DAKOTA

Mr. Eric Hardmeyer, Bank of North Dakota President, distributed the 2017 BND Annual Report and noted that it was focused on innovation. (A copy of the report is available in the Commission files.) He reviewed the highlights in the report. He also noted that this is the 14th year of record profits with \$145 million in income. He said this success is due to the great work by the Bank's employees. The Commission commended Bank management for another good year and asked that Mr. Hardmeyer convey to the Bank's employees their appreciation for a job well done.

Mr. Hardmeyer introduced Ms. Katie Williams with Eide Bailly to present the Independent Auditor's Report and Financial Statement - 12/31/17 (FASB.) (A copy of the report is available in the Commission files.) Ms. Williams indicated that their opinion is different because the Bank of North Dakota's audit is presented in accordance with both FASB and GASB standards. FASB is the standards followed by financial institutions and GASB relates to governmental entities. AICPA issued a technical bulletin in 2017 that addressed the standards to be used for governmental entities. Because these financial statements, that are included in the Annual Report, are presented in accordance with FASB guidelines, their opinion states that the statements presented are not in accordance with GASB and that the content is in accordance with FASB. With the exception to that issue, their opinion is a clean opinion on the financial statements and there are no findings.

Ms. Williams presented the audits of the Beginning Farmer Revolving Loan Fund and the Community Water Facility Loan Fund - 12/31/17. Both audits had an unmodified clean opinion with no findings. (Copies of the audits are available in the Commission files.)

Mr. Todd Steinwand, Bank of North Dakota, discussed with the Commission the following proposed amendments to the General Loan Policy Programs: (Copies of the proposed amendments are available in the Commission files.)

- Ag Pace - Increases the ceiling for the borrower's net worth from \$1,000,000 to \$1,500,000 and incorporates changes for the Production Enhancement Program (PEP) -- subsurface tiling
- Beginning Farmer Real Estate, Beginning Farmer Chattel, Family Farm Loan & Farm Operating - Increases the ceiling for the borrower's net worth from \$750,000 to \$1,500,000 and increases the maximum loan amount from \$500,000 to \$750,000.
- School Construction Assistance Revolving Loan Fund

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission adopt the recommendation of Bank of North Dakota management and approve the amendments to the General Loan Policy Programs as presented contingent upon Bank Advisory Board approval and review by the Credit Review Board. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Hardmeyer, Mr. Steinwand and Mr. Kirby Evanger presented the First Quarter 2018 Performance Highlights. (The Performance Highlights document is available in the Commission files.)

Mr. Hardmeyer distributed the non-confidential Bank of North Dakota Advisory Board February 22, 2018 meeting minutes.

Mr. Hardmeyer and Mr. Tim Porter, Bank of North Dakota, provided information on the FFELP student loan sale. The FFELP Sale to North Texas worksheet was distributed. (The worksheet is available in the Commission files.) The estimated gain on the sale was projected to be \$4,619,209. The actual gain on the sale was \$4,478,424.

Governor Burgum closed the meeting at 3:12 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 DeMinimis Cap Resolution
- Consideration of Bank of North Dakota Loan Applications
- Presentation of the following reports:
 1. Non-Accrual Loans Quarterly Recap/Detail
 2. Problem Loans - Adversely Classified Quarterly Recap
 3. Loan Charge-Offs and Recoveries Y.T.D. 03-31-18
- Presentation of BND Advisory Board confidential February 22, 2018 minutes

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
Tim Porter Bank of North Dakota

Others in Attendance:

Leslie Oliver Governor's Office
Jessie Pfaff Agriculture Department

Following the confidential portion of the meeting, the Commission reconvened in non-confidential session at 3:38 p.m. and the public was invited to return. Governor Burgum stated that during its executive session the Commission considered two Bank of North Dakota loan applications and **it had been moved and seconded that the Bank of North Dakota be authorized to participate in loans identified as Attachments 17 and 18. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

HOUSING FINANCE AGENCY

Ms. Jolene Kline, Housing Finance Agency Executive Director, presented the Housing Finance Agency (HFA) First Quarter 2018 Report. (A copy of the report is available in the Commission files.)

Ms. Kline noted that following the completion of the quarterly report HFA received final approval from the Department of Human Services for the Landlord Risk Mitigation Program. This provides \$150,000 to help incentivize landlords to rent to people with behavioral health or have other issues that receive support services.

Ms. Kline stated that HFA is an approved Ginnie Mae seller/servicer. HFA has had discussions with the Bank of North Dakota on the potential securitization of \$104,000,000 of the Bank's residential loans. The loans would be securitized with Ginnie Mae, priced out on the marketplace, and proceeds received would go back to the Bank. HFA would service the loans. She stated that this is something that HFA is willing to do. HFA already has a large servicing portfolio. HFA has done 26 similar Ginnie Mae transactions since 2011 totaling \$233,000,000. Mr. Hardmeyer stated that as the Bank looks at its loan deposit ratio and does planning for the future, this is an opportunity the Bank would like to further investigate. By selling a portion of their residential portfolio, equity would go back to the Bank and servicing would stay in the state. This is an idea of how agencies can collaborate. Ms. Kline indicated that this is an opportunity to bring in private capital and free up state deposits for the Bank's use.

Ms. Kline presented the NDHFA Advisory Board recommendation for approval of the 2019 Low Income Housing Tax Credit (LIHTC) Qualified Allocation Plan. (The memorandum summarizing the changes in the Plan is available in the Commission files.) She noted that \$3.4 million will be available for allocation in September.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Housing Finance Agency Advisory Board and approve the 2019 Low Income Housing Tax Credit (LIHTC) Qualified Allocation Plan. (A copy of the Plan is available in the Commission files.) On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Kline provided a report on the 2018 Housing Trust Fund Allocation Plan. (A copy of the Plan is available in the Commission files.) The proposed changes to the Housing Trust Fund Allocation Plan mirror the Low Income Housing Tax Credit Allocation plan. She indicated the revisions to this plan do not require Industrial Commission approval because it is incorporated into the ND Department of Commerce State's Annual Action plan. The Department of Commerce is currently holding its 30 public comment period on the Department of Commerce State's Annual Action plan. It will then be forwarded to HUD and they have 45 days to review it. If there is no action by HUD within 45 days, it automatically becomes final. North Dakota will receive \$3 million of funding. HUD requires that units that benefit from this must be targeted to 30% or less of area median income.

Ms. Kline presented the HFA Advisory Board's recommendation for approval of the 2018 Helping HAND Awards. This funding comes from the Agency's capital (Agency earnings) -- not from the General Fund. Because of the across-the-board budget cuts made by the Legislature the Agency's authority to expend funds for this grant program had been reduced from \$250,000 to \$200,000.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Housing Finance Agency Advisory Board and approve the 2018 Helping HAND Awards as follows:

- **Southeastern ND Community Action Agency, Fargo, \$56,700.**
- **Red River Valley Community Action, Grand Forks, \$30,595.**
- **Community Action Partnership, Minot, \$24,389.**
- **Community Action Partnership, Dickinson/Williston, \$19,851.**
- **Dakota Prairie Community Action Agency, Devils Lake, \$21,924.**
- **Community Action Region VI, Jamestown, \$15,442.**
- **Trenton Indian Service Area, Trenton, \$7,333.**
- **Turtle Mountain Band of Chippewa, Belcourt, \$7,333.**
- **Spirit Lake Tribal Housing, Fort Totten, \$7,333.**
- **Lake Agassiz Habitat for Humanity, Fargo, \$4,000.**
- **Red River Valley Habitat for Humanity, Grand Forks, \$3,500.**
- **Rebuilding Together, Fargo, \$800.**
- **Rebuilding Together, Mandan, \$800.**

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

Ms. Kline presented the HFA Advisory Board's recommendation on the annual review of income limits for single family programs based on HUD guidelines.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Housing Finance Agency Advisory Board and approve the income limits effective May 1, 2018:

- **FirstHome programs (as stated in Exhibit 1 - Program Directive 110)**
- **ND Roots Mortgage Loan Program (as stated in Exhibit 2)**
- **Downpayment and Cost Assistance (DCA) Program (as stated in Exhibit 3)**

(Exhibits 1 - 3 are available in the Commission files)

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

Ms. Kline presented the HFA Advisory Board's recommendations on the annual review of acquisition cost limits for single family programs based on Federal Housing Administration regulations. She noted that the acquisition cost limits are going up across the State with Williams County seeing the largest increase.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Housing Finance Agency Advisory Board and approve the Acquisition Cost Limits for the FirstHome Standard, Start, HomeAccess, and DCA programs as stated in Program Directive 111, effective May 1, 2018. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously. (Program Directive 111 is available in the Commission files.)

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approve the following Resolution of Appreciation for Gerald Eid:

Resolution of Appreciation

Whereas, Gerald Eid has served as a member of the Housing Finance Agency Advisory Board since 1994 and Chairman for over 17 years; and

Whereas, Under Jerry's leadership the Housing Finance Agency identified and developed new opportunities for financing both single family and multi-family housing such as the Housing Incentive Fund, Start, DCA and Roots Programs; and

Whereas, Over the years Jerry committed many hours to the goal of making affordable housing available to North Dakotans, and

Whereas, Jerry's thoughtful counsel and willingness to assist the Housing Finance Agency in all facets of its operations over the past two decades has been valuable to the Agency and an overall benefit to the State of North Dakota;

Now, therefore, the Industrial Commission hereby thanks Gerald Eid for his years of service to the Housing Finance Agency, the Industrial Commission and to the State of North Dakota and all its citizens and wishes him the very best for the future.

Adopted this 17th day of April, 2018

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

Ms. Kline reported that HFA has issued a Declaration of Intent to Issue Multifamily Revenue Bonds. This will be in an amount not to exceed \$11 million to acquire Community Homes I and II in Fargo. If this financing goes forward the Commission will need to approve the sale of the bonds.

NORTH DAKOTA PUBLIC FINANCE AUTHORITY

Ms. DeAnn Ament, Pubic Finance Authority Executive Director, provided a series resolution for the issuance of up to \$200,000,000 North Dakota Public Finance Authority State Revolving Fund Program Bonds.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approve the following Resolution For Up To \$200,000,000 North Dakota Public Finance Authority State Revolving Fund Program Bonds.

SERIES RESOLUTION FOR UP TO
\$200,000,000
NORTH DAKOTA PUBLIC FINANCE AUTHORITY
STATE REVOLVING FUND PROGRAM BONDS

WHEREAS, the North Dakota Public Finance Authority (the “Authority”) is duly constituted as an instrumentality of the State of North Dakota exercising public and governmental functions under the operation, management and control of the Industrial Commission of North Dakota (the “Industrial Commission”), pursuant to Chapter 6-09.4, North Dakota Century Code (the “Act”);

WHEREAS, pursuant to the Act, the Authority is authorized to issue bonds and to make loans to political subdivisions of the State of North Dakota and certain other entities through the purchase of municipal securities and other obligations;

WHEREAS, the Legislative Assembly of North Dakota has established a revolving loan fund (the “Clean Water State Revolving Fund” or “Clean Water SRF”) pursuant to Chapter 61-28.2, North Dakota Century Code (the “Clean Water SRF Act”) to be maintained and operated by the North Dakota Department of Health (the “Department”) to provide for loans for the design, construction and rehabilitation of wastewater treatment facilities and certain other activities in accordance with Title VI of the Clean Water Act (the “Clean Water Program”);

WHEREAS, the Legislative Assembly of North Dakota has established a revolving loan fund (the “Drinking Water State Revolving Fund” or “Drinking Water SRF”) pursuant to Chapter 61-28.1, North Dakota Century Code (the “Drinking Water SRF Act”) to be maintained and operated by the Department to provide for loans for expenditures on public water systems and certain other activities in accordance with the Safe Drinking Water Act (the “Drinking Water Program”);

WHEREAS, the Authority has previously issued and there are outstanding under the Drinking Water SRF and Clean Water SRF the State Revolving Fund Program Bonds, Series 1998A, Series 2005A, Series 2008A, Series 2011A, Series 2012A, Series 2012B, Series 2015A and Series 2016A (together, the “Outstanding Bonds”);

WHEREAS, the Outstanding Bonds are secured by an Amended and Restated Master Trust Indenture dated as of July 1, 2011, as amended by a First Supplemental Master Trust Indenture dated as of July 1, 2015 (the “Master Trust Indenture”), as provided therein;

WHEREAS, the Master Trust Indenture authorizes the issuance of bonds in one or more series pursuant to a Series Resolution authorizing each series;

WHEREAS, the Industrial Commission has determined that, subject to the conditions described herein, it is necessary and expedient that the Authority issue at this time a series of tax-exempt bonds to be designated “North Dakota Public Finance Authority State Revolving Fund Program Bonds, Series 2018A ” (the “Series 2018A Bonds”) to provide additional funds for the Clean Water Program and Drinking Water Program to provide financing for loans made or to be made to various political

subdivisions of the State of North Dakota and other eligible borrowers whose applications may be approved from time to time (together the “Borrowers”) through the purchase of debt obligations issued by such Borrowers (the “Municipal Securities”); and

WHEREAS, the Series 2018A Bonds are sometimes referred to herein as the “Bonds”; and

WHEREAS, there have been presented to this Commission, or are on file in the office of the Executive Director of the Authority, copies of the following documents: (i) the Master Trust Indenture; (ii) the form of Undertaking to Provide Continuing Disclosure (the “Continuing Disclosure Undertaking”) to be executed by the Executive Director; and (iii) forms of Loan Agreements (the “Loan Agreements”) between the Authority and the Borrowers;

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

ARTICLE I

Authority and Definitions

Section 1.01. Series Resolution. This Series Resolution is adopted in accordance with the provisions of Sections 2.01 and 2.03 of the Master Trust Indenture and pursuant to the authority contained in the Act, the Clean Water SRF Act and the Drinking Water SRF Act. It is hereby determined pursuant to the Act that the reason for the issuance of the Series 2018A Bonds and the purposes thereof are, with respect to the Series 2018A Bonds, to provide financing for loans to Borrowers through the purchase of Municipal Securities for essential projects at borrowing costs substantially below the costs available to the Borrowers in the private bond markets.

Section 1.02. Definitions. All terms defined in Article I of the Master Trust Indenture or in the Act shall have the same meanings, respectively, in this Series Resolution and with respect to the Series 2018A Bonds as such terms are given in said Article I of the Master Trust Indenture or the Act.

ARTICLE II

Authorization of Series 2018A Bonds

Section 2.01. Authorization of Series 2018A Bonds. Pursuant to the Master Trust Indenture, a Series of State Revolving Fund Program Bonds to be designated as the “Series 2018A Bonds” is hereby created and authorized to be issued in such aggregate principal amount as the Executive Director may determine, but not to exceed \$200,000,000.

Section 2.02. Purposes. The Series 2018A Bonds are being issued to provide funds to be loaned to Borrowers by purchasing the Municipal Securities issued or to be issued by Borrowers and to pay costs of issuance and to reimburse funds previously allocated to such purpose.

Section 2.03. Date, Payment Dates and Series 2018A Maturities. The Series 2018A Bonds shall be dated as of the date of delivery, or such other date as the Executive Director may determine, except that Series 2018A Bonds issued on or subsequent to the first interest payment date shall be dated as of the most recent date to which interest has been duly paid or provided for. The Series 2018A Bonds shall bear interest payable semiannually on April 1 and October 1 in each year, commencing October 1, 2018. The Series 2018A Bonds shall mature on October 1 in each of the years and in the principal amounts as the Executive Director may determine, provided that the final maturity shall not be later than October 1, 2038.

Section 2.04. Sinking Fund Installments. The Series 2018A Bonds maturing on any date or dates (the “Term Bonds”) may be subject to mandatory redemption prior to their stated maturity by payment of Sinking Fund Installments, upon notice as provided in Article III of the Master Trust Indenture, on October 1 in each of the years and amounts as follows, in each case at a redemption price of 100% of the principal amount of such Term Bonds or portions thereof to be so redeemed, together with accrued interest to the redemption date on such mandatory redemption dates and in such amounts as the Executive Director may determine.

Section 2.05. Optional Redemption. The Series 2018A Bonds identified by the Executive Director shall be subject to redemption and prior payment at the option of the Authority on October 1 of the year designated by the Executive Director and on any date thereafter in whole or in part in such amounts from such maturities as the Authority may determine and by lot within a maturity at the redemption prices determined by the Executive Director together with accrued interest to the redemption date.

Section 2.06. Interest Rates. The Series 2018A Bonds shall bear interest at the rates per annum determined by the Executive Director, but not to exceed a true interest cost of 4.50%.

Section 2.07. Denominations, Numbers and Letters. Each Series 2018A Bond shall be in an integral multiple of \$5,000 and shall be numbered separately from R-1 consecutively upwards in order of issuance.

Section 2.08. Sale of Bonds; Acceptance of Offer. The Series 2018A Bonds shall be sold on the basis of competitive bids. Upon receipt of an offer for the purchase of Series 2018A Bonds which she determines to be acceptable, the Executive Director is authorized to execute a bond purchase agreement with the successful bidder.

Section 2.09. Official Statement. The Executive Director shall prepare a Preliminary Official Statement of the Authority in respect to the Series 2018A Bonds, in substantially the form of the draft Preliminary Official Statement on file in the office of the Executive Director, and a final Official Statement shall be distributed with such changes, omissions, insertions and revisions as the Executive Director shall deem advisable in order to make such Official Statement a complete and accurate disclosure of all material facts to prospective purchasers of the Series 2018A Bonds.

Section 2.10. Loan Agreements. The forms of Loan Agreements proposed to be entered into between the Authority and the Borrowers are hereby approved in substantially the forms 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.

Section 2.11. Letter of Representations. The form of Blanket Letter of Representation heretofore executed by the Authority to Depository Trust Company is hereby confirmed and said Blanket Letter of Representation shall be applicable to the Series 2018A Bonds.

Section 2.12. Continuing Disclosure. The form of Continuing Disclosure Undertaking in substantially the form on file is approved and shall be executed by the Executive Director in substantially the form on file with all such changes as the Executive Director may approve, which approval shall be conclusively evidenced by the execution thereof. The Continuing Disclosure Undertaking shall constitute a contractual obligation of the Authority as provided therein.

Section 2.13. Mandatory Redemption. The Series 2018A Bonds shall be subject to mandatory redemption to the extent that the Executive Director determines such a provision to be necessary to comply with the provisions of Section 149(f) of the Internal Revenue Code.

ARTICLE III

Use of Proceeds of Bonds; Allocations

Section 3.01. Allocations. Pursuant to Section 4.01 of the Master Trust Indenture, the Commission specifies that the Clean Water Portions and the Drinking Water Portions of each scheduled payment of principal and interest on each maturity of the Series 2018A Bonds shall be as determined by the Executive Director to reflect (i) that the Series 2018A Bonds issued for the Clean Water Program loans are allocated to the Clean Water Portion as provided in the Master Trust Indenture, and (ii) that the Series 2018A Bonds issued for Drinking Water Program loans are allocated to the Drinking Water Portion as provided in the Master Trust Indenture. Within each of the Drinking Water Portions and Clean Water Portions of principal and interest payments on the Series 2018A Bonds, the Executive Director shall determine the State Match Portion and Leveraged Portion as provided in the Master Trust Indenture. The final percentages, based on the sale results and federal regulations, shall be certified by the Executive Director to the Trustee, subject to modification pursuant to an Allocation Order under the Master Trust Indenture.

Section 3.02. Application of Proceeds. The proceeds of the Series 2018A Bonds shall initially be deposited in the Funds and Accounts established under the Master Trust Indenture as follows:

- (a) A portion of the accrued interest, if any, on the Series 2018A Bonds shall be deposited in the Leveraged Bond Accounts of the Drinking Water Bond Fund and Clean Water Bond Fund, and any remainder of the accrued interest on the Series 2018A Bonds shall be deposited as determined by the Executive Director. The amounts shall be determined by the Executive Director.
- (b) Amounts determined by the Executive Director shall be deposited in the Clean Water Administration Fund and Drinking Water Administration Fund for payment of the Costs of Issuance of the Series 2018A Bonds and other authorized purposes as allocated by the Executive Director.
- (c) The remaining proceeds of the Series 2018A Bonds shall be deposited in the State Match and Leveraged Loan Accounts of the Drinking Water Loan Fund and the State Match and Leveraged Loan Accounts of the Clean Water Loan Fund and to reimburse other Funds and Accounts for amounts drawn to fund loans, all as determined by the Executive Director.
- (d) The Executive Director may on behalf of the Authority issue such instructions to the Trustee as she may deem necessary or appropriate to adjust the balances on deposit in the Funds and Accounts under the Master Trust Indenture to reflect the proper loan sources and other accounting matters consistent with the Master Trust Indenture and federal regulations and to determine the appropriate amounts in each of the Funds and Accounts at the time of delivery of the Series 2018A Bonds. All such instructions shall be reported to this Commission.

It is hereby determined that, because a reserve fund is not reasonably required for the Series 2018A Bonds under Section 148 of the Internal Revenue Code, investment of additional deposits to the

Reserve Funds under the Master Trust Indenture would be restricted as to yield, the Series 2018A Bonds shall not be Covered Bonds under the Master Trust Indenture and no deposits shall be made to the Clean Water Reserve Fund or Drinking Water Reserve Fund. The procedures for requesting funds from the Legislature under Sections 5.06 and 6.06 of the Master Trust Indenture do not apply to the Series 2018A Bonds.

ARTICLE IV

Form, Execution and Other Details of Bonds

Section 4.01. Form of Bond. The Series 2018A Bonds, the Registrar's Authentication Certificate, and the form of assignment shall be in substantially the form set forth in Exhibit A to the Master Trust Indenture, with all such insertions as may be consistent with this Series Resolution.

Section 4.02. Execution and Delivery. The Series 2018A Bonds shall be executed and delivered as provided in the Master Trust Indenture.

Section 4.03. Uses of Securities Depository; Book-Entry Only System. The provisions of this Section shall take precedence over the provisions of the Master Trust Indenture to the extent they are inconsistent therewith.

(a) The Depository Trust Company ("DTC") has agreed to act as securities depository for the Series 2018A Bonds, and to provide a Book-Entry Only System for registering the ownership interests of the financial institutions for which it holds the Series 2018A Bonds (the "DTC Participants"), and for distributing to such DTC Participants such amount of the principal and interest payments on the Series 2018A Bonds as they are entitled to receive, for redistribution to the beneficial owners of the Series 2018A Bonds as reflected in their records (the "Beneficial Owners").

(b) Initially, and so long as DTC or another qualified entity continues to act as securities depository, the Series 2018A Bonds shall be issued in typewritten form, one for each maturity in a principal amount equal to the aggregate principal amount of each maturity, shall be registered in the name of the securities depository or its nominee, and shall be subject to the provisions of this Section. While DTC is acting as the securities depository, the Series 2018A Bonds shall be registered in the name of DTC's nominee, CEDE & CO; provided that upon delivery by DTC to the Authority and the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of CEDE & CO., the words "CEDE & CO." in this Resolution shall refer to such new nominee of DTC.

With respect to Series 2018A Bonds registered in the name of a securities depository or its nominee, the Authority and the Trustee shall have no responsibility or obligation to any DTC Participant or other person with respect to the following: (1) the accuracy of the records of any securities depository or its nominee with respect to any ownership interest in the Series 2018A Bonds, (ii) the delivery to any DTC Participant or any other person, other than DTC, of any notice with respect to the Series 2018A Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than DTC, of any amount with respect to the principal or interest on the Series 2018A Bonds. The Trustee shall pay all principal of and interest on the Series 2018A Bonds only to or upon the order of DTC, and all such payments shall be valid and effective to fully satisfy and discharge the Authority's obligations with respect to the principal and interest on the Series 2018A Bonds to the extent of the sum or sums so paid. So long as the Book-Entry Only System described in this Section is in effect, no person other than DTC shall receive an authenticated Series 2018A Bond.

(c) Upon receipt by the Authority and the Trustee of written notice from the securities depository to the effect that it is unable or unwilling to discharge its responsibilities under the Book-Entry Only System, the Trustee shall issue, transfer and exchange Series 2018A Bonds of the initial series as requested by the securities depository in appropriate amounts, and whenever the securities depository requests the Authority and the Trustee to do so, the Authority and the Trustee shall cooperate with the securities depository in taking appropriate action after reasonable notice (i) to arrange for a substitute depository willing and able, upon reasonable and customary terms, to maintain custody of the Series 2018A Bonds, or (ii) to make available Series 2018A Bonds registered in whatever name or names the Beneficial Owner registering ownership, transferring or exchanging such Series 2018A Bonds shall designate, in accordance with clause (f) or clause (g) below, whichever is applicable.

(d) In the event the Authority determines that it is in the best interests of the Beneficial Owners that they be able to obtain printed Series 2018A Bonds, the Authority may so notify the securities depository and the Trustee, whereupon the securities depository shall notify the Beneficial Owners of the availability through the securities depository of such printed Series 2018A Bonds. In such event, the Authority shall cause to be prepared and the Trustee shall issue, transfer and exchange printed Series 2018A Bonds, fully executed and authenticated, as requested by the securities depository in appropriate amounts and, whenever the securities depository requests, the Authority and the Trustee shall cooperate with the securities depository in taking appropriate action after reasonable notice to make available printed Series 2018A Bonds registered on the Bond Register in whatever name or names the Beneficial Owners entitled to receive Series 2018A Bonds shall designate, in accordance with clause (f) or clause (g) below, whichever is applicable.

(e) Notwithstanding any other provisions of this Resolution to the contrary, so long as any Series 2018A Bond is registered in the name of a securities depository or its nominee, all payments of principal and interest on the Series 2018A Bond and all notices with respect to the Series 2018A Bond shall be made and given, respectively, to the securities depository as provided in the Blanket Representation Letter given to it by the Authority.

(f) In the event that the Book-Entry Only System established pursuant to this Section is discontinued, except as provided in clause (g), the Series 2018A Bonds shall be issued through the securities depository to the Beneficial Owners.

(g) In the event of termination of the Book-Entry Only System, the Authority shall have the right to terminate, and shall take all steps necessary to terminate, all arrangements with the securities depository described herein, and thereafter shall issue, register ownership of, transfer and exchange all Series 2018A Bonds as provided in Article II hereof. Upon receipt by the securities depository of notice from the Authority, the securities depository shall take all actions necessary to assist the Authority and the Trustee in terminating all arrangements for the issuance of documents evidencing ownership interests in the Series 2018A Bonds through the securities depository. Nothing herein shall affect the securities depository's rights under clause (e) above.

ARTICLE V Special Covenants

The Commission and the Authority covenant and agree with the persons who at any time are Holders and Owners of the Series 2018A Bonds that so long as any Series 2018A Bonds remain outstanding and unpaid:

Section 5.01. Observe Master Trust Indenture, Series Resolution and Loan Agreements. The Commission and the Authority will faithfully keep and observe all the terms, provisions and covenants contained in the Master Trust Indenture, this Series Resolution and the Loan Agreements.

Section 5.02. Maintenance of Tax-Exempt Status. Neither the Commission nor the Authority shall take, or permit the Political Subdivision to take, any action that would cause the Series 2018A Bonds to be “private activity bonds” within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended. The Commission and the Authority shall comply with all the rebate requirements imposed under Section 148(f) of the Internal Revenue Code of 1986, as amended, and regulations thereunder, which are necessary to preserve the tax exempt status of the Series 2018A Bonds, including (if applicable) the requirement to make periodic calculations of the amount subject to rebate thereunder and the requirement to make all required rebates to the United States. The Authority agrees to use any moneys on deposit in any Fund or Account maintained under the Master Trust Indenture to pay any such rebate (or penalty in lieu thereof) when due to the extent permitted by the Master Trust Indenture. In addition, the Authority shall make no investment of funds or take or permit the Political Subdivision to take any action that would cause the Series 2018A Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations thereunder. The Executive Director is hereby authorized to make on behalf of the Authority any elections under the provisions of Section 148 of the Internal Revenue Code of 1986 and regulations thereunder as she may deem appropriate. All terms used in this Section 5.02 shall have the meanings provided in the Internal Revenue Code of 1986, as amended, and regulations thereunder. The Executive Director shall execute any certificates as may be necessary or appropriate to establish the tax exempt status of the Series 2018A Bonds.

ARTICLE VI
Miscellaneous

Section 6.01. Amendments. This Series Resolution may be amended as provided in the Master Trust Indenture.

Section 6.02. Determinations. All determinations of the Executive Director required or permitted to be made hereunder shall be in writing, and the Executive Director shall file a copy thereof with the Trustee and the Secretary of the Industrial Commission.

Section 6.03. Effective Date. This Series Resolution is effective immediately.

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

Ms. Ament noted that the Clean Water and Drinking Water Programs are anticipating (not confirmed yet) receipt of an increased level of grant funding from the EPA for 2018. The Clean Water Program will increase from \$6.4 million to \$8.4 million and the Drinking Water Program will increase by \$3 million to an approximate amount of \$11 million.

NORTH DAKOTA STATE MILL

Mr. Vance Taylor, President and CEO of the State Mill, gave a presentation on the third quarter report as follows: (A complete copy of the report is available in the Commission files.)

**North Dakota Mill
 Review of Operations
 3rd Quarter Ended 3/31/18**

SUMMARY

Profits for the 3rd Quarter of the year were \$3,211,200 compared to \$2,432,884 last year. Operating activity for the nine months ending March resulted in a profit of \$10,018,792 compared to \$8,141,195 last year, an increase of 23%.

	<u>Quarter</u>		<u>Year-to-Date</u>	
	<u>3/18</u>	<u>3/17</u>	<u>3/18</u>	<u>3/17</u>
Profits	3,211,200	2,432,884	10,018,792	8,141,195
Sales	84,695,675	72,483,286	254,551,475	214,342,162
Cwt. Shipped:				
Spring	3,522,785	3,222,865	10,630,811	9,784,444
% to Total	92.4%	90.9%	92.5%	91.3%
Durum	<u>288,454</u>	<u>324,325</u>	<u>864,338</u>	<u>932,951</u>
	<u>3,811,239</u>	<u>3,547,190</u>	<u>11,495,149</u>	<u>10,717,395</u>
Bulk Shipments	3,169,391	2,871,321	9,476,063	8,545,036
% to Total	83.1%	81.0%	82.4%	79.7%
Bag Shipments	604,698	637,863	1,908,260	
2,055,756				
% to Total	15.9%	18.0%	16.6%	19.2%
Tote Shipments	37,151	38,005	110,826	
116,603				
% to Total	1.0%	1.0%	1.0%	1.1%
Family Flour				
Shipments	60,605	65,713	276,185	220,547
% to Total	1.6%	1.9%	2.4%	2.1%
Organic Flour				
Shipments	38,260	34,589	115,880	115,885
% to Total	1.0%	1.0%	1.0%	1.1%
Grain Purchased:				
Spring	7,596,986	6,993,970	23,374,865	20,830,603
Durum	<u>645,617</u>	<u>552,341</u>	<u>1,959,102</u>	<u>1,787,636</u>
Total	<u>8,242,603</u>	<u>7,546,311</u>	<u>25,333,967</u>	<u>22,618,239</u>

SALES

3rd Quarter

Sales for the 3rd Quarter were \$84,695,675 compared to \$72,483,286 last year. Shipments of 3,811,239 cwts. are 264,049 cwts. above last year. Bag shipments for the 3rd Quarter are 604,698 cwts., which is 33,166 cwts. below last year's 3rd Quarter. Tote shipments for the 3rd Quarter are 37,151 cwts., which is 854 cwts. below last year. Family flour shipments reached 60,605 cwts., which is 7.8% below last year's 3rd Quarter.

Year-to-Date

Sales for the nine months ended March were \$254,551,475 compared to \$214,342,162 last year, an increase of 18.8%. Shipments of 11,495,149 cwts. are 777,754 cwts. above last year, an increase of 7.3%. This is a new record for 9 months of shipments. The average settled price of grain purchased increased \$1.01 per bushel from last year. Year-to-date bag shipments are 1,908,260 cwts., a decrease of 147,497 cwts. from last year. Tote shipments for the year are 110,826 cwts., which is 5,777 cwts. below last year. Family flour shipments for the nine months ended are 276,185 cwts., an increase of 25.2% from last year. Organic flour shipments were 115,880 cwts., a decrease of 5 cwts. from last year.

OPERATING COSTS

3rd Quarter

Operating costs for the 3rd Quarter were \$9,031,887 compared to \$7,928,401 last year, an increase of \$1,103,486. Operating cost per cwt. of production was \$2.37 compared to \$2.17 last year, an increase of 9.2%.

Year-to-Date

Year-to-date operating costs are \$25,588,348 compared to \$22,938,270 last year, an increase of 11.6%. Operating cost per cwt. of production for the nine months ended was \$2.22 compared to \$2.16 last year, an increase of 2.8%.

PROFITS

3rd Quarter

Profits for the 3rd Quarter were \$3,211,200 compared to \$2,432,884 last year. Gross margins as a percent of gross sales for the quarter were 14.8% compared to 14.5% last year.

Year-to-Date

Operating activity for the nine months ended March led to a profit of \$10,018,792 compared to \$8,141,195 last year. Year-to-date gross margins are 14.3% compared to 14.7% last year.

Risk Management Position

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

**Position Report
31-Mar-18**

Period	Hedge Ratio
May-18	0.9

July-18	1.0
Sept-18	1.0
Dec-18	1.0
Mar-19	0.9
Net Position	1.0

Mr. Taylor indicated that in response to the Commission’s suggestion the Mill had hired an NDSU student as an intern for the summer--one of Dr. Wilson’s students. One of the areas the intern will work with is the development and implementation of the Mill’s new technology to enhance grain customer service. This mobile technology will allow grain elevators to monitor their contract balances on a current basis and will allow for truck efficiency.

Mr. Taylor presented the following information on the proposed Phase II Shuttle Track and Grain Storage Capital Project:

Phase II Shuttle Track and Grain Storage \$19,665,000

This project completes the Enhanced High Speed Rail/Truck Receiving System Phase I project previously approved by the Industrial Commission. It will provide the necessary track space and additional storage required to unload 110 rail car shuttle trains. With the completion of this project, inbound rail rates and rail car demurrage will be reduced. Basis gains will increase and shuttle train unloading speed will be sufficient to qualify for destination efficiency payments.

The completion of this project includes:

- The addition of approximately 18,000 feet of track along the West side of Mill Road.
- The construction of two (or four) 250,000 bushel grain bins with conveyors.
- Increasing the width of the English Coulee culvert at Mill Road.
- Reopening 27th Avenue by reconstructing the West end of the road and culvert.
- Relocation of several utilities along Mill Road.
- Improved drainage in all new track areas along Mill Road.
- Realignment of the rail crossing at Mill Road and N 20th Street.

Benefits include:

- Strategic competitive advantages.
- Access to shuttle markets including Western North Dakota.
- Improvements in freight rates and basis.
- Reduced demurrage cost.
- Additional wheat storage and blending capabilities.

Project Cost

	500K Bu. Storage	1M Bu. Storage
- Total Project Cost	\$19,665,000	\$24,715,000

Estimated Yearly Payback

- Reduced demurrage expense	\$550,000	550,000
- Lower inbound freight	\$2,649,844	\$2,528,587
- Increased origin basis	\$951,456	\$951,456
- DEP payments	\$264,000	\$264,000
Total Payback	\$4,247,300	\$4,126,043

Payback Period	4.63 Years	5.99 Years
ROI	21.16%	16.69%

Dr. Bill Wilson, North Dakota Mill consultant, provided a presentation on the proposed ND Mill Shuttle Proforma. (A copy of the presentation is available in the Commission files.) His presentation included the Strategic Motivations for a Shuttle Reveal:

- Competitor Mills
- Shift in Wheat Production
- Shuttle Elevators and Trucks

Dr. Wilson discussed HRS Basis: 2018 Shuttle Rate vs Truck Comparisons; 2018 Shuttle Terms and Assumptions; Results: Base Case; and Sensitivities. He summarized his comments by stating:

- With expansion of the Mill, it is critical to create the ability to exploit the most attractive logistics possible.
- Including the option of rail shuttle inbound is an alternative that: Reduces truck congestion, increases the draw area for the mill, provides access to increased basis gains.
- Storage: 500,000 bushels is minimally necessary to receive 1 shuttle train; 1 million bushels gives greater flexibility and the ability to stage multiple shuttle trains to be received sequentially.
- Results indicate the project is financially justified with attractive payback, at least for the base case storage, and prospectively for 1 million bushel storage capacity.
- Competing mills (new and old) are adopting shuttle reveal and benefit from lower rates to Chicago and DEP's
- Strategic advantage of Central/West ND procurement. Quantity as wheat acres shift westerly; Periodic quality shortages in the east related to protein; vomitoxin; lower basis when PNW demand decreases.

Governor Burgum noted that this really isn't an option. If you want to be competitive in the industry, you need to have access to shuttle trains. Commissioner Goehring noted that the North Dakota Mill has a good performance history.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the North Dakota Mill is authorized to amend the FY2018 Capital Projects Budget and expend \$24,715,000 on the Phase II Shuttle Track and Grain Storage Project which includes 1,000,000 bushels of additional storage. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

In response to questions, Mr. Taylor stated the Mill will be borrowing from the Bank of North Dakota with repayment coming from Mill revenues. There was discussion on the level of debt and the terms of the borrowing from the Bank.

RENEWABLE ENERGY PROGRAM

Ms. Fine presented the Renewable Energy Fund Financial Report. (A copy of the report is available in the Commission files.) She noted that the uncommitted balance is currently \$3,100,000.

Ms. Andrea Pfennig, Deputy Industrial Commission Executive Director (formerly Renewable Energy Program staff) indicated that Jay Schuler, Renewable Energy Council Chairman, was unable to be at the meeting and asked that she present the Renewable Energy Council recommendation on the following Grant Round application:

R-036-B Low-Pressure Electrolytic Ammonia Production; Submitted by UND Energy and Environmental Research Center (EERC); Total project costs: \$3,164,010; Amount requested: \$437,000. This project will optimize the EERC-developed low-pressure electrolytic ammonia (LPEA) production process, with goals of demonstrating LPEA technical and economic viability and compatibility with renewable and/or off-peak electricity. This project will enable economically viable ammonia production at smaller, distributed-scale plants in response to local/regional demand. It will also accommodate intermittent operation; offering a cost-effective means of monetizing (and storing) renewable energy as ammonia.

In response to a question, Mr. Brian Kalk, EERC Director of Energy Systems Development, stated that U.S. Department of Energy really liked the commercialization component of this project.

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 “Low-Pressure Electrolytic Ammonia Production” and authorize the Industrial Commission Executive Director/Secretary to execute an agreement with the EERC to provide a total of Industrial Commission Renewable Energy Program funding in an amount not to exceed \$437,000. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Pfennig reviewed the proposed policy revisions to Sections 2.02 and 5.06 of the Renewable Energy Program policies recommended by the Renewable Energy Council. (A copy of the proposed changes is available in the Commission files.)

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Renewable Energy Council to revise portions of Sections 2.02 and 5.06 of the Renewable Energy Program policies to read as follows:

REC – 2.02 Eligible and ineligible projects. Any project proposing education, research, development, or marketing of renewable energy resources, materials or products, or advanced energy technology is eligible for a contract under this Program. In all cases, projects must demonstrate a high probability of advancing to a commercially viable stage supported by a road map to commercialization, must have significant involvement from a North Dakota private entity

and not be duplicative of other research or demonstration projects or technology in the Upper Great Plains Region. An entity may apply for grants for different phases of a project, provided appropriate benchmarks are in place and earlier phases have been deemed successful by the Council and Commission. The following are examples, in no particular order, of eligible projects

REC – 5.06 Disbursements of funds. Funds will be disbursed only after a contract has been executed. All disbursements will be made according to the schedule in the contract. Disbursements may be withheld if the Commission deems the grantee has not complied with these policies or the contract.

Projects involving research and development may fall into the following categories: early stage, commercialization ready, and technology deployment. Projects designated by the Council to meet the commercialization ready and technology deployment categories may receive a cooperative grant in which the recipient would pay back the award once certain measures of success have been met as defined below.

If an entity (with the exclusion of the Energy and Environmental Research Center, North Dakota universities and colleges, and political subdivisions) receives more than \$1,000,000 in funding, or receives direct benefit from Renewable Energy Development Funds by partnering with an excluded entity, within a five-year period through the Renewable Energy Program all future funding requests will be in the form of a cooperative grant.

A successful awardee has the following options for determining success, thereby triggering repayment. Once the cooperative grant becomes a loan, a payment schedule will be established. The options for determining success are:

Option 1

Loan to be made with a 0% interest rate with repayment to begin based on a ten-year amortization when the entity has sales that exceed \$5 million in any one year.

Option 2

Loan to be made with a 0% interest rate with repayment to begin based on a ten-year amortization when the entity is profitable for two consecutive years.

In both options, accrual basis financial statements prepared using generally accepted accounting principles provided by the awardee will be reviewed annually to determine if the threshold for repayment has been met. Once the loan terms have been established, suspension of payments may be made on a case-by-case basis. Notes will be secured as determined on a case-by-case basis by the Program's financial advisor (North Dakota Development Fund staff.)

If the company moves out of state or sells the technology developed with Renewable Energy Program funding to an out-of-state entity, the entire amount of the funding must be repaid at the time of the awardee's relocation or the sale of the technology along with an additional 4% of the funds received.

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

NORTH DAKOTA BUILDING AUTHORITY

Ms. Fine presented a resolution to name Joe Morrisette, Office of Management and Budget Director, and rename Karlene Fine, Industrial Commission Executive Director/Secretary as North Dakota Building Authority Authorized Officers.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approves the following resolution naming Joe Morrisette, Office of Management and Budget Director and renaming Karlene Fine, Industrial Commission Executive Director/Secretary, as North Dakota Building Authority Authorized Officers.

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 Pam Sharp, then Director of the Office of Management and Budget, and Karlene Fine, Industrial Commission Executive Director/Secretary as its Authorized Officers; and

WHEREAS, Pam Sharp has retired and Joe Morrisette has been named as Director of the Office of Management and Budget;

THEREFORE, BE IT RESOLVED:

- 1. The Commission names Joe Morrisette and renames 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 .**

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

Being no other business, Governor Burgum adjourned the meeting at 4:50 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary