

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on June 28, 2018 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also Present: Lt. Governor Brent Sanford
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 1:13 p.m. following the taking of photographs with Delores Hummel and the Commission took up Industrial Commission administrative business.

INDUSTRIAL COMMISSION ADMINISTRATION

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission June 5, 2018 non-confidential meeting minutes be approved as presented. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

HOUSING FINANCE AGENCY (HFA)

Ms. Jolene Kline, HFA Executive Director, presented a recommendation for the appointment of a Public Hearing Officer and Approval and Ratification of a Public Hearing Publication for a hearing to be held on July 9, 2018 at 10:00 a.m. CT regarding the issuance of bonds. She indicated that the bond proceeds would be used for the acquisition and rehabilitation of Community Homes 1 & 2, a 186 unit apartment complex located in Fargo, North Dakota. The issuance of tax exempt bonds is required in order for a project to qualify for a non-competitive 4% tax credit allocation. Based on the current underwriting of the application, the Agency anticipates the bond issuance to be \$9,250,000.

She distributed the following information regarding the project: The applicant, Integra Property Group, LLC, a Seattle based corporation, plans an acquisition/rehabilitation of Community Homes 1 (CH1) and Community Homes 2 (CH2). CH1 is a 90- unit project comprised of efficiency, two-bedroom and three-bedroom units and 88 of the units receive the benefit of HUD Section 8 Project Based Voucher (PBV). CH2 is a 96-unit project comprised of similar unit mix as CH1 and has all of the units covered under Section 8 PBV. The projects were originally constructed in 1970 and were rehabilitated in 1991. The capital improvements proposed total over \$38,000 per unit. Unit renovations include replacing flooring, tub surrounds, kitchen cabinets, countertops, and appliances. System replacements include heat boiler replacement and air conditioning units. The project scope includes the restoration of a community "club house" which is currently shuttered. This club house will house amenities such as free Wi-Fi access, laundry, community kitchen, fitness center, library, and a resident services director office. The restoration will facilitate opportunities to provide supportive services to tenants on site.

In response to a question, Ms. Kline stated that the hearing will be held at the Housing Finance Agency Bismarck Office and that individuals need to attend in person to present either oral or written comments.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission appoints Jolene Kline, Housing Finance Agency Executive Director, as the Industrial Commission's Public Hearing Representative for the July 9, 2018 public hearing on the proposed issuance of Multi-Family Revenue Bonds in an amount not to exceed \$11,000,000 and further that the Commission ratifies the publication of the Notice of Public Hearing. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum read the following Resolution into the record.

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

Resolution of Appreciation

Whereas, Delores Hummel began her career in state government in 1963 with the Public Welfare Board, now the Department of Human Services, and then subsequently moved to the North Dakota Housing Finance Agency where she has worked for 36 years; and

Whereas, Delores' attention to details and to making sure the work got done correctly has been of great value to the Agency, and

Whereas, Delores' ability to work with people and her commitment to serving the public in whatever position she has held is an inspiration to those who have had the privilege of working with her; and

Whereas, Delores has now decided that it is time to relax and spend more time with her many friends and her family--especially her grandchildren,

Now, therefore, the Industrial Commission hereby thanks Delores Hummel for her 55 years of service to the State of North Dakota and all its citizens and wishes her the very best in her retirement.

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

PUBLIC FINANCE AUTHORITY (PFA)

Ms. DeAnn Ament, PFA Executive Director, introduced Ms. Katie Williams of Eide Bailly. Ms. Williams presented the 2017 Public Finance Authority Audit. (A copy of the audit is available in the Commission files.) Ms. Williams stated that their firm had issued an unmodified opinion. There were no deficiencies in internal control. The federal program that was reviewed this year was Capitalization Grant for Clean Water State Revolving Fund. There were no findings for the program. Ms. Williams stated it was a clean audit report with no deficiencies.

Ms. Ament introduced Lisa Froelich, the other staff person for the PFA office, and Shannon Fisher from the Department of Health. Governor Burgum thanked the staff for their work and commended them on the results of the audit.

Ms. Ament presented the 2017 Annual Report. (A copy of the annual report is available in the Commission files.) She noted that while the Capital Financing Program did not issue any bonds last year, there is \$156 million of loans outstanding. The Disaster Loan Program did not have new loans as there were no disasters. However, there is approximately \$500,000 in outstanding loans for that program. The State Revolving Fund Program issued \$19 million in loans to 11 political subdivisions for Clean Water Program projects. Almost \$100 million in loans were issued to 20 political subdivisions for Drinking Water Program projects. Over \$1 billion of funds have been disbursed in total.

Ms. Ament presented the following Drinking Water State Revolving Fund Program loans for the Commission's consideration:

Central Plains Water District - \$5,000,000. Ms. Ament stated that this loan is a refinancing of five Rural Development Administration loans. The refinancing will reduce the terms of the loans by seven years, and the Central Plains Water District will save \$46,000 per year. The PFA Advisory Committee recommended approval. In response to a question, Ms. Ament stated that Central Plains Water District includes Sheridan, Eddy, and Foster Counties.

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

**RESOLUTION APPROVING
LOAN FROM DRINKING WATER STATE REVOLVING FUND**

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

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

WHEREAS, the Central Plains Water District (the "Political Subdivision") has requested a loan in the amount of \$5,000,000 from the Program to refinance five USDA-RD loans; and

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

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

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

- 1. The Loan is hereby approved, as recommended by the Advisory Committee.**
- 2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.**
- 3. The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities**

described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.

4. The Commission declares its intent pursuant to Treasury Regulations §1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

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

City of Fessenden - \$1,100,000. Ms. Ament stated that the City of Fessenden had previously been approved for a \$932,000 loan and is requesting an increase of \$168,000 for a total loan amount of \$1.1 million. This funding is for the construction of a water storage tank. The PFA Advisory Committee recommended approval.

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

**RESOLUTION APPROVING
LOAN FROM DRINKING WATER STATE REVOLVING FUND**

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

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

WHEREAS, the City of Fessenden (the "Political Subdivision") has requested a \$168,000 increase to their previously approved \$932,000 loan (total \$1,100,000) from the Program to finance the construction of a water storage tank; and

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

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

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

1. The Loan is hereby approved, as recommended by the Advisory Committee.
2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.
3. The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.

4. The Commission declares its intent pursuant to Treasury Regulations §1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

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

McLean-Sheridan Rural Water District - \$1,074,000. Ms. Ament stated that this loan is part of a \$3.7 million financing for a water tower, transmission lines, and booster station project in Turtle Lake. The State Water Commission is providing \$2.6 million for the project. The PFA Advisory Committee recommended approval of the loan.

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

**RESOLUTION APPROVING
LOAN FROM DRINKING WATER STATE REVOLVING FUND**

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

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

WHEREAS, the McLean Sheridan Rural Water District (the "Political Subdivision") has requested a loan in the amount of \$1,074,000 from the Program to finance a new Turtle Lake water tower; and

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

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

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

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

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

Northeast Regional Water District - \$3,000,000. Ms. Ament indicated that this loan would finance expansion of 250 miles of new or upsized mains to serve 200 connecting users and the cities of Langdon and Cando. Previously the rural water users had been using well water. She noted that this is a \$10.5 million project with \$7.5 million being provided by a Federal Municipal Rural and Industrial grant. The PFA Advisory Committee recommended approval.

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

**RESOLUTION APPROVING
LOAN FROM DRINKING WATER STATE REVOLVING FUND**

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

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

WHEREAS, the Northeast Regional Water District (the "Political Subdivision") has requested a loan in the amount of \$3,000,000 from the Program to finance system expansion; and

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

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

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

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

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

Northeast Regional Water District (refinance) - \$2,460,000. Ms. Ament stated that this loan would refinance \$2,460,000 of revenue bonds that were issued in 2013. This refinancing would reduce payments and the term of the outstanding debt by seven years. The PFA Advisory Committee recommended approval of the loan.

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

**RESOLUTION APPROVING
LOAN FROM DRINKING WATER STATE REVOLVING FUND**

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

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

WHEREAS, the Northeast Regional Water District (the "Political Subdivision") has requested a loan in the amount of \$2,460,000 from the Program to refinance their 2013 revenue bonds; and

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

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

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

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

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

Ms. Ament provided a memorandum regarding loans approved by the PFA Advisory Committee for the entities listed as follows:

Re: Horace, Clean Water State Revolving Fund - \$422,000
North Prairie Rural Water District, Drinking Water State Revolving Fund - \$450,000

Under current policy, the Public Finance Authority can make loans under the State Revolving Fund Program in an amount not to exceed \$1,000,000 and under the Capital Financing Program in an amount not to exceed \$500,000 without seeking the final approval of the Industrial Commission. Within this policy, once the loan has been approved, the Public Finance Authority is required to provide the details of the loan to the Industrial Commission. Accordingly, the Public Finance Authority and its Advisory Committee used this policy to approve the following loans.

The committee reviewed an application from the City of Horace requesting a \$422,000 loan under the Clean Water State Revolving Fund (CWSRF) Program to finance the replacement of cold water meters with remote read capable meters as well as new meters to those without meters and existing meters in new construction which will have a remote read transmitter installed. Total construction costs are estimated at \$422,000. The requested term for the loan is 10 years. The City will issue revenue bonds payable from water user fees and sales tax.

The committee reviewed an application from the North Prairie Rural Water District is requesting a \$450,000 loan under the Drinking Water State Revolving Fund (DWSRF) program to finance construction of 6" main alongside 3" main in a high growth area to maintain pressure and flows. Also, add a 12" main to the Silver Springs addition in Surrey to address low pressure issues. The entire project cost is \$1,565,124 with \$1,115,124 being provided by a State Water Commission grant. The requested loan term is 30 years. The District will issue revenue bonds payable with user fees.

The Public Finance Authority's Advisory Committee approved these loans at their June 21, 2018.

Governor Burgum encouraged the PFA and the Water Commission to share data so that a complete picture of each water project is available for decision making.

He noted that in regards to water projects funded by the Water Commission there are different match designations--rural program participants receive a higher match of 75% compared to municipal participants at 60%. There needs to be changes to the system so that projects are not being located just outside of city limits in order to get the higher percentage of grant funds. Rural projects need to be truly rural projects. He encouraged Ms. Ament to consider if a third designation--rural, municipal and extraterritorial--might impact the financing provided through the PFA/SRF program. He commented on two communities that would be extraterritorial--Horace and Surrey.

Ms. Ament presented a report issued by the PFA's financial advisor, PFM Financial Advisors LLC on the State Revolving Fund Series 2018A \$128,625,000 bond sale. (A copy of the report is available in the Commission files.) She indicated that this was a competitive sale and there were five bidders. The best bid was submitted by J. P. Morgan Securities LLC with a True Interest Rate of 3.27921%. The second best bid was 3.27927%, so the bids were very competitive. The report included the following statement:

PFM reviewed the results of the Authority's Series 2018A Bonds with regard to prevailing market conditions, and it is our opinion that the interest rate scales, couponing, reoffering yields and underwriting compensation received for the Series 2018A Bonds are fair and favorable to the Authority. The final pricing for the Series 2018A Bonds resulted in a gross underwriting spread of \$432,740.05 or \$3.36 per face amount of bonds.

We also opine that the Authority's Series 2018A Bonds were appropriately priced relative to other issues sold or trading in the secondary market during the same period. PFM believes that

the final all-in true interest cost of 3.3001% for the Series 2018A Bonds are favorable to the Authority in light of prevailing market conditions. Additionally, PFM believes that these statistics are comparable to the interest rate levels of similar transactions sold either competitively or through negotiated placement in the market during the week of sale.

It was noted that Moody's Investors Services, Inc. affirmed PFA's outstanding "Aaa" credit rating and S&P Global Ratings also affirmed the Series 2018A Bonds "AAA" credit rating.

On behalf of the Commission Governor Burgum congratulated Ms. Ament on the successful bond sale.

WESTERN AREA WATER SUPPLY (WAWS)

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the WAWS May Financial Report and Debt Reduction Report. (A copy of the report is available in the Commission files.) She noted that debt payments had been made on the Bank of North Dakota debt. She pointed out that interest payments on the Resources Trust Fund loans will begin on July 1st, 2018. The net income for the month of May was \$232,432. Sales exceeded the breakeven number by \$355,306.

Mr. Todd Pokrzywinski, Interim Executive Director for WAWS, provided an update on sales and current activity through May and provided a handout. (A copy of the handout is available in the Commission files.) He stated that overall sales continue to do well. Every gallon of water that can go south of the river is being sold. There continues to be requests for water on the north side of the river and WAWS has more capacity available for sale. He indicated that the "take or pay" contracts are generating sustained revenue for WAWS. Where one-year contracts had been the norm, more companies are looking at 2 or 3 year contracts. He pointed out that their last projection for industrial sales had reflected a downward trend moving into the fall. It now appears that those sales should be sustained at a higher level due to the 2+ year contracts. In addition, a company has indicated an interest in making hot water available at 5 WAWS facilities. The market has expressed a need for hot water so WAWS is continuing discussions with the company on how to meet that customer demand.

In response to questions, Mr. Pokrzywinski said it is the higher volume of water that is needed for each frac that is driving demand. He stated that the majority of the "take or pay" contracts are with independent water operators. They are wholesaling from us and retailing the water to the oil operators. There have not been any issues at the water treatment plant in Williston due to the high water. It has been performing well. The upgrades that were installed have resolved the issues the plant had faced in previous years.

In response to questions regarding future projects, Mr. Pokrzywinski said there are domestic construction projects underway. On the industrial side, WAWS has a small number of pipes, pumps, and storage projects that will make another 1000 gallons per minute of water available on the south side of the river. That additional water is already spoken for as soon as it becomes available. Everything is on track for permitting and construction. The elevated tower will be started this year and finished next year--it takes approximately 1 year to construct that type of project. There are 500 new rural connections planned this biennium with 4-5 rural expansions. The City of Arnegard was added by a temporary connection. Once the tower is completed, it will provide permanent service to Arnegard with all the water services that a city needs such as fire protection, etc. The tower will also open up areas in southern Watford City where their existing infrastructure has challenges providing flows and pressures needed for that part of the community.

Governor Burgum stated that now we are approaching a place where demand for water is exceeding what is available. He indicated that water should not be a negating factor for economic activity and meeting

the needs of the region. He requested that WAWS provide plans to meet these needs and the growth that is being anticipated--he encouraged WAWS and the Commission to be thoughtful and try to get ahead of this before it becomes an issue.

Mr. Pokrzywinski responded that AE2S has already developed plans for a secondary line that would bring water down to Watford City where the need is growing for more water. Mr. Cory Chorne, AE2S, indicated that at the request of the WAWS Board AE2S just completed a masterplan of the overall distribution system. That master plan includes options for additional capacity into McKenzie County. This has been developed from a domestic standpoint. In approximately 10-15 years population growth projections for McKenzie County will exceed the WAWS capacity. Taking that into consideration and seeing if there are partners on the private side to accelerate that timeline might be a win-win for everybody.

Governor Burgum stated that if a project will come to both the Industrial Commission and the Water Commission, he would like the information and reporting to be coordinated.

In response to a question, there was discussion about the strategic storage ponds that are being constructed--the permitting process, local and state. In order to get an overall picture of activity, Governor Burgum requested a map showing where development is currently occurring and where planning is taking place for the future--private sector as well as what is under consideration by WAWS.

BANK OF NORTH DAKOTA

Mr. Eric Hardmeyer, Bank of North Dakota President, provided a copy of the 2017 College SAVE audit. (A copy of the audit is available in the Commission files.) He indicated that the audit was done by Thomas and Thomas out of Little Rock Arkansas. Mr. Tim Porter, Bank of North Dakota CFO, presented their audit findings because their offices are out of state. Mr. Porter indicated that the auditors had expressed an unqualified opinion on the audit. There were no major findings. He pointed out a few financial highlights:

- Contributions vs. withdrawals demonstrated that contributions exceeded withdrawals by \$6.2 million.
- Net investment income was at \$50.8 million, which is significantly higher than the previous year. This was due to strong equity markets.
- The BND match program shows an increase in the number of grants given out, and new baby match also shows an increase.
- Net investment income of the fund is up to \$469 million from \$415 million.
- Total number of accounts is 45,700 with 21,800 from North Dakotans. North Dakota numbers have grown from 17,600 in 2014 to 21,800.
- Average size of an account is \$13,000. The maximum amount is about \$270,000.

Mr. Hardmeyer presented the following memorandum and discussed extending the Breeding Stock Rebuilding Program and Feed Cost Program:

Purpose: Extend Drought Relief Loan Programs

On September 17, 2017 the ND Industrial Commission announced that it had authorized the Bank of North Dakota to offer two loan programs that were designed to offer drought relief for breeding stock rebuilding and feed costs. These programs were approved with an application period that ends on June 30, 2018 at 5:00PM CT.

The purpose of this memo is to request approval to extend the application periods for the following drought relief loan programs to June 30, 2019 at 5:00 PM CT.

- Breeding Stock Rebuilding Loan
- Feed Cost Loan

All other existing terms and conditions will remain unchanged.

Due to the extended drought experienced throughout North Dakota during 2017, the cold winter conditions, and the uncertainty as to necessary moisture during the spring of 2018, livestock producers were hesitant to begin rebuilding their herds to pre-drought levels until they were comfortable that North Dakota would see conditions favorable to produce a hay crop sufficient to support rebuilding their herds. The Bank of North Dakota had a good level of interest in the drought relief programs; however, due to reasons stated above, the timing in which to make decision to rebuild was pushed out until Q2 2018. As a result, the Bank has begun to see a demand for the drought relief programs and we are hearing a need from livestock producers and bankers alike that they would like for the application period to be extended by 12 months for each of the drought relief programs.

Mr. Hardmeyer stated that interest in the program is beginning to grow. Based on feedback from producers and local banks, it was determined that it would be prudent to extend the program. Producers that were hesitant to rebuild are gaining more confidence.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Bank of North Dakota Advisory Board and based on the demonstrated need and discussions occurring with producers and bankers, the Bank of North Dakota is authorized to extend the application periods for the following drought relief loan programs to June 30, 2019 at 5:00 p.m. CT (detailed information on the programs is available in the Commission files):

- **Breeding Stock Rebuilding Loan**
- **Feed Cost Loan**

Commissioner Goehring noted that while there may still be apprehension this summer, by this fall/winter producers will know what they have for feed supplies. This would be an opportunity for producers that had previously liquidated to get back in the business.

In response to questions, Mr. Hardmeyer stated that there are no caps on the programs. A press release will be sent out by the Industrial Commission and BND will market the program through their partner banks. Both the Governor's Office and Agriculture Department will also promote the programs.

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

Mr. Hardmeyer presented the non-confidential Bank of North Dakota Advisory Board April 19, 2018 meeting minutes.

Pursuant to N.D.C.C. 6-09-35, the Industrial Commission entered into executive session. Governor Burgum reminded the Commission members and those present in the executive session that the discussion during executive session must be limited to those items listed on the agenda which is anticipated to last between 15 and 30 minutes. It was noted that any formal action by the Commission would occur after it reconvened in open session. Commission members, their staff, and BND staff

remained but the public was asked to leave the room. Governor Burgum closed the meeting at 2:08 p.m. pursuant to N.D.C.C. 6-09-35 to discuss the following items:

- Consideration of a Bank of North Dakota loan application
- Problem Loan Update
- Presentation of confidential Bank of North Dakota Advisory Board April 19, 2018 meeting 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
Tim Porter Bank of North Dakota
Kirby Evanger Bank of North Dakota

Others in Attendance:

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

The meeting reconvened in open session at 2:35 p.m. Governor Burgum invited the public to return to the meeting room. Governor Burgum stated that during executive session the Commission considered a Bank of North Dakota loan application and it had been moved and seconded that the Bank of North Dakota be authorized to participate in a loan identified as Attachment 18. **On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

LIGNITE RESEARCH PROGRAM

Mr. Mike Holmes, Lignite Research Program Technical Advisor, provided a summary of North Dakota work regarding rare earth element recovery, and provided an Overview of Rare Earth Element R&D which includes information on the work being funded by the U.S. Department of Energy across the United States. (A copy of the report is available in Commission files.)

Mr. Holmes provided a power point presentation. (A copy of the presentation is available in the Commission files.) The presentation included the following points:

High Value Material Extraction

Pioneering work by the North Dakota Geological Survey has led to several funded projects investigating recovery of high value materials from coal and byproducts:

- Characterization study of coal and byproducts across North America
- Rare earth element extraction from ND lignite
- Rare earth element extraction from coal combustion byproducts

Technology development is needed to optimize and improve economics of processes that extract and concentrate rare earth elements and other high value minerals.

Why are Rare Earth Elements (REEs) Important?

- Unique properties makes them very useful in numerous applications
- Often termed “Chemical Vitamins” -- low usage, high impact
- Essential materials for many high-value and critical applications:
Magnets, batteries, electronics, computers, auto vehicles, renewable energy, military defense...and many, many others
REEs make possible \$7 Trillion in value-added products globally
Unique properties prevent replacement by other materials.

Why Research REEs from Coal?

- Several REEs identified as ‘critical’ - mostly the less common HREE
- China dominates global market - 83% of production in 2016
- U.S. 100% import reliant
- Chinese production rich in the HREE; U.S. deposits deficient
- Chinese reserves dwindling (HREE-rich ion adsorbed clays)
Current deposit for ~100% supply of HREE gone by 2025
Growth market sectors are dependent on HREEs - wind turbines, HEV’s and many others

REE Abundance - Harmon-Hanson Coal Zone

Samples of North Dakota lignite show promising concentrations of rare earth elements.

REE Extraction/Concentration Testing - Process Summary and Key Benefits

- REEs easily removed from the raw ND lignite coals due to weak organic bonding
- REE extraction performance summary - direct extraction from unprocessed ND lignite
 1. >2.0wt% REE concentration @ 36wt% REE recovery
 2. 1.36wt% REE concentration @ 68wt% REE recovery
 3. 0.8% REE concentration @ 86wt% REE recovery
- Much simpler extraction process than fly ash or mineral-bound REEs
- No physical beneficiation required - process similar to Chinese ion-adsorbed clays
 1. Solvent-based extraction of REEs from coarsely ground raw coal
 2. Hydrometallurgy techniques to concentrate REEs in the leachate
- Mild leaching process - no high temperatures or pressures; no concentrated acids/bases
- Selective REE extraction - only strips the organically associated REEs, leaving the mineral forms and organic matter behind - does not require digestion of entire ore/mineral
- Coal beneficiation process - reduces ash content and preserves organic content/structure; ~100% removal of ‘problem’ elements such as sodium
- Industrially proven processing methods - fast time to market and low scale-up risks

Overview of REE R&D - North Dakota and U.S. DOE Projects

North Dakota has become engaged in a domestic effort to develop technologies focused on rare earth element (REE) from coal and coal related materials.

- Resource assessment (NDGS and subsequent projects)
- REE recovery from lignite
- REE recovery from coal ash
- Analytical techniques

U.S. DOE Projects

- Recovery from mining materials
- Recovery from acid mine drainage sludge (Eastern coals)
- REEs from coal byproducts
- Analytical techniques

Mr. Holmes noted that North Dakota efforts are focusing on operability, economics, and environmental concerns. If a pilot project could process 50 tons per hour, in one year there would be a potential for 200 tons of REE per year. This could be a healthy, synergistic source of income while processing coal.

Mr. Holmes commented on some of the other projects that are being done in the United States that are funded by U.S. DOE.

In response to a question, Mr. Holmes indicated that he will follow up with additional information regarding the sales value and market size for REE--both globally and in the United States. (Links are available on the DOE website.)

In response to a question, Mr. Holmes stated that DOE is putting money into this research but at this point their financial commitment to commercial scale operations is small. It was noted that there is a significant amount of REEs that are mined today with coal but it is not economically recoverable. Older coal in the southwest part of the state has higher concentrations and it is more likely that it could be economically recoverable. If it can be concentrated to 2% of the feedstock, there is significant tonnage potential.

Mr. Jason Bohrer, Lignite Energy Council President, indicated that it was important for the industry and the State to follow how this is being approached at the federal level. Our advantage is to be able to integrate this opportunity into an economy around coal.

Mr. Jason Bohrer distributed a non-confidential report on the Lignite Public Affairs Program. (A copy of the report is available in the Commission files.)

The presentation included the following slides:

- Key Messages
- Ongoing Tactics
- Air, Land Water Campaign
- How?
- Workshop
- What We Learned
- Preferred Social Media
- New Tactics
- Ongoing Tactics: Energy 101
- Where does our electricity come from?
- Midwest Energy Mix
- Three Types of Utilities
- IOUs
- Municipal Utilities
- Electric Cooperatives
- Utility Regulation
- Mid-Continent Independent System Operator (MISO)
- CAPX2020
- A Rapidly Changing Industry
- Low Gas Prices
- Concerns over CO₂ Emissions
- Not Your Father's Coal Plants
- Minnesota Air Quality
- Federal & State Regulation
- Clean Power Plan

- What the Future Will Look Like
- New Generation Technologies - Allam Cycle
- Project Tundra
- Federal Initiatives
- Ongoing Tactics: Social Media
- Informational Cards
- Electric Vehicles

He commented on the workshop that was held with youth because from polling information they had learned that youth are less informed about the coal industry. From that workshop they learned where youth got their information, and learned how they use and consume media streams. From that information they identified an opportunity for the lignite industry to engage in employee education and develop more employee outreach so youth is getting information directly from individuals involved in the industry.

He indicated that Energy 101 sessions are conducted in Minnesota and North Dakota that give legislators and other policy makers an overview of: where electricity comes from, energy mix in the Midwest, different types of utilities, a look at the market share, how utilities and coops are regulated, and how regulations and governance structures influence the electricity market.

He noted that what has been demonstrated through the work under this project is that individuals do not understand how electricity is regulated, how grids function, and how complex and critical those grids are. This program also gives an opportunity to talk about the advancements that have been made in air quality, work that is being done regarding CO₂, opportunities for CO₂ being used for enhanced oil recovery, federal regulations, Allam Cycle, Project Tundra, and the synergies of promoting coal and its future with electric vehicles and emerging markets.

In response to a question, Mr. Holmes reported on the work that he has been doing in developing the relationships with Saskatchewan and the University of Regina in regards to carbon capture. He indicated that on the technical side he has set up a tour for North Dakota industry partners. Longer term he is working on a cooperative research and development agreement with DOE. Governor Burgum indicated that states, including Montana and Wyoming have indicated interest in working cooperatively on this issue.

Commissioner Goehring indicated that from an agriculture perspective there may be the need in the future for funding biotechnology that would require quantities of CO₂ because it is needed to feed plants. Mr. Holmes indicated that there is some information he will be able to provide by the end of the summer/early fall regarding the work being done with CO₂ through the greenhouse project including the pathway to commercial scale operations.

In response to a question about baseload costs and the structural issue of pricing, Mr. Bohrer responded that industry is working on the economics issue. This grant isn't dealing with that issue but does include information that there is a problem that needs to be addressed.

In response to a question, Mr. Bohrer stated that the Lignite Research Council is trying to identify opportunities. Value added opportunities, such as REE, can address the problem by supplementing the revenue stream. Another option would be to increase subsidies to even out the market.

In response to a question, Mr. Bohrer stated that DOE and FERC have identified resiliency as a challenge and asked the RTOs for solutions. However, the RTOs may not move quickly enough to help the industry

in North Dakota. Industry is working with MISO and SPP to draft a solution that addresses the resiliency concern. Regardless of what is done regarding wind, coal will still have a pricing problem.

TRANSMISSION AUTHORITY

Mr. John Weeda, Transmission Authority Director, gave an update on the Transmission Authority. (A copy of the presentation is available in Commission files.)

Mr. Weeda stated that the feedback he received from the utilities indicated that the current transmission system operates very well. In the past, the NDEX node often required reduced loads because of constraints. This issue has been resolved, in part because of the demand in the Bakken, and partly because of the CAPx line.

Mr. Weeda noted that:

- Generation in North Dakota is very plentiful.
- Demand is the limiting factor. We have more electrons in ND than the system is demanding in ND. One of the objectives moving forward will be to determine how much stays in the state. In response to a question, Mr. Weeda stated that there is currently not an efficient way to determine how many electrons stay in North Dakota. This is something he working to address for future reports.
- Everyone is working very aggressively in regards to cybersecurity. Drills are done on a regular basis.
- ND has a remarkable source of renewable energy. In the future, transmission will be a limiting factor for wind development. The work to resolve that issue needs to be started now.
- Value of renewable energy credits (RECs) minimal.

Mr. Weeda discussed the work he is doing in developing a relationship with MISO and SPP. He is coordinating with PSC Commissioner Julie Fedorchuk and the area utilities.

Under Preliminary Assessment he stated that demand growth in the existing market has largely been in the Bakken. Other market demand growth is in the 1% range. Reaching other markets will require long distance transmission.

Mr. Weeda indicated that the next steps he will be taking include:

- Learn more about DC transmission - attending a conference in Iowa on July 26, 2018
- Determine if DC transmission is an option for renewables.
- Continue to explore potential for demand and supply to participate together on a transmission solution.
- Meet additional potential developers of long distance transmission solutions as transmission beyond the Twin Cities is needed to access other markets.
- Assess benefits to all sectors of generation industry.

In response to questions, Mr. Weeda explained how you identify an AC versus a DC line, pros and cons of the two types of lines, how the lines work, etc.

In response to a question, Mr. Weeda stated that Basin is positioned to meet the needs in the Bakken expeditiously.

Mr. Weeda commented that it is possible that more transmission would raise the market price for everyone.

Under the topic of Options for ND he noted these bullet points:

- Let existing transmission establish the barriers to further interconnection.
- Push for solutions that will benefit the overall generation industry.
- Embrace additional development of renewable generation.
- Pursue options that would put North Dakota government in the movement for improved transmission.
- Support federal policy to promote better market access.

In response to Mr. Weeda's request for feedback on strategies for the future Commissioner Goehring stated that he appreciated that Mr. Weeda is looking beyond the state borders--more markets will lower the costs per unit and will make it more economic for expansion. Attorney General Stenehjem stated that federal agencies need to be engaged along with the ISO's. Governor Burgum summarized the discussion by stating that the Commission is looking for him to be active in his work in developing solutions and identifying markets. He suggested utilizing the Pipeline Authority's model to get more data. Once there is more data available, the Commission can be more constructive in helping guide strategy.

The Commission thanked Mr. Weeda for the report.

DEPARTMENT OF MINERAL RESOURCES

Mr. Bruce Hicks, Department of Mineral Resources Assistant Director, presented the Oil and Gas Division quarterly report. (A copy of the report is available in the Commission files.) Some of the points he highlighted in his report were:

- Permits received were 389 for the first quarter of 2018. This is up 62% from the first quarter of last year.
- Permits issued were 311, which is up 43% from a year ago.
- Rig count continues to rise--57 for the first quarter, 65 as of yesterday.
- Newly completed wells were at 197 for the first quarter.
- There are 890 wells waiting for completion. This number is 29% higher than a year ago.
- Barrels of oil per day is up 16% from a year ago.
- Gas production is at record numbers, up 26% from a year ago. We have now exceeded the total capacity that we are able to process in state.
- There is approximately \$20 million in abandoned well and restoration fund. We have concerns about recent bankruptcies. Some of the companies have an extensive environmental liability. Hopefully they will end up with a good operator taking them over so that the state doesn't need to plug the wells.

Mr. Helms stated that they have added a special assistant attorney general with bankruptcy expertise licensed in Delaware. An operator with \$22 million in well plugging and spill cleanup liabilities went bankrupt. The operator has more assets than that but we need to be able to track bankruptcies and act quickly to make sure that the judge is aware of North Dakota's situation. In response to a question, Mr. Helms stated that our position is above unsecured debt. Bankruptcy does not clear the obligation for environmental cleanup. This is why it is important to have an attorney that can make the bankruptcy judge aware of our situation and have the figures put together quickly. In response to a question, Mr. Helms stated that they try to have special assistant attorney generals licensed in the states where the bankruptcies happen. Constant monitoring is required to determine the best use of resources.

In response to questions, Mr. Helms stated that there is an enormous disconnect between the price of gas prices and the price of oil. Natural gas prices are driven by LNG export along with heating and air conditioning demand. The major factor driving the number of rigs operating in the Permian compared to

the Bakken is that the Permian is in same place that Bakken was in 2011-2013. Companies need to hold leases with production. This will eventually even out to a place where it is a true economic competition. The Permian is running into the same infrastructure issues that North Dakota did. However, the Permian has supermajors like Chevron and Exxon that have large acreages and significant financial resources to build pipelines when their oil pipelines become full.

In response to a question, Mr. Helms stated his prediction for the summer is moderate growth with 70 rigs for the remaining part of the year. The current frack capacity is 80 completions per month, 960 completions per year. This will need to be increased to get to 70 rigs. The top inhibitors of growth are equipment needs and workforce. Many companies are waiting for equipment to be delivered.

In response to questions, Mr. Helms stated that they track the pricing difference of several major benchmark indicators. Currently, there is a \$5 differential between Brent and West TX. This can spur a market decision to move oil via railcars to the Northeast. DAPL keeps everything in check. He noted that North Dakota sweet gets blended with ND sour and heavy Canadian oil in Clearbrook, MN.

Governor Burgum requested that other price points be added to the report in the future. Mr. Helms indicated that this could be a useful tool. Mr. Hicks stated that we could get numbers from the Tax Dept. and use what we're actually getting for a price.

Mr. Hicks noted that in October 2017, there was a slight dip below gas capture goals. May and June may also see a dip below the 85% capture goal. In November the capture goal will rise to 88%. We are at record gas production. Approximately 850 million cubic feet gas processing capacity will be added over the next 18 months. Oasis will go from 80 million to 345 million in capacity with an expected completion date of November. Gov. Burgum requested a map with locations, expansions, capacity and summary of capital investment that has been made in the plants.

Mr. Helms noted that because of the modifications to the gas capture policy, rigs are now operating in Burke, Divide, Stark, Billings, and southern Dunn County. This indicates that the policies are working. Mr. Hicks indicated that a section has been added to the quarterly report to show temporary flaring exemptions granted. No exemptions were requested in the quarter but he included it in the report to be in compliance with the policy changes.

Mr. Hicks pointed out the addition to the complaints section of the report. Attorney General Stenehjem stated that his office has been receiving complaints about a company in Divide County with allegations that rules are not being followed and royalties are not being paid. He inquired if anything has been done about the situation. Mr. Helms indicated that information has been compiled and he will be requesting a meeting with the Attorney General. It appears that the operator has not paid production extraction taxes, Land Department royalties, partners, or private mineral owners while they have been selling product. Attorney General Stenehjem stated that a team should be put together including the Tax Dept., BCI, and the Land Dept.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2 the Industrial Commission close the meeting to the public and enter executive session for the purpose of attorney consultation. The purpose of the executive session will be to consult with the Commission's attorney(s) regarding adversarial proceedings in the following matter: Case No. 09-2018-CV-00089, Sorum, et al v. State of North Dakota, et al. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

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

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

Commission members, their staff, DMR staff, and Special Assistant Attorney General(s) and their staff remained but the public was asked to leave the room. The executive session began at 3:51 p.m.

EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Others in Attendance:

Lt. Governor Brent Sanford
Danielle Hopkins Governor's Office
Leslie Oliver Governor's Office
Jessie Pfaff Agriculture Department
Lynn Helms Department of Mineral Resources
Bruce Hicks Department of Mineral Resources
Katie Haarsager Department of Mineral Resources
Daniel Gaustad Pearson Christensen Law Firm
Dave Gordon Pearson Christensen Law Firm
Andrea Pfennig Industrial Commission Office
Karlene Fine Industrial Commission Office

The Industrial Commission reconvened in open session at 4:29 p.m. and the public was invited to return to the meeting room. Governor Burgum noted that during its executive session the Commission consulted with its attorney regarding Case No. 09-2018-CV-00089.

Mr. Lynn Helms, Department of Mineral Resources Director, provided a report on the Ordinary High Water Mark hearing/process:

- The Comment period ended COB June 20th.
- Hearing was held June 26th. There were 26 sets of written comments and 11 parties appeared at the hearing. Of those at the hearing, 5 appeared with new information. Wenck was there to hear the information first hand, including a GIS specialist, project supervisor, and attorney. The hearing lasted about 3.5 hours.
- The process provided a lot of information with strong public engagement. No additional hearings will be held, and the record is now closed.
- The information will be considered and built into a set of recommendations. The goal is to have a recommendation at the August 29th meeting.
- The process was open and transparent and there have been no complaints regarding public notice and opportunity to comment.
- Some individuals have asked for maps and those requests were answered.

- While it was requested that comments to be limited to 15 minutes, no one's testimony was cut off.

Mr. Helms presented a draft letter to Secretary of Energy Perry, PHMSA Administrator Elliott, and Federal Railroad Administration Administrator Batory in response to a request Senator Charles E. Schumer has made to those agencies for a rule to establish federal volatility standards for crude oil shipped by rail. Senator Schumer's letter did not correctly describe North Dakota's policies. Mr. Helms feels it is critical to provide accurate information of what the standards are and that there is an ongoing Sandia Lab study.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approves and authorizes the sending of the following letter to Secretary of Energy Perry, PHMSA Administrator Elliott and Federal Railroad Administration Administrator Batory regarding North Dakota Oil Conditioning as stated below with the contingency that the letter is also sent to the North Dakota Congressional Delegation. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

June 28, 2018

Secretary of Energy Rick Perry
U.S. Department of Energy
1000 Independence Avenue SW
Washington, D.C. 20585

Administrator Howard Elliott
Pipeline and Hazardous Materials
Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Administrator Ronald L. Batory
Federal Railroad Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

RE: Senator Schumer's letter urging you to propose and quickly finalize a rule establishing federal volatility standards for the shipment of crude oil by rail in the United States. - North Dakota Crude Oil Conditioning

Dear Secretary Perry, Administrator Elliot, and Administrator Batory:

On June 6, 2018 Senator Schumer wrote urging you to propose and quickly finalize a rule establishing federal volatility standards for the shipment of crude oil by rail in the United States.

The North Dakota Industrial Commission (NDIC) appreciates your commitment to safe transportation both in our great state and across the nation. However, in order for your agencies to make informed, scientifically sound decisions, several conclusions and statements in Senator Schumer's letter about NDIC oil conditioning regulations must be corrected. The following is offered as background and to

provide an understanding of NDIC oil conditioning standards for Bakken, Three Forks, and/or Sanish crude oil prior to market transport.

The NDIC adopted stringent oil conditioning standards on December 9, 2014, after reviewing more than 1,250 pages of public comment and testimony provided during a public hearing. The standards became effective on April 1st, 2015. During the twelve-month review process, it was determined that NDIC oil conditioning standards should be based on the vapor pressure standard of measurement used for crude oil: Vapor Pressure of Crude (VPCR). This standard of measurement recognizes stable crude oil as having a VPCR4 ≤ 14.7 psi. The NDIC oil conditioning standard requires that crude oil may not exceed a VPCR4 of 13.7 psi at the point of custody transfer. Setting the standard at a VPCR4 ≤ 13.7 psi allows for the average margin of error of one psi in sampling procedures and measurement equipment. No evidence supporting a lesser standard was presented in the NDIC hearings or over the course of the yearlong development of the NDIC oil conditioning order. It was also determined that other ratios (VPCR_x) are unstable, unrepeatably, and are not based on a recognized standard for stable crude oil.

The NDIC cannot speculate whether VPCR4 may have been low enough to lessen the impact or prevent the tragic accident that occurred in Lac-Mégantic in July 2013. Measurements taken and shared as part of the investigation used the Reid Vapor Pressure (RVP) standard, the standard of measurement used for gasoline, and is not comparable to VPCR4. In addition, the Transportation Safety Board of Canada noted that product samples from the derailed Lac-Mégantic tank cars would not be representative of the cargo prior to shipment. The timing, source, sampling, and analysis of the samples used from this accident have raised numerous questions about the results.

North Dakota's oil conditioning standards have produced a more consistent and safer product prior to shipping crude oil to market while utilizing the existing physical footprint of Bakken, Three Forks, and Sanish production. Oil conditioning can be performed with little to no additional surface footprint as excess gases are removed from the crude oil and transported through existing or planned pipelines to existing or planned gas processing facilities.

Senator Schumer urges development of new regulations that would require the stabilization of crude oil prior to shipment. The stabilization process is somewhat similar to the oil conditioning process, but is in fact, more complex and costly. There is no "one-size-fits-all" safe solution for transporting crude oil. Certain producers choose to stabilize crude oil prior to transport, based upon an available market for the byproducts of stabilization, and the availability of infrastructure to transport these byproducts. For example, although Texas does not require stabilization, in some parts of the Eagle Ford shale play crude oil is stabilized prior to transport based upon the availability of large industrial facilities and access to pipelines to transport removed gases to market. Those markets, pipelines, and stabilization facilities do not exist in North Dakota and would take significant time to construct. The byproducts of stabilization include natural gas liquids such as ethane, propane, and butane, which are much more volatile than Bakken crude oil after it has been conditioned to the NDIC oil conditioning standards. Any byproducts of stabilization would require transportation by truck, railcar or newly constructed pipeline infrastructure.

North Dakota crude oil and natural gas production numbers have been steadily increasing in the last year. This increase in production and renewed boost to our state's and nation's economy have not diminished our commitment to safety and the responsibility we must protect the people, landscape, and resources of our state through smart and thoughtful regulation. The Sandia Task 2 report which summarizes results of crude oil sampling and analytical procedures is complete. The primary conclusion is that both open and closed sampling methods CAN provide reliable results if done carefully, and a few modifications to the VPCR method now being worked through ASTM will help improve reproducibility. The report is available at the U.S. Department of Energy Office of Scientific and Technical Information website:

<https://www.osti.gov/biblio/1414422-doe-dot-crude-oil-characterization-research-study-task-test-report-evaluating-crude-oil-sampling-analysis-methods>.

Sandia has experienced several delays in completing combustion tests and therefore no information is available about the relative difference in hazard (if any), of different crude oils. They are working to complete fire ball and large pool fire experiments this summer and hope to have a final report to the Department of Energy by the end of 2018. At this time there are no results from the Sandia study that would help inform the Department of Transportation or Department of Energy rule making; and there are no indications of the need for more stringent requirements beyond the NDIC oil conditioning standards. The NDIC urges you to remain committed to your original position of delaying rule making until results are available from the Sandia study.

Sincerely,
North Dakota Industrial Commission

Doug Burgum, Chairman
Governor

Wayne Stenehjem
Attorney General

Doug Goehring
Agriculture Commissioner

Mr. Helms commented on an issue that related to waste being transported into Montana from the Bakken. He stated there is a risk that Montana could limit access to their landfills. He asked that the Commission members reach out to their counterparts in Montana and make them aware that North Dakota is aware of the situation and is doing everything it can to deal with the waste in North Dakota.

RENEWABLE ENERGY PROGRAM

Ms. Fine presented a financial summary report for the Renewable Energy Program. (A copy of the report is available in Commission files.) Ms. Fine stated that the uncommitted cash is \$3.8 million as of the end of April.

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-037-A Barley Protein Concentrate; Submitted by Midwest AgEnergy Group; Total Project Costs: \$167,620; Amount Requested: \$83,810. This project will conduct preliminary studies regarding using North Dakota barley to produce a high value protein concentrate designed for aquaculture and a low carbon advanced ethanol at Dakota Spirit AgEnergy. The project would scale up technology developed and owned by Montana Microbial Products and integrate it into Dakota Spirit AgEnergy. This first phase of the project will provide a market analysis of protein feed ingredients in aquaculture, conduct an analysis of barley availability as a feedstock in North Dakota, complete Front End Engineering and Design (FEED) and integration opportunities, and develop an understanding of the regulatory requirements necessary to move forward with construction.

In response to questions, Ms. Pfennig stated that the technology being designed would be bolted on to Dakota Spirit AgEnergy's current facility. It was noted that barley hulls are abrasive and because of this, part of the engineering study will be to identify options for dealing with the barley hulls.

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 "Barley Protein Concentrate" and authorizes the Industrial Commission

Executive Director/Secretary to execute an agreement with the Midwest AgEnergy Group to provide a total of Industrial Commission Renewable Energy Program funding in an amount not to exceed \$83,810 contingent upon receipt of written confirmation of match funding. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Fine noted that Midwest AgEnergy Group has requested that the reporting related to the business model, financial projections, markets and customers, and technology be considered as intellectual property and a trade secret and be determined confidential. Ms. Fine recommended that the request be granted with the understanding that the project manager will provide public information regarding the feasibility of the project and sufficient information to determine that the work has been done.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission grant the Midwest AgEnergy Group's confidentiality request and determines that portions of future reporting related to the business model, financial projections, markets and customers, technology that could be considered intellectual property and all trade secrets be confidential and that Midwest Ag-Energy Group provide non-confidential reports with sufficient information regarding the feasibility of the project and to determine that the work outlined in the application is being completed. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

NORTH DAKOTA MILL

Ms. Fine presented a request on behalf of Mr. Vance Taylor, North Dakota Mill President and CEO, for authorization to make the year-end transfers of North Dakota Mill profits. She stated that during this biennium the level of transfers is 75% and then the next biennium it will go back to the 50% level.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the State Mill is authorized to transfer 5% of the net income earned by the Mill for fiscal year 2018 to the Agricultural Products Utilization Fund (APUF) and transfer to the General Fund 75% of the annual earnings and undivided profits of the Mill after any transfers to other state agricultural-related programs as per the request of the Office of Management and Budget Director noting that the transfers will be based on unaudited year-end results and reserving the right to adjust the transfer numbers once the year-end results have been audited. Further that Mill management reports the amount of the transfers to the Commission at their July meeting. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 4:45 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary