

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on July 27, 2018 beginning at 10:00 a.m.
Governor's Conference Room
State Capitol

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

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

Governor Burgum called the Industrial Commission meeting to order at 10:00 a.m. 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 26, 2018 non-confidential meeting minutes be approved as distributed. 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 resolution for the sale of Multifamily Bonds (for Community Homes I and II) Series 2018 - \$11,000,000. The actual cost is expected to be \$9.25 million. The higher amount of bond issuance allows for a variance if needed.

Ms. Kline noted that in order to receive non-competitive 4% federal tax credits there must be the issuance of multifamily bonds and the bonds need to stay outstanding until the project is completed. The plan is that these bonds will be short term, somewhere between 18-24 months, not to exceed 24 months. Termination date is September 2021. A HUD HFA loan will be utilized to repay the bonds when the construction on the project is completed.

Ms. Kline stated that this project includes 186 units and 100% of the units will be income restricted to 60% of the area median income. The facility was constructed in 1970. The proposed improvements are approximately \$39,000 per unit. A community building will be put back into service which will provide supportive services to the tenants onsite.

Ms. Kline provided a map where the project is located. She noted that the map also displays Opportunity Zones. The City of Fargo had submitted this as a requested census tract for Opportunity Zone designation. However, it was not selected by the committee.

In response to a question, Ms. Kline stated that there are currently enough vacant units that they will do the project unit by unit. There is no anticipated relocation off site. The units currently meet housing standards, but they definitely need repair to be viable moving forward. Because of the federal tax credits, these units need to be affordable and inhabitable for another 30 years.

Governor Burgum stated that elementary students living in these units would likely attend Longfellow. This school has the highest number of different nationalities of any elementary school in North Dakota. There are approximately 20 and possibly up to 30 countries represented in this school. Ms. Kline stated that the primary clientele in this project currently are New Americans. Governor Burgum stated that this is a much needed project.

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

STATE OF NORTH DAKOTA
NORTH DAKOTA HOUSING FINANCE AGENCY
MULTIFAMILY REVENUE BONDS (COMMUNITY
HOMES)
SERIES 2018

**RESOLUTION AUTHORIZING THE STATE OF NORTH DAKOTA, NORTH DAKOTA
HOUSING FINANCE AGENCY, MULTIFAMILY REVENUE BONDS (COMMUNITY
HOMES) SERIES 2018 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED
\$11,000,000**

WHEREAS, the Industrial Commission of North Dakota (the "Commission") acting in its capacity as the North Dakota Housing Finance Agency (the "Agency"), is empowered by the provisions of the North Dakota Century Code Chapter 54-17 (the "Act") to provide financing, directly or indirectly, of construction, permanent and combined construction and permanent mortgage loans for the acquisition, construction, refurbishing, reconstruction, rehabilitation or improvement of multifamily residential housing in which at least twenty percent of the units are held for occupancy by persons or families of low and moderate income; and

WHEREAS, the Agency intends to issue its Multifamily Revenue Bonds (Community Homes) Series 2018 in an aggregate principal amount not to exceed \$11,000,000 (the "Bonds"), the proceeds of which will be used to finance a loan for the acquisition, rehabilitation and equipping of the Community Homes, a 186-unit (184 of which are Section 8 units) multifamily residential rental property located in Fargo, North Dakota (the "Project"); and

WHEREAS, the Bonds will be issued pursuant to a Trust Indenture (the "Indenture"), between the Agency and Wilmington Trust, National Association, as trustee (the "Trustee"), which will be in substantially the form attached hereto as Attachment A, whereby the Agency would be authorized to issue the Bonds subject to the terms, conditions and limitations established herein and in the Indenture; and

WHEREAS, the proceeds of the Bonds will be used to finance a loan (the "Mortgage Loan") to Fargo LIHTC, LP, a North Dakota limited partnership, or another affiliate thereof (the "Borrower"), pursuant to a Loan Agreement, by and among the Agency, the Borrower and the Trustee (the "Loan Agreement"), which will be in substantially the form attached hereto as Attachment B; and

WHEREAS, the Bonds will be sold and delivered to RBC Capital Markets, LLC (the "Underwriter") in the manner, at the purchase price and on the terms and conditions set forth in a bond purchase agreement by and between the Agency and the Underwriter (the "Bond Purchase Agreement"), which will be in substantially the form attached hereto as Attachment C; and

WHEREAS, to market the Bonds, there shall be prepared and delivered to the Underwriter a preliminary official statement (the "Preliminary Official Statement"), which will be in substantially the form attached hereto as Attachment D.

NOW, THEREFORE, BE IT RESOLVED:

Section 1. Findings. The Commission hereby finds and determines that:

(a) the Project financed through the issuance of the Bonds constitutes a "multifamily housing facility" within the meaning of Sections 54-17-07.2 and 54-17-07.3(3) of the Act; and

(b) the Mortgage Loan will provide the Borrower with construction financing for the acquisition, construction, refurbishing, reconstruction, rehabilitation or improvement of the Project; and

(c) that the Project will be of public use and will provide a public benefit.

Section 2. Approval of Indenture. The Indenture is hereby approved in the form hereinabove described, and the Executive Director, the Director of Planning and Housing Development or the Chief Financial Officer of the Agency (each, including any individual authorized to act on his or her behalf, an "Authorized Officer") is hereby authorized and directed to execute and deliver the Indenture, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Indenture, and any other Authorized Officer is hereby authorized and directed to attest thereto.

Section 3. Authorization and Sale of Bonds. The issuance, sale and delivery of the Bonds to the Underwriter are hereby authorized and approved. The final principal amount and terms of the Bonds shall be determined by any Authorized Officer, subject to the following conditions:

(a) The Bonds shall not be general obligations of the Commission or the Agency but shall be limited obligations payable solely and only from Mortgage Loan payments and any other moneys pledged under the Indenture as required by the Loan Agreement.

(b) The Bonds shall mature no later than September 1, 2021, bear interest at a fixed rate or rates not to exceed 3.50% per annum, be sold to the Underwriter at not less than 100% of the principal amount thereof and have the other terms and provisions (including provisions with respect to the redemption of the Bonds prior to maturity, if any) as described to the Commission and definitively set forth in the Indenture upon execution and delivery as aforesaid in Section 2 hereof.

(c) The Bonds shall be executed and delivered substantially in the form set forth in the Indenture, with such additions, omissions and changes as are required or permitted by the Indenture.

(d) The Bonds shall be executed in the name of the Commission by the manual or facsimile signature of each of the members of the Commission, with the official seal of the Commission (or a facsimile thereof) impressed, imprinted or otherwise reproduced thereon, and attested by the manual or facsimile signature of any Authorized Officer, and their

execution shall evidence their approval of the final terms thereof. Such Bonds shall not be valid or obligatory for any purpose until authenticated by the manual signature of an authorized officer of the Trustee.

The Bond Purchase Agreement is hereby approved in the form hereinbefore described, and any Authorized Officer is hereby authorized to execute and deliver the Bond Purchase Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Bond Purchase Agreement.

Section 4. Approval of Loan Agreement. The Loan Agreement is hereby approved in the form hereinabove described, and any Authorized Officer is hereby authorized to execute and deliver the Loan Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Loan Agreement.

Section 5. Approval of Disclosure Materials. The preparation of the Preliminary Official Statement, in the form hereinabove described, is hereby approved. Any distribution or use of the Preliminary Official Statement by the Underwriter in connection with the offering of the Bonds is hereby authorized and ratified. The preparation and distribution of an Official Statement, subsequent to the execution of the Bond Purchase Agreement, and its use as contemplated by the Bond Purchase Agreement, is hereby authorized.

Section 6. Ratification of Prior Actions. All action previously taken by the officers, members or staff of the Agency within the authority granted herein, with respect to the Indenture, the Loan Agreement, the Land Use Restriction Agreement, the Bonds and a public hearing with respect to the issuance of the Bonds is hereby approved, confirmed and ratified.

Section 7. Execution of Tax Documents. Any Authorized Officer is hereby authorized to execute certifications as to the Agency's reasonable expectations regarding the amount and use of the proceeds of the Bonds, to file related forms with the Internal Revenue Service and to execute appropriate land use restriction agreements to comply with the Internal Revenue Code of 1986, as amended, particularly Sections 142 and 148 thereof.

Section 8. Additional Actions Authorized. Any Authorized Officer and any other officer, employee or agent of the Agency, acting alone or acting with others, are each hereby authorized and directed to execute and deliver any or all other documents which may be required under the terms of the Indenture or the Loan Agreement and to take such other action as may be required or appropriate for the performance of the duties imposed thereby or to carry out the purposes thereof.

Section 9. Authorization of Authorized Officers. Any Authorized Officer is hereby authorized to deliver an Agency Certificate at the time of issuance of the Bonds which cures ambiguities, defects or omissions herein, corrects or supplements any provision herein, lessens the obligations of the Agency hereunder, or adds to the rights or options of the Agency, all in furtherance of the purposes and Programs of the Agency.

Section 10. Effective Date. This Resolution shall become effective immediately.

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 second quarter of 2018. (A copy of the report is available in Commission files.) The report included information on the following topics:

- Homeownership - Loan Origination and Loan Servicing
- Planning and Housing Development - Low Income Housing Tax Credit; Tax Exempt Bond/4% Credit Activity; Housing Incentive Fund (HIF 3 2015-2017); Housing Trust Fund; Helping HAND; Rehab Accessibility Program; Community Land Trust Pilot Program; Landlord Mitigation Fund
- Property Management - Contract Administration/Mod Rehab
- Public Affairs - Opportunity Zones; Outreach; Events; Administrative/Personnel

In response to a question, Ms. Kline stated that there is currently \$1 million of HIF funds remaining. This is not due to lack of requests. Remaining funds are strategically being held back to make up for any gap of federal funding that will be awarded in September.

Ms. Kline stated that the Jeremiah Program was showcased by a national organization as one of the first Housing Trust Fund projects to be completed in the nation.

Ms. Kline indicated that the agency has been working with the Dept. of Emergency Services (DES) on its enhanced mitigation plan in response to the tornado in Watford City. Income rent restrictions for HIF projects were waived to enable displaced households to find placement. Five households were placed, including a 90 year old couple and a few more placements are pending.

Governor Burgum noted that this brought to light some issues that McKenzie County will investigate. There were no zoning requirements. It was an RV park that had trailer homes on it. There was no shelter in place. There was a lot of information missing for emergency responders such as street addresses, etc.

Ms. Kline noted that 384 attended the annual conference this year, which is one of the highest years. The format was different this year, offering a policy day and a training day. She stated that they are continually reassessing the conference to ensure it offers maximum value and is an effective use of time. Attorney General Stenehjem noted that training opportunities are always beneficial. Commissioner Goehring stated that it provides a good opportunity to network.

Ms. Kline also reported on the YMCA Grace Garden project that is located next to the Church of the Cross - just west of West Acres. It is on the church's property and it is an infill project. The project and the church are going to share a playground. It will have 30 units. She noted that there are a number of great partners involved in this project. There is no debt and Gate City Bank pledged \$15 million for start-up costs, operations and maintenance. The project targets women coming out of domestic violence situations and the rent income will not be sufficient for operations and maintenance so funding from the partners is beneficial.

PUBLIC FINANCE AUTHORITY (PFA)

Ms. DeAnn Ament, PFA Executive Director, presented a Drinking Water State Revolving Fund Program loan for Barnes Rural Water System. This application is for \$2,000,000 and would be used to refinance a Rural Development loan. Before the project was finished, Rural Development rates went up. It would add 168 new users along with the City of Kathryn's 51 users.

The requested loan term is 30 years and the average annual payment is \$86,317. The number of connections is projected to slowly grow. There are 3 different rates. The original users pay \$43/month, SEWD users pay \$59/month, and new users pay \$52/month. This will provide \$369,093 of savings and shorten the term by 10 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 Barnes Rural Water District (the "Political Subdivision") has requested a loan in the amount of \$2,065,000 from the Program to refinance a USDA-Rural Development loan; 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:

- I. 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.

WESTERN AREA WATER SUPPLY

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the Western Area Water Supply Authority June Financial Report and Debt Reduction Report. (A copy of the report is available in the Commission files.) The net income for the month of June was \$176,062.06. Sales exceeded the breakeven number by \$277,693.53.

In response to a question, Ms. Fine stated that the baseline sales to the member communities are no longer reflected on the balance sheet per the agreement between WAWSA and the member communities adopted earlier this year. The agreement states that in 2020 the WAWSA Board will look back at 2019 to see if any payments should be made. The payments are optional and will be based on the income and cash flows at that time. Since it is optional and based on the cash flow at the time, from an auditing standpoint

WAWSA does not have to carry any accrual or liability because it is our option with the WAWS Board and the members.

Mr. Cory Chorne, AE2S, provided an update on sales and current activity through June. (Copies of the graphs and charts are available in the Commission files.) Sales have totaled \$8.5 million in gross industrial revenue, well ahead of the budgeted industrial revenue. WAWS has been negotiating with a number of water service providers on extended term contracts. WAWS staff anticipated them to draw water sooner, but the connections are still in the process of being implemented. Sales are expected to improve in the last half of the year. Current projections are \$20.8 million for the year, well ahead of \$12.4 the breakeven number.

Mr. Chorne also indicated that the average sale price should start increasing in the last half of the year. The sale prices are related to the location of where the sales are made. As the water sales move away from Williston, the costs to deliver the water increase.

Mr. Chorne stated July will most likely be under projections, not reaching \$2 million. However, moving forward it is expected industrial water sales should be at or above the forecast.

In response to questions, Mr. Chorne stated the following:

- By the end of the year, it is anticipated that there will be \$8 million in additional gross revenues with a profit margin of 60-65% that WAWS will be able to put in reserves.
- There are some pump improvements being made to two pumping stations in McKenzie County along with improvements on three miles of pipeline that will contribute to a 33% increase in pumping capacity and transmission capacity. This will help with the contracting WAWS has been working on. Some parties have indicated an interest in two year contracts. Previously, contracts were on a frac by frac basis.
- The WAWS transmission line goes by Arnegard and it was hooked up to the system last year. Arnegard is not listed on the charts because it is not an industrial location. The city is in the process of building out a distribution system for a community wide system instead of individual connections.

Governor Burgum requested that an updated map be provided at a future meeting that shows both the industrial sector and the domestic sector for a comprehensive view of the WAWS system.

In response to questions, Mr. Chorne stated that barrels per frac are being tracked anecdotally as WAWS does not have all of the information. Historically, 60,000 to 80,000 barrels per frac were required in 2011. Now, fracs use more than 300,000 and some fracs have used 1,000,000 barrels. The historical trend for water use for fracs is steadily increasing. It is anticipated that the volume of water for 2018 will surpass the previous high of 2013 (33,000 acre feet) with 50,000 acre feet or higher. Governor Burgum requested a chart depicting the historical usage of barrels per frac.

In response to questions, Mr. Chorne stated that the permit WAWS utilizes for water withdrawal is a state permit that is in perpetuity. Currently, less than 10,000 acre feet are utilized and the city has a permit in excess of 40,000 acre feet. The City of Williston has a permit from the Army Corps of Engineers (Corps) to build intakes, which is also in perpetuity. As the population grows, expansion of the plant is anticipated which will also require an expansion of the intake. This will need a permit from the Corps. There is a streamlined nationwide permitting process that may take a year, but shouldn't be difficult. He noted that all water permitting in the state is a function of the State Water Commission. Access to Lake Sakakawea involves the Corps due to access easements. The Corps does not own any property on the river but they do have permitting in regards to intakes.

In response to questions, Mr. Chorne stated that the Water Commission keeps a current list of what is planned for the future and WAWS is on that list. WAWS maintains a current list of what they have planned for the future and after this biennium, there will be approximately \$345 million in infrastructure constructed by WAWS to serve the northwest part of the state. The planning list currently has an additional \$210 million in future projects identified. Several are rural water projects in sparsely populated areas, the feasibility will need to be determined.

DEPARTMENT OF MINERAL RESOURCES

In response to a question, Mr. Lynn Helms, Department of Mineral Resources Director, stated that the use of water per frac has increased from roughly 4-5 million gallons to approximately 10 million gallons for a frac. It looks like that number has plateaued. He also noted that additionally, 8-10,000 pounds of sand are utilized per frac.

Mr. Helms presented proposed Order 28931 in Case 25927, Order 29237 in Case 26690, and Order 29238 in Case 26691. (Orders are available in the Commission files.)

Case 25927, Order 28931 – Mr. Helms stated that the proposed order dismisses a Complaint case. Mr. Helms indicated that there is evidence of additional violations by Apollo Resources. The operations have been shut down. The proposed order would dismiss the earlier Complaint and DMR will combine the earlier Complaint with the new violations into a new Complaint. He noted that the Commission will be discussing the new Complaint in an executive session.

Case 25927: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 28931 issued in Case 25927 dismissing a prior Complaint which has been included in a new Complaint, be approved this 27th day of July, 2018. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 26690, Order 29237 and Case 26691, Order 29238 – Mr. Helms indicated that there are two proposed orders addressing the unitization of the Westhope-Spearfish/Madison Unit Area and determination of sufficient ratifications of the unit agreement. Mr. Helms presented a map of the proposed unit in Bottineau County. It will be developed on horizontal wells consisting of approximately 1800 acres. The wells will be 3500 feet deep. The wells currently produce about 100 barrels of oil a day and are expected to get to 700-800 barrels/day with the waterflood. It is expected to produce 300,000 barrels/day under primary and 900,000 barrels/day under waterflood. All legalities seem to be in order, there are not any proposed changes to what the operator, Resonance Exploration LLC, proposed. The operator provided 99% working interest and 83% mineral interest ratifications of the unit agreement. There is strong support for the Unit.

Case 26690: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 29237 issued in Case 26690 providing for the unitized management, operation and further development of the Westhope-Spearfish/Madison Unit Area consisting of land within the Westhope Field in Bottineau County, approving the unit agreement and unit operating agreement constituting the plan of unitization for the Westhope Spearfish/Madison Unit Area, approving the plan of operation and vacating the applicable spacing orders, be approved this 27th day of July, 2018. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 26691: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 29238 issued in Case 26691 determining that the plan of unitization for the Westhope-Spearfish/Madison Area, Bottineau County, ND, have been signed, ratified or approved by owners of interest owning that percentage of the working interest and royalty interest within said unit as required by applicable statutes and rules of the Commission, be approved this 27th day of July, 2018. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

In response to questions, Mr. Helms stated that this is a new discovery -- within the last three years. Smaller accumulations are profitable with newer horizontal wells and pressure maintenance from water, gas, or CO₂. Mr. Helms described the nature of the stratification in this area. The unitized intervals are 250 feet. These are tight rocks with thin beds, but horizontal fracturing makes it economic. There are no aquifers or water tables at these levels.

In response to a question regarding the prognosis for Bottineau County oil production, Mr. Helms stated that the Spearfish formation prospects have improved with \$75 oil. However, it works best at \$90. Renville County has a better outlook with Madison horizontal potential. It was noted that the oil is sour, so there is a \$10 discount below typical ND crude. The only purchasers of the sour crude are in Canada. Those Canadian purchasers are putting the oil on Enbridge's Line 3 and sending it to sour crude refiners - one of those refiners is Flint Hills south of St. Paul. Mr. Hicks noted that there is a \$17 million potential return on investment, so it is worth the \$3 million investment in developing this unit.

Mr. Helms gave a brief update on the study regarding the Ordinary High Water Mark case. The 200 separate public comments from 42 individuals have all been tabulated. The comments have broken down into 11 categories that include 10 separate segments (length of the river) as the Corps of Engineers identified them. The 11th category is general and it falls into a dozen different areas. An order is being structured that goes segment by segment of the river and then in the general category, category by category. This will help everyone understand what segment of the river is being addressed. There will be findings and one conclusion on each segment. He anticipates having recommendations ready next month.

Mr. Helms indicated that there were four comments that asked for additional work from Wenck. He is anticipating that the order will include a provision authorizing that the contract with Wenck be amended to have some additional work done. The work that they did does not allow the North Dakota Department of Trust Lands (Land Board) to actually calculate its decimal interest and pay decks for royalties so there is some additional work that needs to be done.

Mr. Helms stated that the ND Land Surveyors Organization commented that they thought that the report was to do acreage allocations. That was not the intent of this work, which was to get the Ordinary High Water Mark right. The next step would be to put the land surveys in electronic form with the Ordinary High Water Mark that is determined by the Commission in the order and then the computer can calculate the decimal interests for the drilling permits. That would mean amending the contract and spending more funds that were made available in the appropriation.

In response to a question he noted that there are some non-patented lands in the area of the study. He also indicated that Wenck has not acquired any new data that will be reflected in the proposed order. Any changes will be based on the comments received during this process.

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 pending adversarial proceedings in the following matters: Case No. 09-2018-CV-00089, Sorum, et al v. State of North Dakota, et al, Case No. 26327 complaints involving Apollo Resources LLC. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum stated that the Commission will also be going into executive session pursuant to N.D.C.C. 6-09-35 to take up confidential Bank of North Dakota business. 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. Governor Burgum stated that the executive session for both the Department of Mineral Resources and the Bank of North Dakota business was expected to last between 45 and 60 minutes. He noted that any formal action by the Commission would occur after reconvening in open session.

Commission members, their staff, DMR staff, Special Assistant Attorney General(s) and counsel with the Attorney General staff remained but the public was asked to leave the room. Following completion of DMR confidential business, DMR staff and the Special Assistant Attorney General and counsel with the Attorney General staff was asked to leave and BND staff joined the meeting.

The executive session began at 11:09 a.m.

DMR EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Others in Attendance:

Leslie Oliver	Governor's Office
Reice Haase	Governor's Office
Hope Hogan	Attorney General'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

BANK OF NORTH DAKOTA

The DMR executive session business concluded at 12:11 p.m., at which point they left the meeting and BND staff joined the meeting in executive session pursuant to N.D.C.C. 6-09-35 to discuss the following items:

- Consideration of a Bank of North Dakota loan application
 - Non-Accrual Loans Quarterly Recap/Detail
 - Problem Loans - Adversely Classified Quarterly Recap
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- Loan Charge-Offs and recoveries Y.T.D. 06/30/18
- Off-Balance Sheet Risk Quarterly Recap
- Presentation of confidential Bank of North Dakota Advisory Board May 17, 2018 meeting minutes

BND EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Bank of North Dakota Personnel Present:

Eric Hardmeyer Bank of North Dakota
Tim Porter Bank of North Dakota
Kirby Evanger Bank of North Dakota

Others in Attendance:

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

The meeting reconvened in open session at 12:38 p.m. Governor Burgum invited the public to return to the meeting room. He noted that during its executive session, the Commission consulted with its attorney(s) regarding Case No. 09-2018-CV-00089 and Case No. 26327. The Commission also made a motion regarding a Bank of North Dakota loan application.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring to approve the Bank of North Dakota's participation in a loan to TrueNorth Steel Inc. in the amount of \$18,500,000. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Eric Hardmeyer, BND President, presented Second Quarter 2018 Performance Highlights. (A copy of the Performance Highlights is available in the Commission files.) The highlights included:

- Balance Sheet - Deposits are up - Equity is in good shape at \$886 million.
- Income Statement - almost \$82 million for the first 6 months. It is likely that the Bank will end the year in the \$150 million range - beginning on July 1 the Bank will be putting \$1.5 million per month in the Provision for Credit Losses to build up a reserve - currently overall \$6.5 million above budget.
- Leverage Ratio - At 13.1% which is the highwater mark for capital - He noted that the Bank has transferred \$16 million into the Infrastructure Fund with another \$80 million to be transferred as loans are drawn down. There will also be another \$70 million transferred to the General Fund in October.
- Net loans to Earning Assets: 69.8%. It is down from the previous quarter. He indicated the Bank had sold \$25 million of residential loans and previously had sold \$250 million of student loans. Mr. Hardmeyer stated that the Bank will continue to look at opportunities to sell more residential loans (will depend on rates).
- 10 year History of Assets, Loans and Deposits.

- Loan originations are down in dollar amount from last year although the number of loans is approximately the same - Bank stock lending is significantly higher - Ag loans: volume down, but amount is almost equal to last year - Beginning Farmer Real Estate 49 compared to 31 last year - Real Estate market down significantly, this was anticipated - Student loans down a little bit. Getting into busy season. Federal government has a lower fixed rate and so students are not refinancing.
- Administered Loan Programs - Infrastructure Loan Fund is fully subscribed

It was requested that Bank management include a variance column on the Loan Originations report.

Mr. Hardmeyer reviewed a new slide that shows the work that the Bank does on State Loans and Administered Programs. The Commission thanked the Bank management for including that slide. It is beneficial information.

Mr. Hardmeyer briefly commented on the Credit Quality slides and it was noted that the table on Page 16 with the information that the Commission had requested has now been included. It was suggested that the information be coded to reflect trends.

The Commission commended the Bank for the ongoing profitability and the upcoming transfer to the General Fund.

NORTH DAKOTA STATE MILL

Mr. Vance Taylor, North Dakota Mill CEO, provided a report on unaudited profits for the fiscal year ending June 30, 2018 and the transfers made to the General Fund and Agricultural Products Utilization Fund. He noted that all transfers were based on 2018 fiscal year profits of \$14,188,276. The transfers increased by 46% from last year -- third highest profits for the Mill. On July 24, five percent of the net income, or \$709,413.80, was transferred to Agricultural Products Utilization Fund (APUF.) Seventy-five percent of the remaining profits were transferred to the General Fund for a total of \$10,109,146.65. Overall, transfers totaled \$10,818,560.45. This equaled 76.25% of the Mill's profits for the year. Over the last 9 years, total transfers equal to the prior 39 years of transfers.

The Commission congratulated the Mill team for the record levels of profitability. Governor Burgum stated that he appreciated the income transferring into the General Fund during a time of difficulty. However, he hopes that will not be needed in the future. The Mill competes against the private sector every day. The ability to reinvest will be critical to be able to continue to compete. He was not aware of any private companies that dividend out 76% of their profits.

Attorney General Stenejem noted that it is interesting that the last 9 years have been the most profitable to date. In response to a question, Mr. Taylor indicated that records prior to 1971 are not available to the Mill. They may be available at the Heritage Center.

Commissioner Goehring stated that the Mill team, under Mr. Taylor's leadership, has done a great job adding value to ND commodities and providing a quality product.

Mr. Taylor reported that projects are progressing on schedule and on budget for the storage and shuttle tracks. The overall completion date will be late next spring, but hopefully the tracks and storage will be up by January.

In response to a question, Mr. Taylor commented on the wheat crop and the numbers that are being discussed by the different forecasters.

OUTDOOR HERITAGE FUND

Ms. Andrea Pfennig, Deputy Executive Director and Secretary, provided requested information on OHF projects that have access fees. To date, 13 out of 130 projects funded to date have fees associated with them. Those projects totaled \$1,499,234. When considering that \$35,478,137.50 has been awarded, 4% of the awarded funds have fees associated with them. (A copy of the report is available in the Commission files.) There was a discussion on the various amounts of the fees.

Commissioner Goehring stated that because there are operations and maintenance expenses associated with the upkeep of many projects, access fees are reasonable.

In response to a question, Ms. Pfennig stated that a special grant round with an application deadline of July 15th had been held and 14 applications had been received. It is anticipated that the OHF Advisory Board will be meeting in late August and their recommendations will be presented at the next Industrial Commission meeting.

ADMINISTRATIVE BUSINESS

Ms. Fine indicated that Shirley Campbell retired shortly after the last meeting. She worked at the Industrial Commission for over 29 years. A certificate of recognition was signed. The Commission members expressed appreciation for her years of service.

Ms. Pfennig indicated that a job opening has been posted to fill the position. To date, 17 applications have been received. The application period closes on Friday, August 3rd.

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 1:09 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary