

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on October 2, 2019 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: 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 approximately 1:00 p.m. and the Commission took up Housing Finance Agency (HFA) business.

HOUSING FINANCE AGENCY

Mr. Dave Flohr, HFA Interim Executive Director, requested that he be appointed as the Commission's hearing representative for the upcoming public hearing on the proposed issuance of Housing Finance Program Bonds to be held on November 6, 2019.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission appoint David Flohr as the Commission's hearing representative for the November 6, 2019 public hearing on the proposed issuance of Housing Finance Program Bonds, Home Mortgage Finance Program. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Flohr provided a report on the 4% Low-Income Housing Tax Credit (LIHTC), which is an underutilized financing option for the development of affordable multi-family housing. To qualify, developers must finance at least 50% of the construction costs by tax exempt financing. Some of the challenges to utilizing this program include: fixed soft costs, such as legal fees and underwriting, which are the same no matter the size of issuance and a lower amount of equity is being provided. Higher debt and higher rent structures are then required due to less equity which may be unobtainable in most North Dakota communities.

To address this, HFA pledged a portion of the single-family portfolio to the Federal Home Loan Bank as collateral for a line of credit (LOC), which can be borrowed against for any HFA housing program. These funds are considered tax-exempt financing and can be used to address the 50% financing requirement. Additionally, pooling multiple multi-family projects will be examined. HFA has met with several partners and there is interest in this option.

The 4% credit initiative will operate the same as the 9% LIHTC regarding rent restrictions. Credits can be used on projects with a percentage of units/rents restricted to specific income levels and the balance available to all income levels. The practice by developers is to income restrict all units to maximize the amount of tax credit equity brought to the project. The 4% credits are available statewide.

The consensus of the Commission was that this is a good concept. HFA will report back to the Commission as it progresses.

Mr. Flohr provided a report on a housing program being offered by the McKenzie County JDA and the role the Housing Finance Agency has been asked to perform. The goal of the program is to retain workforce. This \$1 million pilot program incentivizes the construction and sale of quality, affordable housing in McKenzie County by providing a development subsidy of up to \$50,000 per single-family house to offset infrastructure costs for qualifying housing projects. The amount of the purchase price to the homebuyer

cannot exceed the Federal Home Administration limit. The JDA will release up to \$50,000 at closing to cover the difference. The development subsidy amount will be adjusted based on the purchase price of the house and the level of infrastructure that was built.

HFA provided technical assistance to the McKenzie County JDA regarding the structure and documentation of the program. At the request of the JDA the Housing Finance Agency will provide the servicing for the loan program—a second lien on the property.

It was noted that there is a shortage of housing in McKenzie County. Dunn County and Williams County are interested in a similar program should this approach prove successful.

DEPARTMENT OF MINERAL RESOURCES

Mr. Lynn Helms, DMR Director, and Mr. Bruce Hicks, Oil and Gas Division Assistant Director, presented the following order for consideration.

Case 27748, Order 30283—application seeking payment from operator for working interest owner revenues

Mr. Helms indicated that this case involves an application from Billings County 2, LLC (BC2) regarding a complaint against Continental Resources. Basically, the complaint breaks down into 3 areas: 1) How Continental is distributing revenue – issues over revenue distributions; 2) Request for a penalty for expenses to be assessed against Continental; 3) Request for some rulemaking. Assistant Attorney General Meyer has looked at this and found that the Commission does not have jurisdiction to resolve contractual or royalty distribution issues and is recommending that the Commission deny that part of BC2's request. Also, the Commission does not have jurisdiction to award costs and attorney fees along with assess penalties with regards to these issues. Last, it would not be appropriate in a Commission order or a hearing to adopt new rules—there is an administrative rulemaking process under NDCC 28-32 that must be followed. Continental submitted a Motion to Dismiss based on these grounds. The recommendation is to grant the motion of dismissal by Continental.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 30283 issued in Case 27748 dismissing the application be approved this 2nd day of October 2019. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

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 current adversarial proceedings in:

- **Supreme Court Case No. 20190203/Case No. 09-2018-cv-00089/Sorum, et al vs. State of North Dakota et al**
- **Case No. 05-2019-cv-00085/Northwest Landowners Association 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 which is anticipated to last between 15 and 30 minutes.

Governor Burgum stated that the Commission is meeting in executive session to consult with the Commission's attorney(s) regarding Supreme Court Case No. 20190203 and District Court Case 2019-cv-00085 (Sorum and Northwest Landowners). He noted that any formal action by the Commission will occur after it reconvenes in open session.

Commission members, staff, DMR staff, and Special Assistant Attorney General(s) and counsel with the Attorney General staff remained, but the public was asked to leave the room. The executive session began at 1:19 p.m.

DMR EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

Others in Attendance:

Mike Nowatzki	Governor's Office
Matt Sagsveen	Attorney General's Office
Nici Meyer	Attorney General's Office (for the Northwest Landowners Case discussion)
John Schneider	Agriculture Department
Dan Gaustad	Special Assistant Attorney General, Attorney General's Office (for the Sorum Case discussion)
Lynn Helms	Department of Mineral Resources
Bruce Hicks	Department of Mineral Resources
Katie Harsaager	Department of Mineral Resources
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

The Industrial Commission reconvened in open session at 2:15 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 attorneys regarding Supreme Court Case No. 20190203/Case No. 09-2018-cv-00089 and Case No. 2019-cv-00085 (Sorum and Northwest Landowners).

Mr. Helms provided a presentation regarding the Abandoned Well Plugging and Site Restoration Fund (AWPSRF) and Abandoned-Orphan-Legacy wells and sites. (A copy of the presentation is available in the Commission files.) The report discussed: the inventory of abandoned wells in North Dakota and the corresponding potential financial exposure of the State, proposed rule changes to help address financial exposure, orphaned wells, and the issues legacy sites are experiencing due to prior practices along with identified solutions.

An abandoned well is a well that has not produced oil or natural gas in paying quantities for one year. As of July 31, 2019, there were 639 abandoned wells/sites in North Dakota with an estimated plugging and reclamation liability of \$95,850,000. After taking different bonds into consideration, the total liability of the State is \$84,550,000. (*Note, these numbers were updated by Mr. Helms after the meeting.*) It was indicated that currently in the Abandoned Well Fund there is \$20 million so there is a gap of approximately \$60 million.

Rule changes are being proposed to prevent temporarily abandoned (TA) wells from becoming abandoned wells and abandoned wells from becoming orphaned. If the rules changes are approved, abandoned wells will require a full plugging and reclamation cost bond before they can be transferred to a new operator. In

addition, the proposed rules will provide for consistency regarding the 7-year time frame so everything is consistent with the law.

The definition for orphan wells was provided and indicated that as of June 30, 2019 there were no orphaned wells with six sites that have not been reclaimed. There is \$930,000 in the Abandoned Well Fund to pay for the reclamation of those six sites.

Legacy sites were defined in the law and include pipelines and facilities that were abandoned or left in an inadequate reclamation status before August 1, 1983, and for which there is not any continuing reclamation responsibility under state law for someone else to deal with these sites.

Mr. Helms commented on the work that had been done by Manitoba 10 years ago using the excavation and replace process and the installation of drain tile. The process works, but it takes between 13 to 15 years to restore a site to productivity and it costs \$1,000,000 per site. The amount of salt that was found was 60 tons in the subsoil.

Previous work that had been done per a contract with the Commission looked at several different methods. The Legislature in 2017 asked that the Commission identify the size of the problem and how many sites we have remaining from the 1950 - 1960's oil fields. Golder and Associates did that work and surveyed all the sites plus as many as they could find out about anecdotally. Their work showed that in the north central areas of the state, 166 sites were reviewed; 52 have no current impact; and 114 have impacts ranging from 100 square feet to 6 acres. They also looked at some other counties not in the north central so the final number is higher.

The second thing that the Legislature wanted to know are how many of these have been settled with the landowner and is now the landowner's responsibility—the landowner took on the responsibility for some cash payment. Barr and Associates reviewed the records and found that 9 of the 114 sites are the landowner's responsibility. That leaves 105 being the number in north central North Dakota, but there is another 96 in other parts of the state. The total number is 201 sites.

Mr. Helms provided information on remediation work that was conducted by NDSU. Findings showed that the use of gypsum and hay restored these sites to short term productivity, but over the long term the sites re-contaminate from the 60 tons of salt that is in the subsoil. This is because the wet/dry cycle brings the salt up.

The second project was conducted by Terracon and work was first done in the lab. What they found out was that the very best thing was two years of precipitation. If you could somehow isolate the root zone from the salt underneath and come up with a technique where that reclaims itself, you get reclamation on the top three feet of the root zone. They then took their tests to the field and did a profile of the six-acre site and came up with nine different techniques that they wanted to test on the site. The key was a combination of what they call Phytoremediation and installing a capillary barrier to break that subsoil root zone cycle. The winner was Test Plot 3B and within one to two years of precipitation the EC levels go down to the extent that you can grow barley on these lands within two years. He reviewed how the work was done and what steps had to be taken on each site. This work is continuing on a larger site (1.5 acres) and the site will be available for viewing next spring with results next summer. This process has worked in the lab, soil profiles, half-acre plot, and they believe it will work on a 1.5-acre site which is being constructed right now.

Mr. Helms indicated that remediation would take ten years and cost \$13,012,552 to reclaim all 201 sites using this approach. If there were no financial constraints, the work could be completed in four years.

Currently the Fund is limited to spending \$5 million a biennium on this type of work and is constrained by the \$7.5 million a year that goes into the fund and what is needed to be kept in the fund balance. The cap on the fund is \$50 million.

Commissioner Goehring noted that he has seen approximately 50 of these sites and every site has different soil composition, size of affected area, topography, etc. Because of these factors, he believes 20-30 sites could be addressed with less expensive techniques, such as tiling and setting up a phytoremediation cell.

Mr. Helms stated that it appears the two key factors is the capillary barrier—breaking the connection to the salt in the subsoil—and the phytoremediation.

The question was raised as to whether more test sites are required before scaling up. Mr. Helms indicated that the site discussed in his report was selected to cover several variations. Because of this, he doesn't feel it is necessary to do multiple years with multiple sites before moving forward.

In response to a question, Mr. Helms confirmed that the constraints are all legislative appropriations.

Mr. Helms stated that there are some problems with the legacy sites, but there is a plan to address and deal with those problems. There is an issue with abandoned wells, but there are plans in the rule changes to protect the state from that growing problem and also to address and scale it back.

The Commission directed that Mr. Helms to bring back the results from the site next year so planning can be done prior to the next legislative session.

The Commission commended the staff, researchers and contractors that had been working and doing the testing to identify solutions for resolving these problems.

Mr. Helms indicated that next week there will be hearings regarding the proposed rule changes in Bismarck, Dickinson, Williston, and Minot. He anticipates bringing a final set of rules for the Commission's consideration at the November meeting.

Mr. Hicks provided information that the Commission had previously requested on wells with a Temporary Abandoned (TA) well status. There are currently 134 wells, approximately one third, that have held a TA status longer than seven years. The proposed rule change would result in an estimated 6% increase in bonding.

In response to a question, Mr. Helms stated that TA wells need to reapply every year for TA status and that warning notices start in year five.

Of the 378 total TA wells, approximately a dozen operators have the TA wells and only about give will need to get additional bonds.

An update was provided on the PHMSA preemption application. Ten states have joined ND and MT and approximately seven industry groups have filed comments in support of the preemption application. September 23rd was the deadline for comments. The Attorney General's office has until October 23rd to file a response to the comments, after which PHMSA will have 180 days to make a determination.

PIPELINE AUTHORITY

Mr. Justin Kringstad, Pipeline Authority Director, updated the Commission regarding a request that will be presented to the Oil and Gas Research Council (OGRC) regarding a study on Bakken Three Forks natural gas liquids chemistry.

Mr. Kringstad noted that in 2011, the Commission funded a study on gas oil ratios that has changed the way industry has gone about development. However, a better understanding is needed about natural gas liquids (NGLs) as the reservoir level changes. Bakken has very rich natural gas compared to other plays in the U.S. We have very good starting point data for each well, but there is no subsequent follow up information being collected. This study would examine the expected NGL chemistry changes from a typical Bakken and Three Forks well over its productive life.

Mr. Kringstad provided various slides depicting the information that is currently available and identified where more information is needed. He provided the table that has been developed by the EERC a few years ago that is currently being used in his forecasting. More detail is needed to do additional forecasting for the next 10, 20, 30 or 40 years as oil development continues in the state.

The consensus of the Commission was that this study is an important step in planning for increasing gas processing and the development of a petrochemical industry in the state. This information would demonstrate to the industry that North Dakota has a resource that merits the significant investment that would be required.

Mr. Kringstad indicated that he will be requesting funds from the OGRC and it will bring it back to the Commission at the next meeting for approval.

It was noted the EERC has the expertise and resources to complete the study. A proposal from the EERC was distributed outlining the scope of work that would be done and identifying the tools and data that would be used to make the best scientific estimate knowing that the Bakken play is only 5 to 10 years old.

RENEWABLE ENERGY PROGRAM

Ms. Andrea Pfennig, Industrial Commission Deputy Executive Director, presented a request for a special grant round for consideration.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Industrial Commission Deputy Executive Director and approve an additional grant round for the Renewable Energy Program with an application submission deadline of October 21, 2019. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

BANK OF NORTH DAKOTA

Mr. Eric Hardmeyer, BND President, presented recommendations for Bank officer compensation for consideration. The recommendations were based on the following considerations:

- *Retention of key talent.* BND officers provide the strategic direction to continue to execute on our mission and strategies.
- *Succession management.* Three of BND's current officers will likely be retiring within the next 2 years. BND management's succession planning process has identified successors from this officer group who could likely take on a higher-level role. BND is at risk of losing key successors to outside entities due to inadequate compensation.
- *Risk management.* BND's enterprise risk management process has identified succession planning and culture as a "yellow" or a pending high risk. The loss of successors is a key risk indicator because such departures would have an impact on the leadership and execution of BND's strategic plan.

- *Increased competition for talent.* In the past 5 years, 32 new hires came from the financial industry, while conversely, 13 employees departed BND for employment with other financial institutions. This is the market BND competes in for talent, and when BND's compensation is inadequate, the risk of losing key officers at BND is high.
- *Fair and equitable compensation.* When compared to the proxy and financial industry survey data information, BND officer salaries fall significantly below a very conservative benchmark. The BND officer core compa-ratio averages 75% where non-executive unclassified employees average 85% and BND's regular classified employees average 97%.

It was noted that equitable compensation is an issue for all state agencies. A comprehensive compensation study would be beneficial. Under the legislative directive next year there will be additional flexibility in regard to making compensation adjustments. It was indicated that in addition to the base increase, three of the officers would receive one-time retention payments.

Commissioner Goehring expressed his concern that with these increases the compensation levels will still be much less than the private sector.

Mr. Hardmeyer pointed out that in addition to being below the private sector for salary compensation the Bank does not offer incentive payments that most private sector banks provide to their employees.

Mr. Hardmeyer stated that the Bank will have a record income again this year. This is a strong management team and needs to be retained.

The Commission members expressed their concerns about the compensation levels for all state employees and the challenges retaining staff with the limitations that had been adopted by the Legislature. Governor Burgum pointed out that he had proposed in the executive budget a 4% first year and 2% in the second year with an opportunity to go to 4% if savings could be identified. This is an issue that will need to be dealt with in the next legislative session.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of Bank of North Dakota Advisory Board and Bank President Eric Hardmeyer and approve the following salary compensation adjustments effective July 1, 2019:

<u>Officer/Title</u>	<u>Annual Increase</u>	<u>% of Increase</u>	<u>Proposed Annual Salary</u>
Tim Porter Chief Financial Officer (CFO)/SVP	\$ 2,400	1.3%	\$187,634
Joe Herslip Chief Technology & Operations Officer (CTOO)/SVP	\$ 2,400	1.7%	\$143,927
Lori Leingang Chief Administrative Officer (CAO)/SVP	\$ 2,400	1.7%	\$146,675
Jeff Weiler Chief Risk Officer (CRO)/SVP	\$ 7,035	5.0%	\$147,735
Kirby Evanger Chief Credit Officer (CCO)/SVP	\$ 8,922	5.0%	\$187,370
Todd Steinwand Chief Business Development Officer (CBDO)/SVP	\$10,200	5.0%	\$214,200

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

Mr. Hardmeyer noted that in 2015, the Legislature approved the construction of a Financial Center with costs not to exceed \$17 million. Due to an economic downturn, the project was suspended by the Commission in 2016. In 2017, the Legislature temporarily suspended the project and authorized the project to move forward after June 30, 2019 with construction funds available through June 30, 2021. Mr. Hardmeyer indicated that he is getting several inquiries from media and legislators about plans to move forward and requested guidance from the Commission.

Governor Burgum indicated that it is his position that the Bank continue in a holding pattern versus starting construction. The Legislature authorized a real estate study that is now being undertaken under the guidance of the Office of Management and Budget. While the scope of the study had to be narrowed due to decreased funding, all the buildings and leases in Bismarck are in the study. He indicated that Mr. Joe Morrisette would be available at a future meeting to provide an update on that work and to provide information on the timeframe for the study and when the results are expected. Governor Burgum stated that the information from the study would be beneficial to incorporate into the decision-making process.

Mr. Hardmeyer indicated the Bank has expended \$500,000 on the architectural work so far on this project and has invested in the land that would allow for the additional construction.

After discussion, it was the consensus of the Commission that Mr. Hardmeyer should work with and retain the architectural firm to obtain updated information regarding costs. Additionally, the agencies that were anticipated to relocate to the financial center should be consulted, as staffing levels and requirements may have changed. The Commission asked that they be given an opportunity to review the design plans (45,000 square foot facility) and expected costs before moving forward.

Mr. Hardmeyer discussed the IT unification program. The Bank has been working with ITD to complete assessments and surveys. He anticipates having information in the coming weeks for a go/no go decision. He stated that the IT unification is being closely examined by the Bank management team. The Bank has recently lost some IT personnel and will need to move quickly on hiring employees if they do not proceed with unification. Governor Burgum noted that the focus of ITD's efforts is unification, not consolidation.

Mr. Hardmeyer provided the Bank of North Dakota Advisory Board July 25, 2019 nonconfidential meeting minutes.

ADMINISTRATIVE BUSINESS

Ms. Fine presented the August 28, 2019 non-confidential meeting minutes for consideration.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the August 28, 2019 non-confidential meeting minutes be approved. 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 3:54 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary