

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on April 30, 2019 beginning at 12:00 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 12:06 p.m. and the Commission took up Housing Finance Agency business.

HOUSING FINANCE AGENCY (NDHFA)

Ms. Jolene Kline, Executive Director, presented the NDHFA Advisory Board recommendation for approval of the 2020 Low Income Housing Tax Credit (LIHTC) Qualified Allocation Plan for consideration.

She noted that under IRS Code, the Governor needs to formally adopt the Plan. Some of the changes include:

- The ability for a developer to receive a 30 percent increase in non-acquisition eligible basis (known as the "basis boost" if the project is in an Opportunity Zone.
- Changes the IRS made in 2018 that gave a project the ability to rent up to 80% area median income (AMI) households as long as the average of households served was at 60% or less of AMI. There needs to be an equitable distribution of unit sizes.
- Under tax code, the federal tax credit requires a 15-year mandatory use period and an optional 15-year period. The project can opt out at the discretion of the agency if the agency finds a qualified buyer for the project. Most developers are waiving their ability to opt out in favor of getting additional points.
- The compliance monitoring fee is being raised from \$35 to \$40 per unit. This rate hasn't been raised since 2008. Careful budget analysis is conducted to ensure that each program pays for itself. The analysis determined that the fee adjustment was required to keep up with inflation and additional requirements by the IRS. There were no objections to the increase. It is an annual fee per unit per year.
- In the design standards, there was a point category that encouraged 2 story or less development in an effort to get away from 3 story walkups. There was an interesting design theory called "the big house" multi-family home that was introduced by some developers at the public hearing. It's a design that has an exterior entrance for each unit, but it is a bridge between a single family and multi family home. An adjustment was made to the scoring to allow this type of development.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Housing Finance Agency Advisory Board and approve the 2020 Low Income Housing Tax Credit (LIHTC) Qualified Allocation Plan as presented.

In response to a question regarding the interest in Opportunity Zones, Ms. Kline stated that the first funding round will be held on September 30th, so more information will be available at that time. There was discussion that investing in Opportunity Zones may be slowly gaining interest.

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

Ms. Kline provided a report on the 2019 Housing Trust Fund Allocation Plan. This is part of HUD's consolidated plan. The Department of Commerce is under a 30-day comment period, which closes on May 7th. Commerce will then submit the plan to HUD. HUD has 45 days to review it and if no comments are made, the plan is final. The Plan outlines how the \$3 million from the Housing Trust Fund will be awarded.

The other change includes eliminating the operating cost assistance reserve from the list of eligible uses. This hadn't been utilized in the past and there was no opposition to the change.

Ms. Kline presented the NDHFA Advisory Board recommendation to approve the updated Acquisition Cost Limits for the FirstHome Standard, Start, HomeAccess and Downpayment Cost Association (DCA) programs for consideration.

The IRS publishes a revenue procedure each year that provides the average area purchase price limits. They can be set at no more than 90% of the average area purchase price. Ms. Kline provided the following examples:

- Burleigh County purchase price limits go down from \$284,823 to \$283,348, an approximate \$1,500 decrease.
- Stark County dropped by approximately \$400 to \$283,348.
- Williams County had a \$5,000 drop.
- McKenzie County increased approximately \$5,000 (from \$303,882 to \$297,050).

The recommendation is for Williams County to go to \$297,050 and all other counties in the state to be at \$283,348. This would be effective May 1, 2019.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Housing Finance Agency Advisory Board and approve the updated Acquisition Cost Limits for the FirstHome Standard, Start, HomeAccess and Downpayment Cost Assistance (DCA) programs as stated in Program Directive 112. (A copy of Program Directive 112 is available in the Commission files.)

In response to a question, Ms. Kline clarified that while Billings County could have gone up, but because there hasn't been a loan since 2011, they were included with the other counties. It was noted that the average loan made under the FirstHome program is about \$165,000, so most are considerably below the limits.

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

Ms. Kline presented the NDHFA report for the first quarter of 2019 and noted the following along with responding to questions:

- Activity continues to be strong. Reservations decreased compared to the same timeframe in 2018. However, it should be noted that 2018 was a record year. Roots Loan purchases increased. While it is not a very large program in HFA portfolio, it does help some people get into a home.
- There is an increase in the total loan portfolio partly due to mortgages that were taken over from BND. Approximately 100 loans were acquired.

- Multifamily housing projects are getting ready to start construction in West Fargo, Bismarck, and Grand Forks. The Pure Development project in Grand Forks will include a Hugo's grocery store on the main floor. It will help make the downtown community very livable.
- Grace Gardens is a YWCA project in West Fargo for families escaping domestic violence. It will be operating this summer.
- Edwinton Place in Bismarck is in construction. It will offer permanent supportive services 24/7. Governor Burgum asked if this a tool that every major city needs to help eliminate homelessness. Ms. Kline responded affirmatively, noting that the service component is the biggest challenge.
- Registration is open for the HFA Statewide Housing Conference. There is an impressive lineup of speakers, including: Ms. Michelle Kommer, Mr. Chris Jones, and Dr. Lisa Petersen.

Ms. Kline provided a legislative report, noting that HB 1014 was the vehicle for Housing Incentive Fund (HIF) dollars. While it was disappointing that HIF only received \$7.5 million, Ms. Kline and her team are working on ideas to make the most of the funding and will offer those suggestions to partners. Ultimately, this will go through a public hearing process and come before the Commission for final consideration.

In response to a question, Ms. Kline stated that approximately 160-180 units will be developed through HIF funds. It will depend on how many are standalone projects and how many partner with federal funds. HIF is needed to address: workforce, frail/elderly, homeless, and other special needs populations.

Operating expense increased due to increase in service release premiums paid to third parties due homeownership activity increasing so significantly. Savings were found in a number of other categories to offset the expenses.

RENEWABLE ENERGY PROGRAM

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented a financial summary report for the Renewable Energy Program. Ms. Fine stated that the uncommitted cash is \$2.9 million as of the end of March 31, 2019.

Ms. Michelle Kommer, Commerce Commissioner, and Ms. Andrea Pfennig, Industrial Commission Deputy Executive Director, presented the Renewable Energy Council Grant Round 39 recommendation for consideration as follows:

R-039-A: "New Implementation of Stack Heat Recovery Technology to Increase Efficiency and Production at Existing Ethanol Production Facility"; Submitted by Hankinson Renewable Energy (HRE), LLC; Total project costs: \$3,242,569; Amount requested: \$500,000.

HRE's current ethanol production rate is steam-limited during the winter months inhibiting the plant's ability to produce ethanol, thereby limiting overall production. This project will address this limitation through the installation of a Stack Heat Recovery (SHR) system. The SHR system is designed to capture excess heat energy released from the plant's dryer exhaust stack and recycle the heat back into the production process. In addition, the system will collect water condensation from the dryer exhaust stack and use it for boiler make-up and process water. In effect, the system will improve efficiency by decreasing natural gas and make-up water needed, while increasing the production of ethanol and coproducts. The Renewable Energy Council voted in favor of this proposal 6-1.

This is a demonstration project, and HRE will share their results with other plants in the state that may be interested in utilizing the technology.

Commissioner Goehring noted that HRE has a history of innovation.

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 “New Implementation of Stack Heat Recovery Technology to Increase Efficiency and Production at Existing Ethanol Production Facility” and authorize the Industrial Commission Executive Director/Secretary to execute an agreement with Hankinson Renewable Energy, LLC to provide a total of Industrial Commission Renewable Energy Program funding in an amount not to exceed \$500,000. On a roll call vote, Governor Burgum and Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum complimented HRE on their willingness to share their findings with other ethanol plants in the state.

Commissioner Kommer and Ms. Pfennig presented the Renewable Energy Council recommendation for an amendment to a current project as follows:

Contract R-025-035: “Biocomposite Development of Industrial and Consumer Projects - Phase II”; Submitted by c2renew.

The objective of this project is to develop a pilot facility. The Renewable Energy Council is recommending the following changes to the project:

- Extend the project from 24 months to 38 months, ending July 31, 2019.
- Move from building a facility in Colfax to leasing a facility in Fargo.
- Modify the budget as follows:

Project Expense	Current Budget		Revised Budget	
	NDIC	c2renew	NDIC	c2renew
Equipment	\$300,000	\$750,000	\$322,107.40	\$252,182.29
Project Management/ Engineering Services	\$200,000	\$0	\$177,892.60	\$247,817.71
Total	\$500,000	\$750,000	\$500,000	\$500,000
Match Rate	40%	60%	50%	50%
Total Project Costs		\$1,250,000		\$1,000,000

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 amend the grant award R025-035 “Pilot Scale Facility for Biocomposites Development for Industrial and Consumer Products” and authorize the Industrial Commission Executive Director/Secretary to execute an amendment with c2renew that includes the following:

- Extend the project from 24 months to 38 months, ending July 31, 2019.
- Change the scope of work from building a facility in Colfax to leasing a facility in Fargo.
- Modify the budget as follows:

Project Expense	Revised Budget	
	NDIC	c2renew
Equipment	\$322,107.40	\$252,182.29
Project Management/ Engineering Services	\$177,892.60	\$247,817.71
Total	\$500,000	\$500,000
Match Rate	50%	50%
Total Project Costs		\$1,000,000

Governor Burgum asked if there were any concerns expressed by the Council that the project has changed dramatically from the original proposal. Ms. Pfennig indicated that the Council had significant discussion about the request and asked the recipient several questions. Commissioner Kommer noted that scope creep has occurred with this project. Commissioner Kommer noted that the Industrial Commission staff have put in an extensive amount of work to help the business leader accomplish his goals while maintaining the integrity of the program. It is important, moving forward, that the business leader follows the program's guidelines. If there is a continuing challenge in meeting project objectives and timelines, there would be reluctance to accommodate further changes.

Gov. Burgum inquired whether checkpoints are in place to make sure that the project stays on track and within the guidelines moving forward. Commissioner Kommer indicated that the project must be completed by July 31, 2019. Ms. Pfennig noted that the funds are provided on a reimbursement basis, requiring supporting documentation of costs. In response to a question, Ms. Pfennig clarified that moving forward funds may only be used for equipment purchases and contractor is required to install the equipment. Some of the prior funds have been utilized for project management.

Commissioner Goehring asked for clarification regarding the decrease in equipment costs. Ms. Pfennig stated that the recipient has been creative with equipment purchases by looking at auctions and secondhand equipment.

Commissioner Goehring noted that the company has done some innovative things and he is comfortable with the changes.

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

Ms. Pfennig presented a recommendation on a confidentiality request for the Commission's consideration.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission grant the request from Evolve Analytics, LLC and determines that the following information is confidential:

Appendices E and G of Grant Round 40 Application - Onsite Installation of Secure, Remote, Autonomous, Multi-Drone Operations within the ND Renewable Energy Sector and further determines, if the application is approved, that the reporting on the project is confidential, including the types and design of hardware, software design and components, source codes, and intellectual property owned by Evolve Analytics, contingent upon Evolve Analytics, LLC providing non-confidential reports with sufficient information to determine that the work outlined in the application is being completed. On a roll call vote, Governor Burgum and Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

WESTERN AREA WATER SUPPLY (WAWS)

Ms. Fine presented the March Financial Report and Debt Reduction Report. For the month of March there was a net income of -\$22,799.34 after paying the principal due on the BND loan and an additional principal payment of \$285,000. The breakeven sales monthly number is \$1,131,811, and the sales for the month of March were \$1,884,571.56; in excess of the breakeven sales number by \$752,760.56.

Mr. Corey Chorne, AE2S, and Mr. Curtis Wilson, Executive Director for WAWS, provided an update on sales and current activity and provided a handout. (A copy of the handout is available in the Commission files.)

Sales year to date through March total \$4.1 million. The budgeted amount was \$6 million. The shortfall is attributed to weather in January and February. Overall, sales are still good, and it is anticipated that the break-even budget of \$13.6 million will be reached in September or October, and sales for the year will reach \$20 million. The budgeted revenue for the year was \$22.1 million.

The average sale price is \$.55 per barrel, which is down from 2018. The cost per barrel is down slightly from last year. This is reflective of where the water is being sold. More water is currently being sold close to Williston.

The monthly budgeted and adjusted industrial sales forecast has been modified based on feedback from the Commission to reflect seasonal demands. This is another way to look at the data.

There was discussion regarding a new approach to selling water. In response to a question, Mr. Wilson stated that a typical frack today requires about 200,000-300,000 barrels over ten days. Approximately 10 times the current capacity in terms of throughput is needed. Because of this, storage will be. Interest has been expressed from private concessionaires to buy WAWS water. WAWS could become a secondary provider.

SB 2020 was approved and included funding for the design work to be completed for an increase in the size of the water treatment plant for the peak summer usages. In the summer, domestic use can hit 23 million gallons. Currently, long term contracts are not viable due to lack of storage.

It was the consensus of the Commission that Mr. Wilson should draft a plan regarding the issues of storage and sales and present it to the Commission at a future meeting.

Mr. Wilson indicated that WAWS is adding a Chief Operating Officer position on their staff and Tami Mattson has been selected by the Board to fill the position.

There is interest in the sale of industrial water into the State of Montana and something that the Board will be considering.

Policies have been developed regarding the depots to address issues with inappropriate dumping. If entities self-report, it will be a \$1,000 fee. WAWS will cover the cost of reporting to the Department of Environmental Quality. If entities do not self-report, it will be a \$5,000 fee.

Mr. Wilson provided a capital expenditure request for consideration.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director/Secretary and approve the request from the Western Area Water Supply Authority Board for payment from the Western Area Water Supply Authority industrial account of capital improvement costs for the Indian Hills & Alexander Pump Station Improvements projects in the amount of \$35,904.29. On a roll call vote, Governor Burgum and Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Based on feedback from the Commission, Ms. Fine presented a memo about the processing of the remaining payments for the approved project in the amount of \$1,010,000. Since the project has already been approved, it will be more efficient to have the Executive Director approve the payments with the conditions that a) the WAWS Board reviews the invoices and submits the payment request and b) there are enough funds within the Industrial Account to pay for the costs.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission delegate authority to the Industrial Commission Executive Director/Secretary to approve Western Area Water Supply Authority Board capital expenditure requests for payment from the Western Area Water Supply Authority industrial account of capital improvement costs for the Indian Hills & Alexander Pump Station Improvements projects up to \$1,010,000.00. On a roll call vote, Governor Burgum and Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM

Ms. Fine presented a request for a special grant round. There was one application received by the most recent grant round deadline. Some partners have requested an additional round, indicating that a July 1st, 2019 deadline will coordinate some federal funding opportunities. The current application would be carried forward to the July 1st round.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Industrial Commission Executive Director and approve an additional grant round for the Lignite Research Program with an application submission deadline of July 1, 2019. On a roll call vote, Governor Burgum and Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Jason Bohrer from the Lignite Energy Council provided a research and development update.

- PCOR, a carbon dioxide management partnership that is sponsored by the Department of Energy (DOE) is up for renewal. The Energy and Environmental Research Center (EERC) manages the program for North Dakota and will apply for a renewal.
- EERC is also applying for funding from DOE on project materials and emerging markets.
- University of North Dakota Engineering program is planning a rare earth elements application.
- DOE has a “Coal First” program. Barr Engineering received \$100,000 from DOE to prepare a proposal. If the early work is successful, Barr Engineering may come back and request funds to access the \$5 million from DOE.

Mr. Bohrer noted that good progress has been made on electric vehicles. The Lignite Energy Council is also looking at greenhouses and studying the best crops to be grown in those greenhouses and developing the strategies. In response to a question, Mr. Bohrer stated that he will reach out to MHA Nation regarding greenhouses to avoid replicating each other’s work. There’s a lot of room to make the industry work through partnership.

Mr. Jonathan Fortner from the Lignite Energy Council provided a legislative report. There are five bills that have helped advance the lignite industry.

- HB 1439: Provides an exemption from oil extraction taxes for the use of carbon dioxide in enhanced oil recovery and geologic storage.
- HB 1066: Increases the Lignite Research Fund appropriation by \$10 million per biennium starting in FY 19-21.

- SB 2044: Increases criminal penalties for trespass and intentional damage to critical infrastructure. The definition of critical infrastructure included several assets at the electrical power generating facilities to provide reliability and safety.
- SB 2344: Provides clarity that the surface owner has those rights, which will help provide certainty for investments made in carbon capture projects.
- HB 1014: Includes authority for \$4.5 million of the funding for the Lignite Research Fund can be used for non-matching projects. That includes the funding for future litigation uses to protect and promote the continued development of lignite resources.

There was discussion regarding potential legislation in Minnesota. A conference committee has been named. Both sides seem to be holding firm to their position. This will continue to be monitored.

PUBLIC FINANCE AUTHORITY (PFA)

Ms. DeAnn Ament, PFA Executive Director, presented the following Clean Water SRF loan applications:

City of Kindred - \$1,400,000. Ms. Ament stated that this loan is for the rehabilitation and expansion of wastewater stabilization ponds. After loan forgiveness, the net loan will be \$980,000. Kindred is in the process of changing user rates to generate an additional \$53,000 per month. This will allow the City to meet the 120% coverage requirement.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Public Finance Authority Advisory Committee and adopt the following resolution:

RESOLUTION APPROVING LOAN FROM CLEAN WATER STATE REVOLVING FUND

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

WHEREAS, the Clean Water 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 (NDPFA) and the Bank of North Dakota (the Trustee); and

WHEREAS, the City of Kindred (the "Political Subdivision") has requested a loan in the amount of \$1,400,000 from the Program for the rehabilitation and expansion of a wastewater pond; and

WHEREAS, the 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 Clean 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 and Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Ament presented a Capital Financing Program Resolution for consideration.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Public Finance Authority Advisory Committee and adopt the following resolution:

SERIES RESOLUTION FOR
UP TO
\$4,000,000
NORTH DAKOTA PUBLIC FINANCE AUTHORITY
CAPITAL FINANCING PROGRAM BONDS
SERIES 2019A

WHEREAS, the Industrial Commission of the State of North Dakota (the "Commission"), acting pursuant to provisions of the North Dakota Public Finance Authority Act, Chapter 6-09.4, North Dakota Century Code (the "Act"), and pursuant to the General Bond Resolution adopted by it on March 2, 1990, as amended March 16, 1990, March 30, 1992, and May 13, 1998 (the "General Bond Resolution"), desires to authorize and direct the issuance by the North Dakota Public Finance Authority (the "Authority") (formerly the North Dakota Municipal Bond Bank) of a Series of its Capital Financing Program Bonds (the "Bonds");

WHEREAS, the General Bond Resolution authorizes the issuance of Bonds in one or more Series pursuant to a Series Resolution authorizing each Series;

WHEREAS, the Industrial Commission of North Dakota has determined that it is necessary and expedient that the Authority issue at this time a Series of Bonds to be designated "North Dakota Public Finance Authority Capital Financing Program Bonds, Series 2019A" (the "Series 2019A Bonds") to provide approximately \$2,500,000 net proceeds to lend to Morton County to finance remodeling of the second floor of the County's Law Enforcement Center and mechanical and electrical upgrades to the basement and first floor (the "Morton County Project") and to lend any additional proceeds to other Political Subdivisions requesting loans prior to the issuance of the Series 2019A Bonds, all pursuant to the General Bond Resolution;

WHEREAS, the Industrial Commission has determined to approve a \$500,000 loan of additional funds of the Authority to Morton County for the Morton County Project (the "Morton County Loan");

WHEREAS, repayment of the loan of Series 2019A Bonds and the Morton County Loan is to be provided by the purchase of approximately \$3,000,000 of sales tax revenue bonds, which bonds, together with any repayment obligations of other Political Subdivisions are referred to herein as the "Municipal Securities;"

WHEREAS, the Reserve Requirement for the Bonds will be provided by the Political Subdivisions and/or a letter of credit to be issued by the Bank of North Dakota pursuant to the Capital Financing Program Reserve Fund Master Letter of Credit and Reimbursement Agreement (the "Reimbursement Agreement") between the Bank of North Dakota and Authority;

WHEREAS, the Municipal Securities are expected to mature on June 1 of each of the years and in the principal amounts determined by the Executive Director, not exceeding an aggregate of \$4,000,000, plus the amount of the Morton County Loan, and having a final maturity not later than June 1, 2029.

WHEREAS, the Commission has received and reviewed a report of PFM Financial Advisors LLC, financial consultants to the Commission, describing the estimated costs to certain above-named entities (the "Political Subdivisions") of borrowing for their projects through the Capital Financing Program as compared to the costs of borrowing through other alternatives available to such Political Subdivisions, copies of which are on file in the offices of the Commission.

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

ARTICLE I

Authority, Definitions and Findings

Section 1.01. Series Resolution. This Series Resolution is adopted in accordance with the provisions of Section 2.02 of the General Bond Resolution and pursuant to the authority contained in the Act.

Section 1.02. Definitions. All terms defined in Article I of the General Bond Resolution or in the Act shall have the same meanings, respectively, in this Series Resolution and with respect to the Series 2019A Bonds as such terms are given in said Article I of the General Bond Resolution or the Act.

Section 1.03. Findings. The Commission hereby determines with respect to the Political Subdivisions for which reports were received that the reasons for the Authority's involvement in the bond issue through the Capital Financing Program are that (a) the net borrowing costs for the Political Subdivisions for the financings are expected to be lower under the Capital Financing Program than they would be under any other borrowing method available to the Political Subdivisions, (b) issuance costs and reserves required to be funded by the Political Subdivisions are lower than would be the case under other methods so that the aggregate amount required to be borrowed by the Political Subdivisions is less than other competitive means of borrowing, and (c) the Political Subdivisions voluntarily requested financing through the Authority's Capital Financing Program.

ARTICLE II

Authorization of Series 2019A Bonds; Morton County Loan

Section 2.01. Authorization of Series 2019A Bonds. Pursuant to the General Bond Resolution, a Series of Capital Financing Program Bonds to be designated as the "Series 2019A Bonds" is hereby created and authorized to be issued in the aggregate principal amount of up to \$4,000,000; provided that the terms of the Series 2019A Bonds may be established or revised to provide for any additional obligations authorized by the Commission or for the reduction in the amount of the Municipal Securities.

Section 2.02. Purposes. The Series 2019A Bonds are being issued to provide funds to be loaned to the Political Subdivisions by purchasing such Municipal Securities to be issued by the Political Subdivisions as are approved by this Commission pursuant to the Act. In the event any Political Subdivision receiving such approval fails to issue its Municipal Securities as contemplated by October 1, 2019, proceeds of the Series 2019A Bonds allocated for such purpose may be used for the purchase of any other Municipal Securities subsequently approved by the Commission or for the redemption of Series 2019A Bonds as provided in Section 2.04. It is hereby found and determined in accordance with Section 2.11 of the General Bond Resolution that the Municipal Securities will be in an amount and will mature and bear interest at rates sufficient to pay the principal of and interest on the Series 2019A Bonds when due.

Section 2.03. Date, Payment Dates, and Maturities. The Series 2019A Bonds shall be dated as of a date determined by the Executive Director to be appropriate, except that Series 2019A Bonds issued on or

subsequent to the first interest payment date shall be dated as of the most recent date to which interest has been duly paid or provided for. The Series 2019A Bonds shall bear interest from their date, payable semiannually on June 1 and December 1 in each year, commencing June 1, 2020. The Series 2019A Bonds shall mature, or at the option of the purchaser be subject to mandatory redemption, on June 1 in each of the years and in the principal amounts determined by the Executive Director to be necessary to accommodate the needs of the Political Subdivisions. The Series 2019A Bonds may be issued in any amount not more than \$4,000,000 and maturing in amounts on each June 1 as determined by the Executive Director.

Section 2.04. Redemption. The Series 2019A Bonds are subject to redemption and prior payment at the option of the Authority at par plus accrued interest no later than June 1, 2027, as determined by the Executive Director, and any date thereafter, in whole or in part in such order as the Executive Director may determine. The Series 2019A Bonds are also subject to mandatory redemption on January 1, 2020, at the amortized issue price as determined by the Executive Director plus accrued interest, in whole or in part in such order as the Authority may determine, to the extent that the net proceeds of such Series exceeds the net proceeds of the Municipal Securities which have been purchased by the Authority with the proceeds thereof on or prior to November 1, 2019.

Section 2.05. Interest Rates. The Series 2019A Bonds shall bear interest at such rate or rates as the Executive Director may approve based on the public sale procedure described in Section 2.08, provided that the net interest rate for the Series 2019A Bonds shall not exceed 5.00% per annum.

Section 2.06. Denominations, Numbers, and Letters. Each Series 2019A Bond shall be in an integral multiple of \$5,000 and shall be numbered separately from R-1 consecutively upwards in order of issuance.

Section 2.07. Registrar and Paying Agent. The principal of the Series 2019A Bonds shall be payable upon presentation and surrender thereof at the main office of the Bank of North Dakota, Bismarck, North Dakota, which is hereby appointed Registrar and Paying Agent under the General Bond Resolution. Interest on the Series 2019A Bonds shall be payable by wire transfer or by check or draft mailed to the registered Owners of record as of the 15th day of the month preceding each interest payment date at their registered addresses.

Section 2.08. Sale of Series 2019A Bonds. The Series 2019A Bonds shall be sold at public sale pursuant to and in accordance with the Official Terms of Offering which shall be prepared by the Executive Director in customary form and shall be mailed to prospective bidders in advance of the sale. Upon receipt and acceptance of a bid conforming to the Official Terms of Offering, the Executive Director is authorized to execute the bid form submitted by the successful bidder in acceptance thereof and to return the good faith deposits of the unsuccessful bidders.

Section 2.09. Official Statement. A Preliminary Official Statement of the Authority in respect of the Series 2019A Bonds, similar in form to previous official statements shall be prepared by the Executive Director and made available to members of the Commission, and a final Official Statement shall be distributed with such changes, omissions, insertions and revisions as the Executive Director shall deem advisable in order to make such Official Statement a complete and accurate disclosure of all material facts to prospective purchasers of the Series 2019A Bonds. The Executive Director shall sign one or more copies of such final Official Statement on behalf of the Authority, and at least one such signed copy shall be filed with the permanent records of the Commission.

Section 2.10. Loan Agreement. The forms of Loan Agreement proposed to be entered into between the Authority and the Political Subdivisions are 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. The Loan Agreement with Morton County may include the amount of the Morton County Loan and is hereby approved.

ARTICLE III

Use of Proceeds of Series 2019A Bonds

Section 3.01. Reserve Fund Deposit; Letter of Credit. Upon or prior to the issuance and sale of the Series 2019A Bonds and as a condition to the delivery thereof, the Authority shall have received a letter of credit provided by the Bank of North Dakota in accordance with the Reimbursement Agreement (the “Letter of Credit”) in an amount equal to the largest amount of money required by the terms of the Series 2019A Bonds to be paid on maturing principal of and interest on the Series 2019A Bonds in any period of 24 consecutive months (the “Series Reserve Fund Requirement”), less such amounts as may be deposited in the Reserve Fund from the proceeds of the Series 2019A Bonds as directed by the Executive Director or from funds deposited by the Political Subdivisions. The Executive Director is authorized to deposit up to one half of the Reserve Fund Requirement into the Reserve Fund from Series 2019A Bond proceeds. The proceeds of any draw on the Letter of Credit are pledged to the Reserve Fund and may be applied only for the purposes for which the Reserve Fund may be applied. The Authority shall make a draw on the Letter of Credit at any time funds thereunder are necessary to pay principal of or interest on Bonds issued under the General Bond Resolution when due. In the event of a draw on the Letter of Credit which has not been reimbursed by legislative appropriation, the Authority shall reimburse the Bank of North Dakota only after payment of the Series 2019A Bonds and solely from amounts on deposit in the Series 2019A Account of the Reserve Fund, subject and subordinate to the prior pledge to the holders of Bonds under the General Bond Resolution.

Section 3.02. Deposit to Costs of Issuance Fund. Upon receipt of the proceeds of sale of the Series 2019A Bonds, the Authority shall deposit in the Costs of Issuance Fund from the proceeds of the Series 2019A Bonds the sum determined by the Executive Director to be used to pay Costs of Issuance of the Series 2019A Bonds in accordance with the provisions of the General Bond Resolution.

Section 3.03. Deposit to Series 2019A Account of Loan Fund. The Authority shall deposit all other proceeds derived from the sale of the Series 2019A Bonds which are not deposited in the Reserve Fund or Cost of Issuance Fund in the Series 2019A Account of the Loan Fund, which is hereby created, to be applied to the making of loans to the Political Subdivisions through the purchase of the Municipal Securities at the prices corresponding to the percentages of par bid for the Series 2019A Bonds plus accrued interest for the period from the date of the Series 2019A Bonds to the date of purchase; provided that such accrued interest shall not in any event exceed the amount of accrued interest received from the sale of the Series 2019A Bonds plus all interest earnings on the amounts deposited in the Series 2019A Account of the Loan Fund under the General Bond Resolution.

ARTICLE IV

Form, Execution and Other Details of Series 2019A Bonds

Section 4.01. Form of Series 2019A Bonds. The Series 2019A Bonds, the Registrar’s Authentication Certificate and the form of assignment shall be in substantially the form set forth in Exhibit A to the General Bond Resolution, with all such insertions as may be consistent with this Series Resolution and the successful bid. The approving legal opinion of bond counsel may be printed on the reverse side of the Bonds and certified by the Executive Director.

Section 4.02. Execution and Delivery. The Series 2019A Bonds shall be executed by the facsimile signatures of the Chairman and Executive Director and delivered as provided in the General Bond Resolution.

ARTICLE V

Special Covenants

The Commission and the Authority covenant and agree with the persons who at any time are Holders and Owners of the Series 2019A Bonds that so long as any Series 2019A Bonds remain outstanding and unpaid:

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

Section 5.02. Maintenance of Tax-Exempt Status. Neither the Commission nor the Authority shall take, or permit the Political Subdivisions to take, any action that would cause the Series 2019A Bonds to be “private activity bonds” (other than “qualified 501(c)(3) bonds”) within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended. The Commission and the Authority shall comply with all the rebate requirements imposed under Section 148(f) of the Internal Revenue Code of 1986, as amended, and regulations thereunder, which are necessary to preserve the tax exempt status of the Series 2019A Bonds, including (if applicable) the requirement to make periodic calculations of the amount subject to rebate thereunder and the requirement to make all required rebates to the United States. The Authority agrees to use any moneys on deposit in any Fund or Account maintained under the General Bond Resolution to pay any such rebate (or penalty in lieu thereof) when due. In addition, the Authority shall make no investment of funds or take or permit any Political Subdivisions to take any action that would cause the Series 2019A Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations thereunder. All terms used in this Section 5.02 shall have the meanings provided in the Internal Revenue Code of 1986, as amended, and regulations thereunder. The Executive Director shall execute any certificates as may be necessary or appropriate to establish the tax exempt status of the Bonds.

Section 5.03. Continuing Disclosure. The Continuing Disclosure Certificate proposed to be executed and delivered in connection with the Bonds is hereby approved and the Authority’s undertaking therein shall be a contractual obligation of the Authority for the benefit of the holders of the Bonds.

ARTICLE VI

Book-Entry Bonds

Section 6.01. Depository. The Bonds shall be initially issued in the form of a separate single typewritten or printed fully registered bond. Upon initial issuance, the ownership of each such Bond shall be registered in the registration books kept by the Bond Registrar in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York, and its successors and assigns (“DTC”). Except as provided in Section 6.03 hereof, all of the outstanding Bonds shall be registered in the registration books kept by the Bond Registrar in the name of Cede & Co., as nominee of DTC.

With respect to Bonds registered in the registration books kept by the Bond Registrar in the name of Cede & Co., a nominee of DTC, the Authority, the Bond Registrar and the Paying Agent shall have no responsibility or obligation to any broker dealers, banks and other financial institutions from time to time for which DTC holds Bonds as securities depository (the “Participants”) or to any other person on behalf of which a Participant holds an interest in the Bonds, including but not limited to any responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Participant or any other person other than a registered owner of Bonds, as shown by the registration books kept by the Bond Registrar, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any Participant or any other person, other than a registered owner of Bonds, or any amount with respect to principal of, premium, if any, or interest on the Bonds. The Authority, the Bond Registrar and the Paying Agent may treat and consider the person in whose name each Bond is registered in the registration books kept by the Bond Registrar as the holder and absolute owner of such Bond for the purpose of payment of principal, premium and interest with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Paying Agent shall pay all principal of, premium, if any, and interest on the Bonds only to or on the order of the respective registered owners, as shown in the registration books kept by the Bond Registrar, and all such payments shall be valid and effectual to fully satisfy and discharge the Authority’s obligations with respect to payment of principal of, premium, if any, or interest on the Bonds to the extent of the sum or sums so paid. No person other than a registered owner of Bonds, as shown in the registration books kept by the Bond Registrar, shall receive a certificate Bond evidencing the obligation of the Authority to make payments of principal,

premium, if any, or interest pursuant to this Bond Resolution. Upon delivery by DTC to the Executive Director of a written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions herein with respect to record dates, the words "Cede & Co." shall refer to such new nominee of DTC; and upon receipt of such a notice, the Executive Director shall promptly deliver a copy of the same to the Bond Registrar and Paying Agent, if the Bond Registrar or Paying Agent is other than the Executive Director.

Section 6.02. Letter of Representations. The blanket Representation Letter submitted to DTC, which is on file with the Executive Director, is hereby confirmed. Any Paying Agent or Bond Registrar appointed by the Authority with respect to the Bonds shall agree to take all action necessary for all representations of the Authority in the Representation Letter with respect to the Bond Registrar and Paying Agent, respectively, to at all times be complied with.

Section 6.03. Discontinuance of Book-Entry. In the event the Authority, by resolution of the Industrial Commission, determines that it is in the best interest of the persons having beneficial interests in the Bonds that they be able to obtain Bond certificates, the Authority shall notify DTC, whereupon DTC shall notify the Participants, of the availability through DTC of Bond certificates. In such event the Authority shall issue, transfer and exchange Bond certificates as requested by DTC and any other registered owners in accordance with the provisions of this Bond Resolution. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the Authority and discharging its responsibilities with respect thereto under applicable law. In such event, if no successor securities depository is appointed, the Authority shall issue and the Bond Registrar shall authenticate Bond certificates in accordance with this Series Resolution and the provisions hereof shall apply to the transfer, exchange and method of payment thereof.

Section 6.04. Payments and Notices. Notwithstanding any other provision of this Series Resolution to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the Representation Letter.

ARTICLE VII

Miscellaneous

Section 7.01. Amendments. This Series Resolution may be amended as provided in the General Bond Resolution.

Section 7.02. Effective Date. This Series Resolution is effective immediately.

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

Ms. Ament provided a report on actions by the Public Finance Authority Advisory Committee approving a Clean Water SRF Loan for the City of Walcott in the amount of \$427,000 to construct a new lift station.

Ms. Ament provided a brief legislative report, noting that all bills involving bonding, except for the North Dakota Building Authority, failed.

NORTH DAKOTA BUILDING AUTHORITY

Ms. Fine and Ms. Ament provided a legislative update. (A copy is available in Commission files.) Legislation was passed authorizing the North Dakota Building Authority to arrange funding for the following projects:

North Dakota State University Dunbar Hall	\$40,000,000
Valley City State University Communications and Fine Arts Building	\$30,000,000
North Dakota State University Agriculture Products Development Center	\$20,000,000
University of North Dakota Gamble Hall	\$ 6,000,000
Dickinson State University Pulver Hall	<u>\$ 4,000,000</u>
Total	\$100,000,000

In addition, HB 1003 included \$30 million for deferred maintenance and parking projects at UND. In response to a question regarding what costs will be included in the \$30 million, Ms. Ament stated that campus water, sewer, and roads will account for a large portion. Discussions will be held with the universities regarding their needs. Documentation may come before the Commission as soon as next month.

BANK OF NORTH DAKOTA (BND)

Mr. Eric Hardmeyer, BND President, provided a legislative update. (A copy is available in Commission files.) He reviewed the handout that listed the bills that have an impact on the Bank of North Dakota. The bills have been divided into 3 categories:

- Legislation Impacting BND Capital,
- Legislation Impacting BND Loan Programs & State Agency Borrowing Authority from BND - BND Direct Funding, and
- Legislation Impacting BND Loan Programs and State Agency Borrowing Authority - Other Funding Sources that would be administered by the Bank.

A total of \$255,000,000 of capital will be transferred. Of this,

- \$140 million will be transferred to the General Fund.
- \$15 million will be transferred for a research loan program administered by Commerce.
- \$6 million for a workforce program.
- \$94 million for various programs (\$15 million for Development Fund, \$37 for buydown on BND administered loan programs including disaster relief,, \$20 million to ITD, \$2 million for APUC, \$20 million for NDUS.)

A total of \$318,000,000 impact BND Loan Programs and State Agency borrowing authority.

In response to a question, Mr. Hardmeyer stated that BND has enough liquidity and its ability to make loans will not be impaired.

Mr. Hardmeyer noted that there was an effort to add language that the \$140,000,000 for the General Fund would be taken as needed since it is anticipated that there will be a surplus of approximately \$65 million at the end of the biennium. This effort was unsuccessful. Governor Burgum recommended having a discussion with Joe Morrisette, OMB Director, regarding the timing of withdrawing the money as a higher return can be earned by the Bank.

Mr. Hardmeyer then went through the details on the bills that impact the Bank.

Mr. Hardmeyer presented the 2018 BND Annual Report. (A copy is available in Commission files.) One of the predominant messages of the report relates to a strong return on investment. Innovation occurred throughout the year in a variety of areas including:

- Cyber security advancements,
- Key risk indicators and tolerances,
- Record profits of \$159 million,

- Return on investment of 18%.

Mr. Hardmeyer complimented the BND employees for the work that they did and the successful year.

Income has continued to rise, assets have plateaued, and deposit size has increased. BND has a history of being a tool to promote industry, commerce, and agriculture. Mr. Hardmeyer noted that 10 years ago the Bank earned \$58 million compared to today with earnings of \$159 million.

The Commission commended the Bank on a successful year.

Ms. Katie Williams, Eide Bailey, presented the Independent Auditor's Report and Financial Statement (FASB version). Ms. Williams noted that because the Bank is a governmental entity it is required to follow GASB as primary accounting standards. However, since it primarily operates as a bank, it follows FASB. There is a clean opinion on FASB.

Ms. Williams noted that one audit adjustment was identified, involving a debit to a deposit and discussed the adjustment. It was determined that the issue was caused by software and BND management is working with the software provider to fix the problem. Normally the error would have corrected the next day but because it happened at a year-end it was not identified until the next year and resulted in an incorrect accounting statement. There is no impact on the income statement. Ms. Williams noted that the error was caught, and the customer was made whole. It just wasn't reflected in the accounting statements in the required timeframe. Because of this it is designated as material and is noted in the audit.

Ms. Williams also noted that there was an additional entry relating to a DEAL loan. However, it is designated as an uncorrected misstatement. It is considered immaterial and no correction is required. The DEAL loan was paid off early, but the deferred cost was still on the balance statement. As a result of that, one internal control deficiency is identified in the audit.

Ms. Williams then presented reports on audits of the following programs: Beginning Farmer Revolving Loan Fund, Community Water Facility Loan Fund, and North Dakota Guaranteed Student Loan Program. All three have unmodified clean opinions. There were no internal control deficiencies and no audit adjustments proposed.

Governor Burgum thanked Ms. Williams and her team for their work on the audits.

Mr. Hardmeyer provided a Disaster Assistance Program and Implementation Plan for consideration. The program is based on a flood relief program that was developed in 2011. House Bill 1014 allows funds being repaid from the original Rebuilders Program loans to be used for this activity. The program is for individuals impacted by flooding in western North Dakota.

Mr. Todd Steinwand, Bank of North Dakota, provided information regarding the proposed revised Rebuilders program. Through coordination with Department of Emergency Services (DES), 27 homes have been identified as needing assistance and 9 were destroyed. There are no federal programs available. Because of this, the maximum amount of the loan has been increased to \$75,000. Payments will not be required for the first two years. After that, monthly payments will be made over 18 years.

Mr. Steinwand provided information on AgPACE. This program is intended to assist agriculture producers impacted by the flood. Approximately 23,000 acres were affected and was equipment damaged. An additional \$1 million from Bank profits was appropriated for this program. It allows the producer a \$20,000 buy down. The loan will not apply to their lifetime maximum cap. Funds may be used to repair equipment,

fencing, etc. The loans will be approximately \$125,000 or less and producers can get a 7-year term. Local lenders will originate the loans.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Bank of North Dakota Advisory Board and approve the Bank of North Dakota's AgPACE and Rebuilder's Home Loan Programs as authorized in House Bill 1014 to provide disaster assistance for farmers, livestock producers and homeowners impacted by river flooding in the winter and spring of 2019.

Mr. Steinwand noted that working with the Division of Emergency Services (DES) has worked very well. DES has identified the 27 families that were impacted, and the Bank will be able to help them. The Bank staff will continue to work with DES.

Mr. Hardmeyer noted that there will be \$15-18 million paid back from the original Rebuilders Loan Program that will go to the General Fund. Hopefully these dollars will be considered next session for the establishment of a permanent disaster loan fund.

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

Mr. Hardmeyer provided an update on first quarter 2019 performance highlights. (A copy is available in Commission files.) Of note, equity is at an all-time high at \$895,495,000. Net income is at \$42,580,000 and the budget is on track. Leverage ratio is at 13% and the benchmark is 10%. The Bank is in a very strong capital position. Liquidity is at 70%, right in line with industry.

A question was raised regarding ratio adjustment as it relates to capital being transferred to the General Fund. Mr. Hardmeyer indicated that the ratios are adjusted as funds are disbursed. However, it is noted as a continual liability.

Mr. Steinwand noted that residential loans are dropping by design. Student loans are dropping due to consolidation and rates. State loans and administered programs have doubled over the last 3 years.

Mr. Kirby Evanger, Bank of North Dakota, indicated that credit quality has decreased. This is mostly due to apartments and hotels. Classifieds loans and non-performing loans have increased slightly, although the Bank's numbers are below the North Dakota average.

There was discussion about the classification of loan statuses. Mr. Evanger stated that the gradual increase regarding adversely classified loans is a reflection of the economic downturn rather than changes in policy. Most of the migration has been commercial.

Residential and student loans delinquencies are down again this quarter. Student loans delinquencies are at an all-time low. Several new tools were put in place for student loans, contributing to this result. Overall delinquencies are down.

Mr. Hardmeyer presented new information regarding human resources, indicating that it could be utilized as a tool to look at how efficiently the Bank is being operated. The information compares total assets and earnings to the number of employees and provides an efficiency ratio.

The Bank of North Dakota Advisory Board February 21, 2019 non-confidential meeting minutes were presented.

Pursuant to N.D.C.C. 6-09-35, the Industrial Commission entered 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 2:27 p.m. pursuant to N.D.C.C. 6-09-35 to discuss the following items:

- Consideration of a loan application
- Non-Accrual Loans Quarterly Recap/Detail,
- Problem Loans - Adversely Classified Quarterly Recap,
- Loan Charge-Offs and Recoveries Y.T.D. 03-31-19, and
- Presentation of Bank of North Dakota Advisory Board February 21, 2019 confidential 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
Todd Steinwand Bank of North Dakota
Kirby Evanger Bank of North Dakota

Others in Attendance:

Leslie Oliver Governor's Office
Reice Haase Governor's Office
Andrea Pfennig Industrial Commission Office
Karlene Fine Industrial Commission Office

The meeting reconvened in open session at 2:50 p.m. and Governor Burgum invited the public to return to the meeting room. He noted that during its executive session, the Commission made a motion regarding a Bank of North Dakota loan application. **On a roll call votes, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

NORTH DAKOTA MILL (Mill)

Mr. Vance Taylor, President and CEO, and Mr. Ed Barchenger, CFO, presented the third quarter report as follows:

**Review of Operations
3rd Quarter Ended 3/31/19**

SUMMARY

Profits for the 3rd Quarter of the year were \$2,216,800 compared to \$3,211,200 last year. Operating activity for the nine months ending March resulted in a profit of \$9,220,665 compared to \$10,018,792 last year, a decline of 8.0%.

	<u>Quarter</u>		<u>Year-to-Date</u>	
	<u>3/19</u>	<u>3/18</u>	<u>3/19</u>	<u>3/18</u>
Profits	2,216,800	3,211,200	9,220,665	10,018,792
Sales	76,468,017	84,695,675	238,633,500	254,551,475
Cwt. Shipped:				
Spring	3,340,914	3,522,785	10,447,830	10,630,811
% to Total	93.6%	92.4%	93.5%	92.5%
Durum	<u>288,574</u>	<u>288,454</u>	<u>726,963</u>	<u>864,338</u>
	<u>3,569,488</u>	<u>3,811,239</u>	<u>11,174,793</u>	<u>11,495,149</u>
Bulk Shipments	2,948,268	3,169,391	9,202,130	9,476,063
% to Total	82.6%	83.1%	82.4%	82.4%
Bag Shipments	585,413	604,698	1,861,058	1,908,260
% to Total	16.4%	15.9%	16.6%	16.6%
Tote Shipments	35,808	37,151	111,605	110,826
% to Total	1.0%	1.0%	1.0%	1.0%
Family Flour Shipments	86,412	60,605	273,019	276,185
% to Total	2.4%	1.6%	2.4%	2.4%
Organic Flour Shipments	34,128	38,260	106,810	115,880
% to Total	1.0%	1.0%	1.0%	1.0%
Grain Purchased:				
Spring	6,702,196	7,596,986	21,839,062	23,374,865
Durum	<u>465,700</u>	<u>645,617</u>	<u>1,471,018</u>	<u>1,959,102</u>
Total	<u>7,167,896</u>	<u>8,242,603</u>	<u>23,310,080</u>	<u>25,333,967</u>

SALES

3rd Quarter

Sales for the 3rd Quarter were \$76,468,017 compared to \$84,695,675 last year. Shipments of 3,569,488 cwts. are 241,751 cwts. below last year. Bag shipments for the 3rd Quarter are 585,413 cwts., which is 19,285 cwts. below last year's 3rd Quarter. Tote shipments for the 3rd Quarter are 35,808 cwts., which is 1,343 cwts. below last year. Family flour shipments reached 86,412 cwts., which is 42.6% above last year's 3rd Quarter.

Year-to-Date

Sales for the nine months ended March were \$238,633,500 compared to \$254,551,475 last year, a decrease of 6.3%. Shipments of 11,174,793 cwts. are 320,357 cwts. below last year, a decrease of 2.8%. The average settled price of grain purchased decreased \$0.56 per bushel from last year. Year-to-date bag shipments are 1,861,058 cwts., a decrease of 320,357 cwts. from last year. Tote shipments for the year are 111,605 cwts., which is 778 cwts. above last year. Family flour shipments for the nine months ended are 273,019 cwts., a decrease of 1.1% from last year. Organic flour shipments were 106,810 cwts., a decrease of 9,070 cwts. from last year.

OPERATING COSTS

3rd Quarter

Operating costs for the 3rd Quarter were \$9,089,852 compared to \$9,031,887 last year, an increase of \$57,965. Operating cost per cwt. of production was \$2.53 compared to \$2.37 last year, an increase of 6.8%.

Year-to-Date

Year-to-date operating costs are \$26,600,529 compared to \$25,588,348 last year, an increase of 4.0%. Operating cost per cwt. of production for the nine months ended was \$2.37 compared to \$2.22 last year, an increase of 6.8%.

PROFITS

3rd Quarter

Profits for the 3rd Quarter were \$2,216,800 compared to \$3,211,200 last year. Gross margins as a percent of gross sales for the quarter were 15.4% compared to 14.8% last year.

Year-to-Date

Operating activity for the nine months ended March led to a profit of \$9,220,665 compared to \$10,018,792 last year, a decrease of 8.0%. Year-to-date gross margins are 15.6% compared to 14.3% last year.

Risk Management Position

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

Position Report 31-Mar-19

Period	Hedge Ratio
May-19	1.0
July-19	1.2
Sept-19	1.1
Dec-19	1.0
Mar-20	1.0
May-20	0.9
Net Position	1.1

There was discussion regarding the weather and the impact that it has on sales. Shipments were reduced, and demand was decreased.

Mr. Taylor and Mr. Barchenger provided an update on the capital project. Pictures of the projects were provided. (Copies are available in Commission files.) Four 250,000 bins have been added. The conveyor is in place, along with the tower and catwalks. It is expected that the Mill will be able to start putting wheat in the bins in June. The first shuttle train is expected in July. The rail portion of the project is coming along well. It is expected to be operational by the end of May.

Mr. Taylor provided a legislative update.

- HB 1217: Regarded competition between the government and private industry. The bill failed.
- HB 1293: Related to employees working 7 consecutive days in a week. This bill failed.

- HCR 3057: Recognized and congratulated the Mill on its 100th anniversary.
- HB 1014: Industrial Commission appropriation bill. Three of the four new positions requested by the Mill were approved – two Food Safety positions and one Utility Worker.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the provisions of N.D.C.C. § 44-04-18.4 the Industrial Commission proceed into executive session to discuss commercial information including marketing strategies and sales plans and pursuant to N.D.C.C. § 44-04-19.1 to discuss strategy and instructions regarding upcoming union contract labor negotiations. On a roll call vote, Governor Burgum and 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 those items listed on the agenda which is anticipated to last between 15 and 30 minutes. Commission members, their staff, and Mill staff remained but the public was asked to leave the room. Governor Burgum closed the meeting at 3:08 p.m. to discuss the following items:

- Discussion of strategy and instructions regarding upcoming union contract labor negotiations.
- Discussion of commercial information including marketing strategies and sales plans

MILL EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Mill Personnel Present:

Vance Taylor State Mill
Ed Barchenger State Mill

Others in Attendance:

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

The meeting reconvened in open session at 3:45 p.m. and Governor Burgum invited the public to return to the meeting room.

DEPARTMENT OF MINERAL RESOURCES (DMR)

Mr. Lynn Helms, Director of Department of Mineral Resources, presented the following orders for consideration:

Case 27356, Order 29802 - application for unitization of Long Creek-Bakken Unit Area. An application was received from Continental Resources for a unit consisting of 6,400 acres south of Williston. There is rough topography in this area. It is mostly in Williams County with part in McKenzie County. There are two factors driving the proposal: the ability to locate well pads significantly back from Lake Sakakawea while accessing the resources and developing it from east to west. A gas gathering connection exists on the

east side. The decline curves that the applicant brought to the hearing were found insufficient by staff. It was requested that a different set of decline curves be provided. The revised decline curves were acceptable. The ultimate recovery was based on the number of wells that the applicant planned to drill in each tract. Because plans can change, the proposed order requires the same unit formula that has been approved for similar units. If approved, the applicant will have 6 months to seek the ratifications.

Questions were raised regarding the number of well pads and where they would be located. Mr. Helms stated that there would be six well pads located on the Williams County side a half a mile back from Lake Sakakawea.

In response to a question regarding the length of the horizontals, Mr. Helms indicated that there is one tract that has a 1.5 mile lateral, the rest are close to 3-mile laterals.

The question was asked if the State's minerals have been developed in this area. Mr. Helms indicated that they are leased, but not fully developed. The State owns 43% of the minerals in this proposed unit. Because of the topography in the area, if the minerals are not in this proposed unit it's very difficult to develop.

In response to a question regarding the location of the five existing wells, Mr. Helms stated that there is one in each tract. One additional well pad will be added.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order No. 29802 issued in Case 27356 establishing the Long Creek-Bakken Unit consisting of lands within the Long Creek Field in Williams and McKenzie Counties, North Dakota, approving the unit agreement and unit operating agreement constituting the plan of unitization for the Long Creek-Bakken Unit area with the stipulations as stated in the order, approving the plan of operation, and vacating the applicable spacing orders, be approved this 30th day of April, 2019. On a roll call vote, Governor Burgum and Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Case 27357, Order 29803 - application for determination of sufficient ratifications of unit area. This would authorize Mr. Helms to sign the order. Continental Resources will have 6 months to get the necessary 55% ratifications. It is a mathematical calculation, and if the motion is approved, and sufficient ratifications are received, Mr. Helms would sign the order.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Department of Mineral Resources Director be authorized to sign Order No. 29803 for Case 27357 regarding the establishment of the Long Creek-Bakken Unit Area upon receipt and review of sufficient ratifications as required by law. On a roll call vote, Governor Burgum and Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Helms provided a legislative update. (A copy is available in Commission files.) Of note:

- HB 1014: Provided \$175,000 for temporary employees to capture institutional knowledge, \$300,000 for a water recycling study, \$6 million for temporary gas storage demonstration projects, and \$108,000 for operating expenses of the two FTEs that were added in December, 2018.
- SB 2037: Related to high level radioactive waste. There is now a law that is compliant with Federal regulations and the State constitution. While this establishes a process for the State to refuse, it can still be overridden by a Federal executive order or Act of Congress.
- SB 2123: Establishes the authority to confiscate property to reclaim sites.

- SB 2344: Related to pore space. The result was that clarification was provided that the surface owner owns the pore space. Existing contracts will continue. Contracts moving forward are required.
- HB 1383 & SB 2261: These bills related to mitigation. DMR's involvement was to make sure that the language did not interfere with the use of the Abandoned Well Site Mitigation Fund's ability to hire people to do direct mitigation. There was also concern that it may have impacted the permit stipulations that are put on. DMR was able to work with the committees to avoid this.

Mr. Helms provided an update on the Environmental Integrity Project and an EPA consent decree regarding federal Subtitle D solid waste regulatory requirements. EPA reviewed the guidelines based on the consent decree and has determined that they do not need to revise the federal regulations for Subtitle D solid waste at this time.

Mr. Helms provided an update on an agreement with Bureau of Land Management (BLM) to regulate gas capture on federal lands, indicating a stalemate due to disagreement on the definition of routine flaring. Routine flaring isn't mentioned in the rule itself, just in the preamble. Their definition of routine flaring includes only tank vapors and wells not connected to a pipeline, which accounts for 4% of the flaring. As proposed by BLM, there is minimum benefit to the State. DMR would need to do an analysis of every federal well in the State every month and submit it to BLM, requiring a significant amount of manpower. The best possibility of getting some movement on the agreement is to just decline until BLM is willing to negotiate on the definition of routine flaring.

Mr. Helms reported on the status of the State of Washington Senate Bill 5579. It was approved by the legislature and delivered to the Governor of Washington on April 25. The Governor of Washington has to make his decision by May 15. It states that any new facility in WA cannot unload crude from a rail car with a psi of 9. Existing facilities are allowed to continue as is, unless they exceed the 2018 volume by 10%. At that point, 2 years later it's illegal for a facility to unload crude oil with psi of 9.

There are three refineries in Washington that process Bakken crude. One refinery processes 100% Bakken crude, and other two refineries process 20% Bakken crude.

The North Dakota delegation has sent a letter to the Governor of Washington, urging him to veto this legislation. Discussion took place regarding a potential future response as it is very likely that the legislation will be signed into law.

It was noted that the law is clearly a violation of the Interstate Commerce Clause. North Dakota has gone through this before and prevailed. It was determined that if Washington moves forward, North Dakota will protect its interests through litigation.

In response questions regarding where the oil supply for the Washington State refineries would come from if the legislation is successful, Mr. Helms indicated that refiners would need to import from West Africa by ship. The legislation does not have limitations of crude oil by ship.

There was discussion about the potential impacts of the legislation. Currently, the amount being exported to Washington is slightly above the 2018 amount. Pipelines are full, and the expansions currently proposed will be full in a few years. There is significant potential for growth by rail. The west coast has the best prices and is the prime growth market for North Dakota crude oil. This cap would harm the State through decreased gross production taxes along with impacting North Dakota producers.

Mr. Helms presented a request for authority to sign a limited confidentiality agreement with the EPA. They are the head negotiator of a settlement agreement with Summit Midstream Partners, which had a saltwater spill. In order to be a part of the negotiations and the settlement, the Commission needs to sign a confidentiality agreement. The final settlement will likely be public.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Department of Mineral Resources Director be authorized to execute on behalf of the Industrial Commission a limited confidentiality agreement between the Industrial Commission and the U.S. Environmental Protection Agency to exchange communications in regard to settlement discussions which relate to Industrial Commission Case No. 24179 (Summit Midstream Partners and Meadowlark Midstream.) Governor Burgum and Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Helms provided an overview of oil and gas development in western North Dakota along the Little Missouri River. A comparison of development in 1998 and today was provided. Mr. Helms noted that much of the impact regarding areas of interest is from legacy wells. This is because those wells were vertical and there wasn't the ability to do lateral drilling.

Mr. Helms noted that concerns were expressed that it has been difficult for the public to determine the area of interest in question. This has been addressed by adding a button to the website that brings up the proposed area on Google maps. A map has also been developed that shows the impact of oil development in western North Dakota. He noted that most minerals are owned by federal and state.

Mr. Helms stated that concern has been expressed about wells near the north unit of Theodore Roosevelt National Park. The wells are not visible unless they are flaring. A natural gas plant is planned that will address the flaring.

In response to a question regarding the life span of the legacy wells, Mr. Helms stated that they will not be on the landscape much longer. Some of the legacy wells will be under water flood and gas flood which will extend the life.

NP Resources has produced 150 wells in an area between the two parks. With a few exceptions, they are located well outside of areas of interest. Most of the activity already has well pads and roads. Wendy Ross, Theodore Roosevelt National Park, has been very complimentary of their willingness to work with existing infrastructure. However, much of the area is either federal or state land and it does limit options.

Governor Burgum thanked Mr. Helms and his staff for the work that was done on the map.

The question was raised if the policies give DMR the resources needed to deal with areas of interest. Mr. Helms stated that they do. He noted that DMR advertises on the website, in the Bismarck Tribune, and through other resources. DMR also posts for comment once the exact site is determined. He feels the process is working.

In response to a question, Mr. Helms stated that a system that allows the public to sign up for an alert when an area of interest is affected can be explored. Currently, DMR does not have the capability, but with the new software project, North Star, it will be possible.

It was indicated that the map presented today will be posted online under policies and guidance.

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 and adversarial proceedings in 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 30 and 45 minutes.

Governor Burgum stated that the Commission was meeting in executive session to consult with attorneys regarding Case No. 09-2018-CV-00089. 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 5:08 p.m.

DMR EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

Others in Attendance:

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

The Industrial Commission reconvened in open session at 5:22 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 the passage of State of Washington Senate Bill 5579 and Case Number 09-2018-CV-00089.

ADMINISTRATIVE BUSINESS

Ms. Fine presented the March 27, 2019 non-confidential meeting minutes for consideration.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem Commissioner Goehring that the March 27, 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.

Ms. Fine provided a legislative update. (A copy is available in Commission files.)

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 5:23 p.m.

North Dakota Industrial Commission

A handwritten signature in blue ink, appearing to read "Karlene Fine".

Karlene Fine, Executive Director and Secretary