

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on January 18, 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 12:05 p.m. and the Commission took up Housing Finance Agency business.

HOUSING FINANCE AGENCY

Ms. Jolene Kline, Executive Director, presented the Home Mortgage Finance Program 2019 General Authorization Resolution authorizing the issuance of bonds in an amount not to exceed \$450,000,000 for long-term bonds and \$100,000,000 for short-term bonds for consideration.

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

2019 GENERAL AUTHORIZATION RESOLUTION

WHEREAS, the Industrial Commission of North Dakota (the "Commission") acting in its capacity as a state housing finance agency, i.e., the North Dakota Housing Finance Agency (the "Agency"), is empowered by the provisions of the North Dakota Century Code Chapter 54-17 (the "Act") to establish, and has established, a home mortgage finance program to contract to purchase from lenders mortgage loans made to persons or families of low or moderate income to finance the purchase or substantial rehabilitation of owner occupied, residential dwelling units; and

WHEREAS, the Commission adopted the Housing Finance Program General Bond Resolution of 1994, on July 21, 1994, as amended (the "1994 General Resolution"), and the General Bond Resolution of 2009, on November 25, 2009 (the "2009 General Bond Resolution," and together with the 1994 General Resolution, the "General Resolutions"), wherein Wilmington Trust National Association, Minneapolis, Minnesota, was appointed successor trustee (the "Trustee") under each of the General Resolutions, and which General Resolutions were each accepted by the Trustee, and which General Resolutions are hereby ratified and confirmed; and

WHEREAS, the Agency has previously issued certain bonds pursuant to each of the General Resolutions, both of which allow for the issuance of additional bonds thereunder and the refunding of certain bonds currently outstanding thereunder; and

WHEREAS, with respect to the proceeds of the bonds issued pursuant to the General Resolutions (collectively, the "Bonds"), such proceeds will be applied in accordance with the Act and the respective General Resolution to provide funding for the programs of the Agency to finance decent, safe and sanitary housing for persons and families of low and moderate income (the "Program"); and

WHEREAS, it is in the best interests of the Commission acting as the Agency to appoint as its agents the Executive Director, the Director of Homeownership Programs and the Chief Financial Officer of the Agency (the "Authorized Officers") for the negotiation of the terms of sale of the Bonds, in one or more series, with fixed or floating interest rates, and with or without bondholder tender rights, and to sign such

agreements on behalf of the Commission after such terms of sale have been negotiated, and such certificates and other documents as are necessary and customary to complete the sale of the Bonds, and to enter into agreements for their sale by the Agency and purchase by the Underwriters described below, private entities or the U.S. Treasury and/or instrumentalities thereof, subject to the limitations herein established with regard to the Bonds:

- (a) a maximum principal amount of long term bonds of \$450,000,000;
- (b) a maximum principal amount of short term bonds of \$100,000,000;
- (c) a final maturity of not later than forty four years from the date of issuance;
- (d) a maximum average annual interest rate of 7.00% for fixed rate bonds, and for variable rate bonds an initial rate of 7.00% with a maximum rate of 15% per annum, determined at the time of Bond pricing; and

WHEREAS, in furtherance of the above stated objectives, the Commission, the Agency, and RBC Capital Markets, Isaak Bond Investments, Piper Jaffray, Morgan Stanley & Co. LLC, or successors thereto, affiliates thereof, or other investment banking institutions (the "Underwriters") or purchasers approved by an Authorized Officer, will cause to be prepared and executed, such bond issuance documents as are necessary for issuance of the Bonds herein authorized; and

WHEREAS, Section 1.150 2 of the Internal Revenue Code regulations (the "Tax Regulations") provides, if the Agency intends to finance mortgage loans with its own funds or warehouse funds, and then reimburse itself with Bond proceeds, that the Agency declare its intention to do so prior to so financing such mortgage loans.

NOW BE IT HEREWITH RESOLVED:

1. The sale of the Bonds to the Underwriters, private entities or governmental entities in accordance with the limitations herein established is hereby authorized and the officers, agents and employees of the Commission and the Agency are hereby authorized, empowered and directed to take any actions required to effect such sale and related transactions and to execute any instruments and take any actions required to effect the issuance of the Bonds and to apply the monies received by the Commission from the bond proceeds in such manner as is necessary to give effect to the Program.

2. The terms of any sale of Bonds shall be reported to the Commission at its next succeeding meeting, and any acts of the officers, agents and employees of the Commission and the Agency which are in conformity with the purpose and intent of this General Authorization Resolution and in furtherance of the sale of the Bonds may be submitted for approval, ratification and confirmation.

3. The appointment of the Agency's Executive Director, the Director of Homeownership Programs and the Chief Financial Officer of the Agency as Authorized Officers with the authority to accept and execute Mortgage Purchase Agreements with Lenders and Servicing Agreements with Servicers, and the prior execution thereof by any such Authorized Officer, shall be and are in all respects ratified, approved, and confirmed.

4. The use and distribution by the Underwriters of initial offering documents in the form of Official Statement(s), substantially in the form previously used by the Agency in the sale of its Bonds, as contemplated and in conformity with the provisions of sale of the Bonds is hereby authorized and the use thereof prior to the date of ratification and confirmation as of the date first circulated is also authorized.

5. The Bonds shall be executed by the manual or facsimile signatures of the Governor, the Attorney General, the Agriculture Commissioner and an Authorized Officer, and with the manual or a facsimile of the Official Seal of the Commission impressed, imprinted or otherwise reproduced thereon.

6. The Authorized Officers are authorized and empowered to enter into interest rate hedging agreements with respect to any Bonds with a variable interest rate, including replacement of expiring hedging agreements, but only for the purposes and in accordance with the Commission's Swap Management and

Execution Policy as then in effect, and in no case may the notional amount of any such agreement exceed the principal amount of variable interest rate Bonds whose interest rate is being hedged.

7. The Authorized Officers are authorized and empowered to enter into liquidity agreements, such as standby bond purchase agreements, including extension or replacement of expiring liquidity agreements, with financial institutions whereby such institutions are primarily obligated to purchase any Bonds whose owners have the right to tender their Bonds.

8. Moneys held by the Trustee pursuant to the General Resolutions may be invested in any investments permitted by the respective General Resolution, and in accordance with North Dakota laws.

9. Program Directive No. 59, adopted by the Commission on September 23, 1998, authorizing the changing of Mortgage Loan purchase price, fees and points and interest rate is still in effect and is hereby ratified and confirmed.

10. The Master Reimbursement Resolution, adopted October 3, 1997, is hereby ratified and confirmed, and proceeds from the sale of the Bonds may be used to reimburse the Agency for its purchase of any Mortgage Loans in anticipation of the availability of the proceeds from the sale of the Bonds; in particular, the Agency hereby declares its intention, within the meaning of the Tax Code Regulations, to facilitate continuous funding of its home mortgage finance program (as described above) by, from time to time, financing Mortgage Loans and then issuing Bonds in one or more series within 18 months thereof to reimburse itself for such financing, all in an amount presently expected to not exceed the amount of long term Bonds authorized by Section 1 hereof, and hereby confirms that any Authorized Officer is authorized to also so declare the intention of the Agency within the meaning of said Tax Regulations, provided that any such declaration does not authorize or obligate the Agency to issue any such Bonds.

Mr. Pat Nagel, HFA, stated that a slightly larger amount is requested to allow flexibility.

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

Ms. Kline presented the Housing Finance Program Bonds, Supplemental Authorizing Resolution 2019 Series A \$60,000,000, and Series B \$25,000,000 for consideration and a report on the 2019 Series A & B bond sale. She noted that the anticipated average loan amount is \$166,000 and based on that amount the bond proceeds will fund just under 500 loans. The goal is to have HFA interest rates 50 basis points lower than market. Supplemental information was provided regarding trends since 2000. (A copy is available in Commission files.)

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

**SUPPLEMENTAL
GENERAL AUTHORIZATION RESOLUTION**

WHEREAS, the Industrial Commission of North Dakota (the "Commission"), acting in its capacity as a state housing finance agency, i.e., the North Dakota Housing Finance Agency (the "Agency"), is empowered by the provisions of the North Dakota Century Code Chapter 54 17 (the "Act") to establish and has established a home mortgage finance program to contract to purchase from lenders mortgage loans made to persons or families of low or moderate income to finance the purchase or substantial rehabilitation of owner occupied, residential dwelling units; and

WHEREAS, the Commission adopted the Housing Finance Program General Bond Resolution of 1994, on July 21, 1994, as amended (the "General Resolution") under which Wilmington Trust, National

Association, Minneapolis, Minnesota, was appointed successor trustee (the "Trustee"), which General Resolution was accepted by the Trustee, and which General Resolution is hereby ratified and confirmed; and

WHEREAS, the General Resolution authorizes the issuance and sale of the captioned 2019 Series A Bonds (the "2019 Series A Bonds" or the "Fixed Rate Bonds") and 2019 Series B Bonds (the "2019 Series B Bonds" and, together with the 2019 Series A Bonds, the "Bonds") pursuant to the Act, the application of the proceeds of which will provide funding for the captioned Home Mortgage Finance Program (the "Program") contemplated by the Act in furtherance of the Program for the providing of decent, safe, and sanitary housing for persons and families of low or moderate income; and

WHEREAS, the Commission acting as the Agency, pursuant to that 2017 Supplemental General Authorization Resolution adopted by the Commission on December 14, 2017 and that 2019 General Authorization Resolution adopted by the Commission on January 18, 2019 (collectively, the "General Authorization Resolution"), regarding the authorization of and the negotiation and sale of the Bonds, appointed as its agents the Executive Director, the Director of Homeownership Programs, and the Chief Financial Officer of the Agency (the "Authorized Officers") for the purpose of negotiation of the terms of sale of the Bonds, subject to the limitations set out in the General Authorization Resolution, and to sign such agreements as are required for the issuance of the Bonds on behalf of the Commission after such terms of sale had been negotiated and to sign such certificates and other documents as are necessary and customary to complete the sale of the Bonds and to enter into agreements for their sale by the Agency and purchase by the Underwriters (as hereinafter defined, and which are so designated by an Authorized Officer); and

WHEREAS, the Authorized Officers did negotiate the sale of the Bonds on January 8, 2019, within the limitations set out in the General Authorization Resolution as to maximum principal amount, final maturity and maximum interest rate; and

WHEREAS, the Agency negotiated and executed an ISDA Master Agreement dated as of July 30, 2009, between Royal Bank of Canada and the Agency (the "ISDA Master Agreement"), and pursuant thereto entered into a Confirmation in conjunction with the sale of the 2019 Series B Bonds to effectively result in a fixed interest rate on the 2019 Series B Bonds; and

WHEREAS, in furtherance of the above stated objectives, the Commission, the Agency and RBC Capital Markets, LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC and Raymond James & Associates as the purchasers of the Fixed Rate Bonds (the "Underwriters") have caused to be prepared and presented to the Commission for adoption after the sale of the Fixed Rate Bonds pursuant to the terms of the 2019 Series A Purchase Contract described below, but prior to delivery of the Fixed Rate Bonds, the following documents in final form (unless otherwise indicated) (collectively, the "Fixed Rate Closing Financing Documents"):

- A. 2019 Series A Bond Resolution, in substantially final form, attached hereto as Attachment A;
- B. 2019 Series A Purchase Contract, dated January 8, 2019 by and between the Commission and the Underwriters, attached hereto as Attachment B;
- C. Preliminary Official Statement, with respect to the Bonds, dated January 2, 2019, attached hereto as Attachment C; and
- D. Official Statement, with respect to the Bonds, dated January 8, 2019, attached hereto as Attachment D; and

WHEREAS, in furtherance of the above stated objectives, the Commission, the Agency and RBC Capital Markets, LLC, as the purchaser of all of the 2019 Series B Bonds ("RBCCM"), have caused to be prepared and presented to the Commission for adoption after the sale of the 2019 Series B Bonds pursuant to the terms of the 2019 Series B Purchase Contract described below, but prior to delivery of the 2019 Series B Bonds, the following documents in final form (unless otherwise indicated) (collectively, the "2019 Series B Closing Financing Documents" and, together with the Fixed Rate Closing Financing Documents, the "Closing Financing Documents"):

- A. 2019 Series B Bond Resolution, in substantially final form attached hereto as Attachment E;

- B. **2019 Series B Purchase Contract, attached hereto as Attachment F, by and between the Commission and RBCCM;**
- C. **Remarketing Agreement in substantially the form previously presented to and approved by the Commission and used in connection with the issuance of the Agency's Housing Finance Program Bonds, 2018 Series C by and among the Commission, RBCCM and Wilmington Trust, National Association, as tender agent; and**
- D. **Confirmation to ISDA Master Agreement, attached hereto as Attachment G; and WHEREAS, it appears that each of the Closing Financing Documents is in the appropriate and final form (or substantially final form, subject to determination of the final terms of the Bonds in accordance with this Supplemental General Authorization Resolution) and is an appropriate document to be approved or executed and delivered by the Commission or the Agency, as may be necessary for the purpose intended; and**

WHEREAS, in the judgment of the Commission, it is advisable that the Agency by its Executive Director, its Director of Homeownership Programs, or its Chief Financial Officer, jointly or severally, be authorized, and are hereby so authorized, to do all things necessary to complete the transaction described herein, and in the Closing Financing Documents.

NOW BE IT HEREWITH RESOLVED:

- 1. **The execution and delivery of the Closing Financing Documents and the sale of the Bonds to the Underwriters and RBCCM, as specified in and in accordance with the terms set out in each of the 2019 Series A Purchase Contract and the 2019 Series B Purchase Contract, is hereby authorized and the officers, agents and employees of the Commission and the Agency are hereby authorized, empowered and directed to take any actions required to effect the transactions contemplated therein and to finalize the terms of and execute any instruments (including any continuing disclosure agreement and tax certificates or forms) and take any actions required to effect the issuance of the Bonds, and to apply the monies received by the Commission from the bond proceeds in such manner as is necessary to give effect to the Program.**
- 2. **All prior acts of the officers, agents and employees of the Commission and the Agency which are in conformity with the purpose and intent of the General Resolution, the General Authorization Resolution and this Supplemental General Authorization Resolution in furtherance of the sale of the Bonds shall be and the same hereby are in all respects approved, ratified and confirmed.**

Mr. Dave Flohr, HFA, stated in response to a question that in 2006-2008 the federal government had a first-time home buyer credit which resulted in a market increase. The spread between the Agency's rates and market rates has increased. If interest rates continue to climb, the Agency's program will be a better choice for the homebuyer. He also noted that in 2012-2013, the Agency was given authority to do Ginnie Mae loans. The Agency continues to diversify its funding sources to meet the needs of homebuyers.

Governor Burgum thanked Ms. Kline and her team for the additional information. In response to a question, Mr. Flohr stated HFA has 30% of the market share. Governor Burgum asked that market share be tracked moving forward if it can be done in a cost-effective way.

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

Ms. Kline stated that a public hearing needs to be held regarding the Allocation Plans and asked that the Commission name a representative to conduct the hearing.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission appoints Jolene Kline as the Commission's representative at the March 28,

2019 10:00 a.m. public hearing on the Housing Finance Agency's proposed 2020 Low Income Housing Tax Credit Program Qualified Allocation Plan and the 2019 National Housing Trust Fund Allocation Plan. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Kline presented the HFA 2018 annual report. (A copy is available in Commission files.) The Commission congratulated the HFA for another successful year.

Governor Burgum requested that more information be provided about the number of banks in North Dakota vs. the number of banks that participate with HFA, along with the level of participation by various banks.

Ms. Kline reported that there is concern from property owners regarding the government shutdown. They are concerned that payments from the federal government will be delayed.

Ms. Kline provided a legislative update. She requested feedback regarding SB 2271 and SB 2303. The Agency's partners were concerned that the \$20 million for the Housing Incentive Fund (HIF) had not been included in HB 1014 and rallied to get support for HIF in other bills. Ms. Kline requested permission to testify in support of the need for HIF with the understanding that the amounts vary from the recommendation in the Governor's Executive Budget.

It was the consensus of the Commission that HFA may testify in favor of funding up to \$20 million (the amount in the Governor's Executive Budget) and state the need for more.

DEPARTMENT OF MINERAL RESOURCES

Mr. Lynn Helms, Director of Department of Mineral Resources, presented orders involving the bonding amounts that are required under the Commission's rule -- specifically 43-02-03-15. A copy of the rule was distributed along with information on plugging and reclamation that has taken place during the 2017-2019 biennium. He stated that proposed Orders 29264, 29301, 29302, and 29303 relate to adjusting the bonding amounts for acquisition companies -- Cobra and Scout Energy Management LLC. In determining recommendations, the staff looked at several factors including but not limited to:

- the acquisitions and the number of abandoned wells in each acquisition,
- analysis of assets versus liabilities,
- economic value of the well/wells,
- average production of the active wells,
- expected costs of plugging and site reclamation, and
- location and depth of the wells.

Mr. Helms noted that the 43-02-03-15 states that for a \$100,000 blanket bond, there can be no more than 6 wells that are not in compliance. This was the rule of thumb that staff used in preparing the proposed orders.

Mr. Helms stated that, for example, Case 26824, Order 29264 involves the establishment of bond amounts required of Scout Energy Management LLC for the operation of wells operated in the Wiley-Glenburn Unit in Bottineau County. (8 abandoned wells and 6 inactive wells). Based on 43-02-0315 that would lead you to say at a minimum there should be \$200,000 or \$300,000 in bonding for that set of wells. The staff recommendation, based on the rule and the other information, is recommending the bond be set at \$400,000.

Mr. Helms indicated that each of the orders presented today included a provision that should the operator accomplish the work plan they have provided to the Oil and Gas Division and deal with their abandoned wells, they will be able to make application to reduce the bonding amount back to the standard bond amount and the Director would be authorized to sign an administrative order granting that change.

Mr. Helms pointed out that industry is a very good steward of these assets in general. So far in the current biennium:

- 438 total North Dakota wells have been plugged and reclaimed at a cost of \$65 million
- 5 wells were plugged by the State utilizing monies in the Abandoned Well Plugging and Site Restoration Fund (AWPSRF) at a cost of \$369,000
- 5 sites were reclaimed by the State utilizing monies in the AWPSRF at a cost of \$1,012,564 -- \$250,000 bonds were forfeited so net cost to AWPSRF was \$1,131,564
- Industry spent nearly \$65 million in the 18 months of the biennium on the plugging and reclamation of 433 wells.

In response to a question, Mr. Helms stated that the sources of the funds that go into the AWPSRF include: civil penalties, permit fees, bond forfeitures, confiscated equipment, oil sales. Additionally, 4% of 1% of the gross production tax goes to the fund, with a limit \$8 million this biennium. After this biennium, it is currently written in statute that the limitation will automatically revert to \$15 million. Through the tax the entire oil industry is contributing to the fund to deal with those companies that fail to plug and reclaim their wells. The fund is capped overall at \$100 million and has never been as high as it is right now. There are conversations with legislators that there may need to be a minimum balance kept in the fund of approximately \$25 million before funds are used for studies, research projects, etc. He noted that the Enduro case is an example of where the State could have faced a significant cost of up to \$23 million with the bankruptcy taking place in Delaware. That is why the Division has legal counsel that specializes and monitors bankruptcies.

In response to a question, Mr. Helms stated that one of the wells that the State plugged and reclaimed was a long-term disposal facility and was much more expensive than average. Normally the wells the State takes over are in line with the industry average. Treatment plants can become enormously expensive very quickly and that is why the Division has a full-time inspector for treatment plants. The amount of waste at these facilities is closely monitored.

In response to a question, Mr. Helms stated that bonding levels is a very sensitive issue for industry and if not carefully done could inhibit industry. Currently the staff is planning to review the current policies regarding bonding through the administrative rule making process later this year. At that time the staff will make recommendations if changes should be made and what the changes should be.

Mr. Helms stated that North Dakota has very few abandoned or “orphan” wells as compared to other states. Part of that is because of the detailed monitoring that the Division does when acquisitions take place.

Governor Burgum stated that this is an important regulatory step and expressed his appreciation to Mr. Helms and his team for level of granularity that was provided. He noted that there is a significant amount of data that has been accumulated. This should be treated as a high-risk pool with projections regarding everyone’s contribution to the pool determined based on analysis. If the State is underfunded, then this should be adjusted based on data and not ideology.

Case 26824, Order 29264. It was moved by Commissioner Goehring and seconded Attorney General Stenehjem that Order No. 29264 issued in Case 26824 requiring Scout Energy Management LLC to provide a bond amount of \$400,000 for the operation of oil and gas wells in the Wiley-Glenburn unit, located in Bottineau County, ND, with the opportunity to apply for a reduction to \$100,000 when all wells are in compliance, be approved this 18th day of January, 2019. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 26861, Order 29301 involves the establishment of bond amounts required of Cobra Oil and Gas Corp. for the operation of wells operated in the Baumann Drain, Hay Draw, Loraine, McKinney, Mouse River Park, Northeast Foothills, Northeast Landa, North Westhope, Sherwood, and South Lone Tree Fields, located in Bottineau, Burke, McKenzie, Renville and Ward Counties, ND.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order No. 29301 issued in Case 26861 requiring Cobra Oil and Gas Corp. to provide a bond amount of \$500,000 for the operation of oil and gas wells in the Baumann Drain, Hay Draw, Loraine, McKinney, Mouse River Park, Northeast Foothills, Northeast Landa, North Westhope, Sherwood, and South Lone Tree Fields , located in Bottineau, Burke, McKenzie, Renville and Ward Counties, ND, with the opportunity to apply for a reduction to \$100,000 when all wells are in compliance, be approved this 18th day of January, 2019. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 26862, Order 29302 involves the establishment of bond amounts required of Cobra Oil and Gas Corp. for the operation of wells operated in the Burning Mine, Eden Valley, Flat Top Butte, Glenburn, Hamlet, Hay Draw, Lake View, McGregor, North Branch, Northeast Foothills, North Tioga, Pierre Creek, Square Butte, Stoneview, and Temple Fields, located in Bottineau, Burke, Divide, Golden Valley, McKenzie, Renville, and Williams Counties, ND.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order No. 29302 issued in Case 26862 requiring Cobra Oil and Gas Corp. to provide a bond amount of \$700,000 for the operation of oil and gas wells in the in the Burning Mine, Eden Valley, Flat Top Butte, Glenburn, Hamlet, Hay Draw, Lake View, McGregor, North Branch, Northeast Foothills, North Tioga, Pierre Creek, Square Butte, Stoneview, and Temple Fields, located in Bottineau, Burke, Divide, Golden Valley, McKenzie, Renville, and Williams Counties, ND, with the opportunity to apply for a reduction to \$100,000 when all wells are in compliance, be approved this 18th day of January, 2019. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 26863, Order 29303 involves the establishment of bond amounts required of Cobra Oil and Gas Corp. for the operation of wells operated in the East Flaxton-Madison Unit located in Burke County, ND.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order No. 29303 issued in Case 26863 requiring Cobra Oil and Gas Corp. to provide a bond amount of \$200,000 for the operation of oil and gas wells in the East Flaxton-Madison Unit located in Burke County, ND, with the opportunity to apply for a reduction to \$100,000 when all wells are in compliance, be approved this 18th day of January, 2019. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Helms stated that Case 27125, Order 29398 involves the amendment of Order 25417 regarding oil conditioning.

Mr. Helms reported that this had a very robust comment period. A public hearing was held in response to a request. There were also follow up written comments. The work done by the Commission since 2015 has taken industry in the right direction. The recommendation is to amend the order so that the oil conditioning requirements remain in place; but the specifics of how those are implemented and enforced move to a policy similar to what was done with gas capture. This enables flexibility to change specific dates, the adoption of new standards, etc.

Mr. Helms walked through the provisions of the policy and responded to questions from the Commission. He noted that the original order had temperature and pressure requirements for the separation vessels upstream of custody transfer being enforced year-round. Based on the 60,000 data points, the requirements are only necessary when ambient temperatures drop below 40° F. Additionally, the vapor pressure testing going on in summer quarters was unnecessary. Instead, during winter months, at least 2 tests will be required. One must take place in the October-December timeframe, and one must occur in the January-March timeframe.

The standards for sampling have changed and so this has been updated for the new standards accordingly.

In recent years, all transporters have adopted standards that are either as strict, or more restrictive than the 13.7 standard. This would allow an operator that is subject to a tariff (transporter requires a tariff) that is equal to 13.7 or more stringent to certify this. Division staff will complete random checks. The benefit of this is that instead of being checked quarterly, every load is being checked for vapor pressure through the transportation tariff. By making this change the Commission is increasing the amount of vapor testing that is going on. The Division can require any of the data that is collected to be submitted to the Division. This removes redundancy.

It was noted that the policy also recognizes multiple jurisdictions and the fact that there could be conflicting regulations. Mr. Helms stated his staff will work with other jurisdictions to work out any differences.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Oil Conditioning Order 29398 Policy/Guidance Version 011819 implementing conditioning standards for safe transportation and improved marketability of Bakken and Three Forks crude oil be approved as follows:

**Oil Conditioning Order 29398 Policy/Guidance
Version 011819**

Policy Goals:

- 1) **Provide safe transportation of crude oil produced from the Bakken Petroleum System**
- 2) **Improve marketability of crude oil produced from the Bakken Petroleum System**

Action items:

- 1) **Require production equipment of ample capacity that effectively separates the production into gaseous and liquid hydrocarbons;**
- 2) **From October 1 through March 31, require production facilities utilizing a gas-liquid separator and/or an emulsion heater-treater operating at a pressure of no**

- more than 50 psi on the final stage of separation and heating the produced fluids to a temperature of no less than 110 degrees Fahrenheit; or
- 3) From October 1 through March 31, require production facilities utilizing a gas-liquid separator and/or an emulsion heater-treater operating at a pressure greater than 50 psi on the final stage of separation and heating the produced fluids to a temperature of no less than 110 degrees Fahrenheit while utilizing a vapor recovery system; or
 - 4) From October 1 through March 31, require production facilities utilizing a gas-liquid separator and/or an emulsion heater-treater operating at pressures and temperatures other than outlined above, to have a valid vapor pressure test on file with the Commission that demonstrates such system is producing a crude oil Vapor Pressure of Crude Oil (VPCR₄) no greater than 13.7 psi or 1 psi less than the vapor pressure of stabilized crude oil as defined in the latest version of ANSI/API RP3000, whichever is lower, although VPCR₄ testing will not be required on any crude oil that is transported from the point of custody transfer via a transporter implementing a tariff specification as stringent as the Commission's VPCR₄ requirement—such tariff must be stated on the Authorization To Purchase And Transport Oil From Lease (Form 8) or verified by the submission of supporting documents if deemed necessary by the Commission;
 - 5) All required VPCR₄ tests must be performed twice annually in accordance with the latest version of ASTM D6377 by a person sufficiently trained to perform the test and sampled in accordance with ASTM D5842 or D8009 at the point of custody transfer, once between October 1 and December 31 and once between January 1 and March 31 and at least 30 days apart, although additional VPCR₄ testing may be required if deemed necessary the Commission;
 - 6) A Sundry Notice (Form 4) shall be submitted to the Director within 15 days of conducting any required VPCR₄ test which includes a copy of the VPCR₄ test performed and details the operating capacities, pressures, and temperatures of all well site conditioning equipment at the time of the test;
 - 7) Require public hearings to consider alternative oil conditioning methods;
 - 8) Periodically inspect production facilities and confirm operator compliance with Commission standards and requirements;
 - 9) Prohibit blending crude oil with natural gas liquids;
 - 10) Request transload rail facilities to notify the Commission of violators of any federal standards;

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

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

Attorney General Stenehjem requested that if there is an issue with the policy, Mr. Helms notify the Commission.

In response to a series of questions they discussed the process that the Division uses in monitoring the information that is provided and the penalties involved if the operator files inaccurate or false information.

Mr. Bruce Hicks, Assistant Director of the Oil and Gas Division, presented the Oil and Gas Division Quarterly Report for the 3rd quarter of 2018. (A copy is available in Commission files.) Mr. Hicks and Mr. Helms responded to numerous questions about the data presented in the report.

Mr. Hicks reported that the newly completed wells is a record for the quarter. This is the first time the producing wells are over 15,000. The wells spud and wells completed drive the sales tax numbers. This information will be very helpful for Moody's and others trying to predict sales tax.

Governor Burgum noted that over a half a billion more cubic feet per day of gas is being produced and the industry is capturing more gas. He requested that the ratio of gas produced and captured be added to page 1 of the report. He also requested that the report include when capacity will be coming online vs. gas produced projecting to 2020, along with the capital that will be invested.

Mr. Hicks noted that the temporary flaring exemptions granted information will be removed from the report. It is no longer needed due to the policy change.

Mr. Helms provided an update on the submission of comments regarding a Draft Supplemental Environmental Impact Statement for Oil and Gas Leasing published by the Dakota Prairie Grasslands. Mr. Helms reviewed the comments he had submitted on behalf of the Commission. (The comments are available in the Commission files.) He noted that because of the federal government shutdown more time will be allowed to submit additional comments if the Commission wishes to do so.

Mr. Helms provided a legislative report on bills that have been introduced. So far, they are tracking 67 bills with 11 being actively followed. (A copy of the list of bills is available in Commission files.) Mr. Helms requested guidance on HB 1438 and HB 1439.

Mr. Helms stated that he would like to testify in opposition to HB 1438, which would create and enact a new section to chapter 38-08 of the North Dakota Century Code, relating to bonds for the reclamation of well sites. The cost to industry would be enormous. It would require bonding to go to \$4 billion in bonds. It would also create a significant additional workload for DMR. It was noted that there was no fiscal note. It was the consensus of the Commission that a fiscal note be provided, and that Mr. Helms offer the information that is available and note that there are better ways to do this. It was suggested that the bill sponsors be encouraged to share their concerns as part of the administrative rules process later this year.

Mr. Helms requested permission to testify in support of HB 1439, relating to an oil extraction tax exemption for the incremental production from tertiary recovery projects using carbon dioxide. This incentive would be instrumental in making projects, such as Project Tundra, profitable. It was noted that having market incentives to take CO₂ and put it in the ground is good for a variety of reasons.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission support HB 1439. 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 Governor Burgum that under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2 the Industrial Commission close the meeting to the public and enter executive session for the purpose of attorney consultation. The purpose of the executive session will be to consult with the Commission's attorney(s) regarding adversarial proceedings in the following matter: Case No. 09-2018-CV-00089, Sorum, et al v. State of North Dakota, et al. On a roll call vote, Governor Burgum and Attorney General Stenehjem voted aye. Commissioner Goehring was absent for this vote. The motion carried.

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

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

Commission members, staff, DMR staff, and Special Assistant Attorney General(s) and staff remained, but the public was asked to leave the room. The executive session began at 1:49 p.m.

EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

Others in Attendance:

| | |
|-----------------|--|
| 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 |
| Daniel Gaustad | Pearson Christensen Law Firm |
| Andrea Pfennig | Industrial Commission Office |
| Karlene Fine | Industrial Commission Office |

The Industrial Commission reconvened in open session at 2:04 p.m. and the public was invited to return to the meeting room. Governor Burgum noted that during its executive session the Commission consulted with its attorney regarding Case No. 09-2018-CV-00089.

OIL & GAS RESEARCH PROGRAM

Ms. Karlene Fine, Industrial Commission Executive Director/Secretary, presented a financial summary report for the Oil and Gas Research Fund. (A copy of the report is available in Commission files.) Ms. Fine stated that the uncommitted cash is \$3.7 million as of the end of November 30, 2018.

Mr. Brent Brannan, Director, presented the Oil and Gas Research Council recommendation for the following Grant Round 48 application:

G-48-03 “Energy of North Dakota” submitted by North Dakota Petroleum Foundation; Project Duration is 21 months; Total Project Cost: \$1,094,000; Amount Requested: \$490,000. The Energy of North Dakota program will continue to pursue its mission through public outreach, education and informational opportunities. This includes the continuation of many of its award-winning outreach programs such as Bakken Rocks CookFest, Public Education Sessions, Safety and Environment – including Pick Up the Patch and Vision Zero, Teacher Seminar, Energy Career Awareness Partnership, Promotion and Public Perception, and Emerging Issues. The Foundation will also continue developing online materials and messages that are smartly scalable, relatable to a millennial audience, and able to be deployed via multiple channels. The North Dakota Petroleum Foundation operates the Energy of North Dakota program and each of its initiatives with the support and oversight of North Dakota Petroleum Council staff. The Oil and Gas Research Council voted 6-0 to approve the funding with one member absent and not voting.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Oil and Gas Research Council’s recommendation to fund the grant application “Energy of North Dakota” and to authorize the Industrial Commission Executive Director and Secretary to execute a contract with the North Dakota Petroleum Foundation to provide a total of not to exceed \$490,000 in funding. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. John Harju, Energy and Environmental Research Center (EERC), provided a presentation regarding the evaluation of subsurface produced gas injection. (A copy of the report is available in Commission files.) The report included the following summary:

The goal of the effort was to evaluate the feasibility of produced gas injection and storage into the Broom Creek Formation or other subsurface targets to help alleviate flaring where pipeline capacity is limited. Technical, economic, and regulatory aspects associated with injection of produced gas into the subsurface were assessed.

Key findings include the following:

- The Broom Creek Formation may be a technically and economically-viable target for temporary produced gas storage in the southern portion of the core Bakken area. Other potential injection targets should be evaluated for the northern portion of the core Bakken area.
- Gas recovery factors from temporary storage range from 47 to 63% in the most realistic scenarios, which include constrained rates of gas production and/or reuse of the same storage reservoir to facilitate additional well development.
- Water production rates during gas recovery range from 500 to 2,900 bbl/day.
- The potential gross economic benefit of unconstrained oil production from a single well with no gas capture capacity could be as high as \$41 million over a 2-year period (or \$200 million for 5 wells on a pad) if this approach were applied proactively for well pad development.
- Estimated capital cost for development of a gas injection site able to fully capture and handle the gas from 5 new wells (average of 10 MMscf/day) was \$15.7 million (\$2.15/Mscf of injected gas). Operational costs could add an additional \$1 – \$3 million/year.

In response to a question, it was stated that pore space belongs to the surface owner under North Dakota law.

Mr. Helms stated that since this EERC report shows that subsurface storage of produced gas is technologically and economically feasible there are some action items the Commission could do:

- There are legislative efforts underway to clarify the relationship of those who own the gas and those who own the pore space, as well as identifying the regulations to use the pore space. The Commission could support those efforts.
- Ask Mr. Brannan to put out an RFP for the demonstration project Mr. Harju recommended. The project is estimated to cost \$16 million. The Commission could request a special amount of money from the legislature for this activity to defray some of the expenses.

In response to a question, Mr. Helms stated that approximately 99,000 barrels of oil per day are being constrained because of the inability to capture and utilize the gas. This information has changed from two years ago.

It was the consensus of the Commission that action should be taken to keep the development of this technology advancing. Mr. Helms indicated he would work with Mr. Brannan to prepare an RFP for the Commission's consideration at the February meeting and provide information on the economic loss that is occurring right now as a result of restricted production. He will also pursue legislative support for funding of a demonstration project as well as needed legislation regarding usage of pore space.

Mr. Jay Almlie, EERC, provided a report on the Intelligent Pipeline Integrity (iPIPE) Program that is partially funded by the Oil and Gas Research Program. (A copy of the report is available in Commission files.) He noted that:

- Industry-led program
- Mission: Advance emerging technologies to prevent pipeline releases
- Unique collaboration between pipeline operators and technology providers
- Multiyear commitment required to ensure momentum and continuity
- \$4M investment over 3 years
- Currently 8 companies (Goodnight Midstream, Andeavor, Oasis Midstream Partners, Oneok, Hess, DCP Midstream, Whiting, Equinor) and the North Dakota Industrial Commission through the Oil and Gas Research Program
- Demonstrates North Dakota leadership on this topic.

The Commission commended Mr. Almlie for the work that is being done by the industry through this Program.

LIGNITE RESEARCH, DEVELOPMENT & MARKETING PROGRAM

Mr. Jason Bohrer, Director, provided a legislative update. (A copy of the report is available in Commission files.) Mr. Bohrer reported that HB 1439 would provide an opportunity for a coal facility to make more use of CO₂. This could take 30 million tons of CO₂ and monetize it.

In response to a question, Mr. Bohrer stated that he is not aware of any opposition to the bill. The Lignite Energy Council has been openly promoting this concept for six months. Governor Burgum stated that he would like Mr. Bohrer to reach out to the Mandan, Hidatsa and Arikara (MHA) nation as they could be impacted by the legislation.

WESTERN AREA WATER SUPPLY (WAWS)

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the WAWS November and December Financial Report and Debt Reduction Report. (A copy of the report is available in the Commission files.) She noted that there was a non-cash expense to book the January-June 2018 deferred interest that put WAWS in a negative position for the year. However, the net income for the biennium to date is \$1.7 million.

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

Mr. Wilson stated that industrial sales revenue for the year was \$17.8 million. The breakeven number is calculated at \$12.4.

Mr. Wilson presented a request from the Western Area Water Supply Authority Board for payment of capital costs from industrial revenues. It's a minor amount because the construction season is over. In the spring, there will be an additional \$900,000 expense.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem 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 \$33,861.71. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Wilson presented the 2019 Forecasted Industrial Sales report. (A copy of the handout is available in the Commission files.) There is a projected revenue of \$22,061,088 in industrial sales for 2019. This includes direct connections and depots.

In response to a question on projected capital improvements, Mr. Wilson stated that the depots have no drainage which causes problems when drivers overflow their trucks. In the winter, there is five-ten inches of ice that build up. Additionally, there is no containment for anything spilled. Trucks are not always carrying water, and environmental cleanup has been required. A catch tank buried deep enough to avoid freezing is planned.

Mr. Wilson also reported that a study regarding reimbursement rates was conducted by AE2S.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director/Secretary and approve the Western Area Water Supply Authority Board's recommended 2019 reimbursement rates as follows:

| | | |
|-------------------------------|--------------------------------|----------------------|
| NWRWD*/BDW** | \$3.45 to \$3.57 | 3.5% increase |
| R&T Water District | \$3.45 to \$3.57 | 3.5% increase |
| Williston | \$1.95 to \$1.98 | 1.5% increase |
| MCWRD | \$4.03 to stay the same | 0% increase |

Watford City Reused Water \$1.67/1000 industrial rate reimbursement.

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

Governor Burgum requested a 2019 forecast column be added to the Industrial Water Sales YTD report. He noted that the 2018 forecasting was 50% off from what was sold. Mr. Wilson stated that forecasting will be shifting to a quarterly basis. Governor Burgum requested that gallons per frac and a trend line be incorporated into the forecast.

Mr. Wilson clarified that industrial sales cover the loans that built out the transmission system. The Water Commission has not provided grants for the industrial side of WAWS. On the domestic side, the loans are being met by the domestic sales. The industrial sales are being financed by the Bank of North Dakota.

Commissioner Goehring requested Mr. Wilson research funding from the USDA to defray costs for rural water connections.

PUBLIC FINANCE AUTHORITY

Ms. Fine recommended Mr. John Phillips to fill the vacancy on the Public Finance Authority Advisory Committee and extending the terms of the current members.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Commission's Executive Director/Secretary and appoint John Phillips, Beulah, to the Public Finance Authority Advisory Committee for a three-year term extending to July 1, 2022, and further extend Linda Svihovec's current term to July 1, 2021 and Keith Lund's current term to July 1, 2020. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. DeAnn Ament, PFA Executive Director, provided a legislative update. (A copy of the report is available in the Commission files.)

BANK OF NORTH DAKOTA

Mr. Eric Hardmeyer, BND President, presented amendments to the Background Investigation Policy for consideration. He stated that training will be provided to Bank employees regarding the changes.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Bank of North Dakota Advisory Board and approve the amendments to the Background Investigation Policy to read as follows:

PURPOSE:

Background investigations include criminal and employment credit checks to protect the Bank of North Dakota and reduce risk. Criminal and employment credit check information is collected as a means of promoting a safe work environment and enhancing the security of BND customers and employee information.

Criminal History Record Checks:

- 1. In accordance with [N.D.C.C. 12-60-24](#) and at the direction of the Bank President, criminal background checks are conducted on:**

- All applicants following their acceptance of an offer of employment to fill a regular, fully funded position. Criminal history record check results must be reviewed prior to final candidate beginning work at BND.
 - All temporary employees prior to beginning work at BND. Criminal history record check results must be reviewed prior to temporary employee beginning work at BND.
 - Contractors, at the discretion of the Service Area manager, prior to beginning work at BND. Criminal history record check results must be reviewed prior to contractor beginning work at BND.
2. Criminal history record checks are obtained through the ND Office of Attorney General, Federal Bureau of Investigations and credit checks through Advantage Credit Bureau. Fingerprints are required for processing a national criminal history check.
 3. A background hiring checklist will be referenced in making determinations on the final candidate's hire.
 3. A review of each federal banking agency's enforcement actions and orders will be conducted to include a comparison check on individuals who have been assessed civil monetary penalties or have been removed and/or prohibited from banking. Also, a review of any cease and desist orders issued against an institution and a determination if the applicant played a role in any possible misconduct may be conducted. This information is located on Federal Financial Institutions Examination Council (FFIEC) website: <http://www.ffiec.gov>.

Employment Credit Checks:

An employment credit check will be conducted for new BND hires and temporary hires. Employment credit checks *will not* be conducted for internal transfers or promotions unless an internal transfer is accessing federal government systems that require an employment credit check.

- Employment credit checks will be conducted on the final candidate after an offer of employment has been made. Credit checks will be obtained through a third party credit service for Fair Credit Reporting Act compliance and lawful employee notification. Credit check results must be reviewed by HR prior to final candidate beginning work at BND.
- A background hiring checklist will be referenced in making determinations on the final candidate's hire.
- BND reserves the right to conduct current employee credit checks and criminal history report checks in any investigation of suspicious activity.

Employee Responsibility:

Employees are required to notify their service area manager and Human Resources immediately if charged with and/or convicted of a misdemeanor or felony, (i.e. any drug and alcohol related charges or convictions) (not civil infractions) regardless of where the charge was made (example: other states, foreign countries, etc.). A determination will be made on a case by case basis if such a charge and/or conviction affects their ability to perform the essential functions of their job, or if there are other circumstances that should be considered.

Employees must notify Human Resources of any declared bankruptcy that has not been dismissed. A determination to run a credit check for further investigation will be made on a

case by case basis and determined if it affects their ability to perform the essential functions of their job, or if there are other circumstances that should be considered.

Non-Compliance:

A violation of this standard may lead to disciplinary actions, up to and including termination of employment.

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

Mr. Hardmeyer presented a HRMS Drug and Alcohol-Free Workplace policy for consideration along with the rescinding of the current BND Drug Free Workplace policy.

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 adopt the HRMS Drug and Alcohol-Free Workplace Policy as follows:

The State of North Dakota, as the employer, desires to provide a drug-free, healthful, and safe workplace. Employees are required to report to work in a condition to perform their jobs in a safe, efficient, and satisfactory manner. This policy applies to all employees regardless of status.

Any unauthorized or unlawful manufacture, distribution, dispensations, possession, or use of controlled substances or alcohol by any employee at any workplace or in any vehicle used for official state purposes is strictly prohibited. This prohibition applies during all work breaks, during nonworking hours when the effect inhibits the employee's job performance or agency's performance, or while conducting any official business of the state. The use of prescribed drugs is permitted provided it does not impair the employee's ability to perform the essential functions of the job effectively and in a safe manner that does not endanger other individuals, equipment or property in the workplace. No employee may report for work having the odor of an alcoholic beverage on their person or under the influence of alcohol or drugs.

All employees must sign a drug and alcohol free workplace acknowledgement form (SFN 16769) at the time of hire.

A manager may require an employee to leave the workplace if the manager determines the employee has reported to work in an inappropriate condition and cannot perform the essential functions of the job effectively in a safe manner that does not endanger themselves or others. The employee may be required to use annual leave or sick leave. If the manager determines the employee should not operate a motor vehicle, the manager should arrange transportation for the employee. If the employee refuses to accept transportation and insists on operating a motor vehicle, they will be informed by the manager that law enforcement officials will be notified that the employee appears unfit to operate a motor vehicle. Law enforcement officials should then be appropriately notified.

Under the Drug-Free Workplace Act, a state employee who performs work for a government contract or grant must notify the state of a criminal conviction for drug-related activity occurring in the workplace. The report must be made within five days of the conviction.

When participating in social activities sponsored by the state, a state agency, or which are associated with workplace activities, employees are required to conduct themselves in a manner

that they do not represent a danger to themselves, other employees, or the general public, or damage the reputation of the state.

To inform employees about important provisions of this policy, the state has established a drug-free awareness program. The program provides information on the dangers and effects of substance abuse in the workplace, resources available to employees, and consequences for violations of this policy. Employees with questions or concerns about substance dependency or abuse are encouraged to use the resources of the Employee Assistance Program. Employees may also wish to discuss these matters or this policy with their supervisor, their Human Resource department or HRMS to receive assistance or referrals to appropriate resources in the community.

Any employee who is determined to have violated this policy will be subject to disciplinary action up to and including termination of employment and participation in a substance abuse rehabilitation or treatment program.

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

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 rescind the BND Drug Free Workplace Policy. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Hardmeyer presented a HRMS Workplace Anti-Harassment policy and HRMS Workplace Violence policy for consideration along with the rescinding of the current BND Workplace Violence, Harassment, Hostile Work Environment policy.

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 adopt the HRMS Workplace Anti-Harassment Policy as follows:

The State of North Dakota, as the employer, will **not** tolerate, condone, or allow **any** type of harassment to occur within state workplaces or in any other work-related settings. This prohibition applies to every person at a state workplace or present during state-related business activities, including but not limited to state employees, customers, vendors, contractors, or any other person. All employees are empowered with the responsibility to prevent harassment in all state work areas and during all state-related business activities.

Harassment: Any offensive conduct that interferes with an individual's work performance or creates an intimidating or hostile work environment. Unlawful harassment can be verbal, non-verbal, or physical conduct or communication that shows hostility or aversion towards an individual because of a person's race, color, religion, sex, age, genetics, national origin, disability or other legally protected status in the State of North Dakota. Examples may include epithets, slurs, jokes, negative stereotyping, written or graphic materials, posters, calendars, or pictures.

Harassment becomes unlawful when:

- 1) Enduring the offensive conduct becomes a condition of continued employment, or
- 2) The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Sexual harassment: Unwelcome sexual advances, sexual favor requests, or any other conduct or communication of a sexual nature when:

- a. Submission to the conduct is made explicitly or implicitly a term or condition of employment.
- b. Submission to or rejection of such conduct is used as the basis for employment decisions.
- c. Conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment may include a range of behaviors, and may involve individuals of the same or different gender. Examples are:

- a. Unwanted sexual advances or requests for sexual favors.
- b. Sexual jokes and innuendos or verbal abuse of a sexual nature.
- c. Leering, massaging, or touching or sexual related comments about another's body.
- d. Displaying inappropriate sexually suggestive or offensive pictures or objects anywhere in the workplace.

If an employee observes or experiences harassing conduct in the workplace, the employee should either directly inform the offender that the conduct is offensive and must stop or notify agency leadership about the occurrence. If an employee does not feel comfortable reporting the situation within the employing agency, he/she should contact HRMS to report the situation.

All employees shall report harassing behavior they observe or is reported to them.

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

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 adopt the HRMS Workplace Violence Policy as follows:

The State of North Dakota, as the employer, maintains a working environment free from violence or the threat of violence. Acts or threats of physical violence, including but not limited to intimidation, harassment, or coercion will not be tolerated.

Employees must immediately report any incidents of violence, threat of violence, or any behavior that may threaten an employee's safety or the safety of others, to appropriate management or law enforcement authorities. Once a managerial level employee is notified of a violent or threatening situation, he/she must contact Human Resources. HR will assist in coordinating the proper response and notifying the appropriate personnel/authorities.

The State of ND prohibits any form of discipline or retaliation for reporting such incidents and shall handle all complaints promptly. Any employee who engages in such conduct or who makes false accusations of violence or threats of violence will be subject to disciplinary action up to and including termination.

In appropriate cases, the organization may seek criminal prosecution or cooperate with the appropriate authorities.

Employees must report to their supervisor the existence of anything that may potentially threaten the safety of the employee or other state employees. This includes a restraining order of any kind obtained by the employee against another individual(s) or a restraining order obtained against an employee. Employees are also encouraged to report if they are a victim of domestic violence or if they suspect a coworker may be a victim.

Any person who violates this policy will be subject to disciplinary action, up to and including termination of employment, or be removed from the state work area.

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

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 rescind the BND Workplace Violence, Harassment, Hostile Work Environment Policy. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Kirby Evanger, Bank of North Dakota, presented amendments to the General Loan Policy for consideration.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Bank of North Dakota Advisory Board and approve the following amendments to the General Loan Policy outlined below:

Page 9

Business Bankers are authorized to approve up to a 0.25% reduction in the Bank's net rate of interest on a loans within their approval authority, even if that loan is part of aggregate related exposure that exceeds a Business Banker's individual authority. Sole approval will be required to approve up to a 0.25% reduction in the Bank's net rate of interest on loans above Business Banker authority not to exceed \$5,000,000.

Page 11

For the purpose of determining loan lending limits, all loans which have a common source of primary repayment, along with any loan which the guarantor(s) have with the Bank, shall be taken into account. and any exposure that is government guaranteed may be excluded.

LETTERS OF CREDIT

A request to the Bank to issue or to Participate in a letter of credit must be handled in the same manner as a request to make or to participate in a loan.

A letter of credit, direct, participation or confirming, issued by the Bank or in which the Bank is a participant must contain a specified expiration date or be for a definite term and the party for whose account a letter of credit is issued must have an unqualified reimbursement obligation for payments made under the letter of credit. The term not to exceed one year from the date of the Letter of Credit.

The form of any Letter of Credit which the Bank issues or in which the Bank has a participation interest must be reviewed by legal counsel.

A direct Letter of Credit which has already had a resolution executed by the Industrial Commission will only need to be approved by the Bank's Advisory Board level for total exposure over \$15MM. All other levels of approval based on exposure level remain unchanged.

Page 14

LOAN MATURITY EXTENSIONS

For non-watchlist credits, Regardless of exposure level, extensions of loan payments and/or maturity totaling no more than 120 days for matured non-watchlist loans, regardless of exposure level and 30 days for watchlist credits, may be granted by the business banker without further approval provided no adverse change has occurred in the borrower's financial condition. Any subsequent extensions must be approved by Sole approval and shall have the authority to approve an extension of loan payments and/or maturity dates for an additional 120 cumulative days regardless of exposure level for non-watchlist credit and an additional 90 days for watchlist credits. The cumulative total of extensions exceeding 240 days must be considered a renewal and require a full financial review and credit analysis of the borrower.

For watchlist credits, authorities to extend loan payments and/or maturity for up to 120 days is under Sole authority regardless of exposure level. For watchlist credits all extensions of loan payments and/or maturity beyond 120 cumulative days must be approved by Dual authority regardless of exposure.

Page 17

PROBLEM LOAN COMMITTEE

Watchlist loans aggregating \$5300,000 or more or any student loan that becomes uninsured or is being considered for non-accrual or charge-off, will be reviewed on a quarterly basis by the responsible business banker/student loan representative with the Problem Loan Committee. The Problem Loan Committee shall consist of Bank staff selected by the Chief Credit Officer who shall serve as the chairman. The Problem Loan Committee will review and assess the adequacy of the plan of action for each of these loans and will make recommendations as necessary. The Committee will act on recommendations to discontinue collection efforts on loans which have been charged-off. The Problem Loan Committee will review and approve the level of allowance for credit losses for each impaired loan based on the loan's calculated specific reserve. Any allowance adjustment made between Problem Loan committee meetings which exceeds \$5300,000 needs to be approved by the Investment Committee.

Page 23

Capitalized expenses to get the properties saleable do not impact the amount reported as uncollectible. What is reported as uncollectible should not include any gain/loss on sale after it has been in OREO.

Page 25

BND will consider the financing of oil and gas production activities such as oil and gas exploration, mineral interests, and/or drilling or fracking of wells; however, the originating lender should have expertise in this type of lending. The originating lender's underwriting should rely heavily on the comprehensive analysis of professional engineering consultants, and loan documents are to be attorney prepared. See the O&G section of General Loan Guidelines for additional information. BND has limited expertise in oil and gas production lending and thus must rely on the oil and gas expertise of the originating lender for underwriting. The originating lender's underwriting would rely heavily on the comprehensive analysis of professional engineering consultants. Final loan documents are to be attorney prepared.

Page 26

MARIJUANA RELATED BUSINESSES (MRBs)

ND will have eight dispensaries and two grow facilities

Definitions of Marijuana Related Businesses (MRBs)

Tiers

- Tier I – Businesses that manufacture, distribute, or dispense marijuana

- Tier II – Businesses that specifically focus on providing products and services to Tier I MRBs o Hydroponic supplies
 - o Packaging supplies
 - o Training and education
 - o Marijuana software

- Tier III – Businesses with sales or services that are incidental to a Tier III MRB’s overall business and revenue o Electricians/plumbers o Attorneys/Accountants o Commercial property owners

BND Lending and Participating in MRBs

Tier I – The Bank will not directly or participate in a lending transaction to a Tier I MRBs.

Tier II – The Bank will not directly lend to any Tier II.

– The Bank will only participate in a Tier II loan transaction if less than 25% of the entity’s revenue comes from doing business with a Tier I.

Tier III – The Bank will only participate in a Tier III loan transaction if less than 25% of the entity’s revenue comes from doing business with a Tier I or Tier II.

Correspondent Banks will be required to confirm that commercial property owners will not rent to a Tier I or Tier II. Correspondent Banks will be required to reaffirm periodically the commercial property owner has not rented to a Tier I or Tier II.

Page 29

Updated charts on page 29

Page 30

APPRAISAL EXEMPTIONS

This section of loan policy outlines the cases where the requirement of an appraisal is exempted; however, in each case, an in-house evaluation is still required **except in the case of a renewal or refinance**. The following types of transactions do not require the services of either a state-certified or a state-licensed appraiser:

- The transaction value is \$250-500,000 or less **for commercial Real Estate or \$250,000 or less for Residential Real Estate, including 1-4 family.**
- The transaction value is \$250-500,000 or less involving a 2nd REM on commercial real estate with an existing 1st REM at the bank where the two combined loan amounts exceed the \$250-500,000 threshold, provided:

Page 33

Loans with short-term maturities such as lines of credit that are secured by real estate will **require validity of the original value need a re-valuation (appraisal or in-house evaluation -- whichever is applicable) completed at a minimum of 3-year intervals. Validity of the original value may be completed using re-appraisal, in-house evaluation, or analysis of value within the credit presentation.**

Page 34

In-house evaluations are to be prepared in the event the transaction amount secured by **commercial** real estate is up to \$250,000, **or up to \$250,000 if secured by 1-4 family or** if the transaction qualifies for an appraisal exemption. In-house evaluations **are acceptable to use instead of an appraisal are not required** in the case of a renewal of existing credit that is secured by real estate, regardless of the renewal amount provided that the following two conditions exist: 1) property has had no obvious or material change in the market conditions or physical aspects of the property which would threaten the adequacy of the Bank’s real estate collateral protection, and 2) the renewal transaction will have no advancement of new monies other than funds necessary to cover reasonable closing costs. **If both of these conditions exist for a renewal, the credit analyst may substantiate the validity of the original value directly within the credit presentation for the renewal request (a separate in-house evaluation form is not required).**

If there are any questions as to if an appraisal may be necessary to properly value a property, Credit Administration must be consulted. It should not be assumed **an appraisal will never be needed if a transaction is beneath the thresholds requiring an appraisal. that if a transaction is beneath \$250,000 an appraisal will never be needed.** For

example, the bank will consider obtaining an appraisal as the Bank's portfolio risk increases or for higher risk real estate-related financial transactions, such as those involving:

Page 39

PACE/Flex PACE

Maximum Buy Down = \$500,000 **per project**

Maximum buy down through any combination of PACE, Flex PACE, and Flex PACE for Affordable Housing is \$500,000 per biennium per borrower. In this section of policy, borrower means an individual, corporation, limited liability company, partnership, association or any combination of these if there is common ownership.

Page 41

- The maximum buy down on a community business is \$200,000 **per project**
- The maximum buy down on a child care facility is \$300,000 **per project**
- The maximum buy down on a Flex Pace Affordable Housing Project is \$500,000 per project

Maximum buy down through any combination of PACE, Flex PACE, and Flex PACE for Affordable Housing is \$500,000 per biennium per borrower. In this section of policy, borrower means an individual, corporation, limited liability company, partnership, association or any combination of these if there is common ownership.

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

Mr. Hardmeyer presented a report on fourth quarter 2018 performance highlights. (A copy is available in Commission files.) The Commission congratulated the Bank on a good year.

Mr. Hardmeyer provided a legislative update. (A copy is available in Commission files.) 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.

Mr. Hardmeyer presented the Bank Advisory Board's non-confidential November 15, 2018 minutes.

Pursuant to N.D.C.C. 6-09-35, the Industrial Commission entered into executive session. Governor Burgum reminded the Commission members and those present in the executive session that the discussion during executive session must be limited to those items listed on the agenda which is anticipated to last between 15 and 30 minutes. It was noted that any formal action by the Commission would occur after it reconvened in open session. Commission members, their staff, and BND staff remained but the public was asked to leave the room. Governor Burgum closed the meeting at 4:58 p.m. pursuant to N.D.C.C. 6-09-35 to discuss the following items:

- Non-Accrual Loans Quarterly Recap/Detail
 - Problem Loans - Adversely Classified Quarterly Recap
 - Loan Charge-Offs and Recoveries for the year ending December 31, 2018 with 10-Year Summary
 - Determination of Uncollectable Loans
 - Presentation of Off-Balance Sheet Risk Quarterly Recap
 - Presentation of Confidential Bank Advisory Board November 15, 2018 meeting minutes
 - Other Bank of North Dakota confidential business (as defined under N.D.C.C. 6-09-35)
-

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
Jessie Pfaff Agriculture Department
Andrea Pfennig Industrial Commission Office
Karlene Fine Industrial Commission Office

The meeting reconvened in open session at 5:17 p.m. Governor Burgum invited the public to return to the meeting room. He noted that during its executive session, the Commission made the following motions:

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the Loan Charge-Offs totaling \$5,895,561 and Recoveries totaling \$1,931,167 for the period January 1, 2018 through December 31, 2018. (The \$5,895,561 includes the 2018 loan charge-offs that are deemed uncollectible.) On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission make the determination that the following loans charged off in the year 2018 totaling \$790,237.53 are determined uncollectible:

2018 Loans Charge-off Deemed Uncollectible*

| | |
|---------------------------------------|---------------------|
| Main Street Rental Properties, LLC | \$ 150,633.13 |
| Michael Baumgartner Construction Inc. | \$ 487,353.00 |
| Straus for Men, Inc. | \$ 18,382.23 |
| Lucky Ducks ND, LLC | \$ 116,772.84 |
| Wesley J. Sagvold | <u>\$ 17,096.33</u> |
| | \$ 790,237.53 |

Also determined as uncollectible in 2018 are \$177,760.90 of student and residential loans which are not reportable under GLB.

***Uncollectible amounts are net of any recoveries received.**

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

OUTDOOR HERITAGE FUND (OHF)

Ms. Andrea Pfennig, Industrial Commission Deputy Executive Director, provided a legislative update. (A copy of the report is available in the Commission files.) Currently, there are three bills that would impact the OHF. Ms. Pfennig requested guidance on HB 1202, SB 2054, and SB 2261. It was the consensus of the Commission that Industrial Commission staff be available to answer questions at hearings.

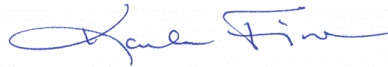
ADMINISTRATIVE BUSINESS

Ms. Fine presented the November 20 and December 7, 2018 non-confidential meeting minutes for consideration.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the November 20 and December 7, 2018 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 an update on legislation impacting the North Dakota Mill, research programs, Student Loan Trust and North Dakota Building Authority. (A copy of the report is available in the Commission files.)

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 5:29 p.m.



Karlene Fine, Executive Director and Secretary