

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on December 17, 2019 beginning at 12:30 p.m.  
Governor's Conference Room - State Capitol

Present: Governor Doug Burgum, Chairman  
Attorney General Wayne Stenehjem  
Agriculture Commissioner Doug Goehring (portions of the meeting)

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 (Commission) meeting to order at approximately 12:30 p.m. and the Commission took up Housing Finance Agency business.

### **HOUSING FINANCE AGENCY (HFA)**

Mr. Dave Flohr, Interim Executive Director, presented a recommendation for the appointment of a public hearing officer for the Tax Equity and Fiscal Responsibility Act (TEFRA) hearing scheduled for January 9, 2020 regarding the proposed issuance of Multi-family Revenue Bonds.

**It was moved by Attorney General Stenehjem and seconded by Governor Burgum that Dave Flohr, Interim Executive Director of the Housing Finance Agency, be named as the Industrial Commission's public hearing officer for the TEFRA hearing scheduled for January 9, 2020 for the issuance of Multi-family Revenue Bonds and approve the publication of the Notice of Public Hearing on December 30, 2019. On a roll call vote, Governor Burgum and Attorney General Stenehjem voted aye, with Commissioner Goehring absent and not voting. The motion carried.**

Mr. Flohr and Mr. Pat Nagel provided a report on the North Dakota Housing Finance Agency Housing Finance Program 2019 Series F \$80,000,000 bond sale (Non-AMT), indicating that this bond issuance and structure was similar to prior bond issues. The bond issue was oversubscribed by 3.5 times. The HFA staff had been preapproved to issue up to \$100 million in bonds and considered increasing the amount. However, it was determined that it was more beneficial to issue \$80 million in bonds at this time. Over 300 loans have already been approved to use the funds from the bond proceeds. Because of this, HFA staff anticipates being back before the Commission in March for consideration of another bond issue.

### **OIL & GAS RESEARCH PROGRAM (OGRP)**

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, provided the Oil and Gas Research Fund Financial Report. The current cash balance in the Fund is \$12.7 million. After consideration of the anticipated funding for the current biennium and the outstanding commitments, there is a balance of \$6.3 million that is available for funding awards.

The Program received applications for the current grant round totaling over \$10,251,200, which included funding that would not be expended until the 2021-2023 biennium. The Council's recommendations that will be discussed today reflects that a portion of the funding would come from the 2019-2021 biennium and 2021-2023 biennium. Specifically, the Council's recommendation is that \$5,269,200 come from the 2019-2021 biennium and \$4,982,000 come from the 21-23 biennium. This would leave \$1,403,415 available for the remainder of the current biennium.

Ms. Fine noted that this is not the first time that the Commission has committed dollars from future biennia. Because this program is well-established and respected by the Legislature, Ms. Fine does not anticipate a

reduction in the \$10,000,000 continuing appropriation the program receives as a minimum each biennium. However, in total the Commission, with what has previously been approved, would be utilizing approximately \$7 million of the next biennium's \$10 million continuing appropriation. It was clarified that when the contracts for these projects are written, it will be identified that funding will come from the next biennium. Additionally, the contracts will specifically state how much is available in the current biennium and that the second portion of the funding is contingent upon receiving funding in 2021-2023.

Mr. Brent Brannan, OGRP Director, presented the following Oil and Gas Research Council Grant Round 51 recommendations for consideration.

*G-051-07: "Bakken Production Optimization 3.0"; Energy & Environmental Research Center (EERC); Project Duration: 3 years; Total Project Costs: \$12,000,000; Request for: \$6,000,000 (Research Allocation)*

Funding the Bakken Production Optimization Program (BPOP) 3.0 offers an opportunity for North Dakota to continue its investment in the future of the state. The success of BPOP to date suggests a high likelihood of significant return on investment. Throughout the first six years of the program, the EERC has demonstrated that the strength of BPOP rests in its ability to rapidly address ever-changing technical priorities. It is envisioned that there will be an ongoing need to adapt and meet those challenges, both anticipated and unanticipated. Key questions that will be addressed during the next three years of BPOP include:

- How do we move Bakken enhanced oil recovery (EOR) from pilot to commercial scale?
- What is the best development strategy for Bakken and Three Forks resources over the next decade?
- How do we manage long-term, large-volume water and rich gas coproduction?
- How can recent technology advances (e.g., artificial intelligence, machine learning, big data analytics) be applied to oil and gas resource development in North Dakota?

It was clarified that \$3 million would come from this biennium and \$3 million would come from next biennium for a total award of \$6 million.

Mr. Brannan confirmed that the match is secured. Further, the match will be required in the contract.

In response to a question, Mr. Helms indicated that this project has yielded significant results in terms of hydraulic fracturing technology and good advice to the Commission in terms of setbacks, well density, Three Forks productivity, and prospects. The focus in the next round will be on enhanced oil recovery, water management, and produced gas management.

**It was moved by Attorney General Stenehjem and seconded by Governor Burgum that the Industrial Commission accepts the Oil and Gas Research Council's recommendation to fund the grant application "Bakken Production Optimization 3.0" and to authorize the Industrial Commission Executive Director and Secretary to execute a contract with the Energy and Environmental Research Center not to exceed \$6,000,000 in funding noting that \$3,000,000 of the funding would be allocated from the 2019-2021 biennium and \$3,000,000 would be allocated from the 2021-2021 biennium appropriations. On a roll call vote, Governor Burgum and Attorney General Stenehjem voted aye, with Commissioner Goehring absent and not voting. The motion carried.**

*G-051-05: "Expansion of the intelligent Pipeline Integrity Program (iPIPE)"; iPIPE Executive Committee; Project Duration: 42 months; Total Project Cost: \$6,437,297; Request for: \$1,000,000*

This project originally received \$1.6 million in 2018. The project is a successful partnership with industry to develop new tools that will assist industry's ongoing efforts to continuously improve pipeline integrity, thus reducing leaks and spills. In its first 17 months of effort, iPIPE has gained national attention for its unique and highly successful approach to developing new technology that enhances safe pipeline operations. The current request is for a five-year duration.

At program inception, the project participants were advised to return with requests for incremental funding as the consortium grew, thus ensuring the intention to support industry oil research rather than lead it. A variety of factors, including continued membership growth, growth in scope, notoriety earned for the state and its industry partners, and cash and in-kind cost share in excess of that promised by industry have led to an incremental funding request.

Mr. Jay Almlie, EERC, provided a brief overview of iPIPE to date noting that the mission is to foster development of emerging technologies to prevent pipeline releases by: funding development work, providing live, operating pipelines upon which technology is developed, and providing user feedback to hone products. He noted that the program has grown by the number of members, which is now at 11.

Mr. Almlie gave examples of successes, including a product that uses UAS technology to detect leaks and a golf ball sized pipeline sensor that detects leaks, locates deposits, identifies pipe wall flaws, and locates pipeline centerlines. Currently, two operators are utilizing the sensors commercially. The goal of iPIPE was to make technologies commercially available, and this has occurred.

In response to a question regarding the UAS technology, Mr. Almlie indicated that iPIPE provided funds to develop a produced water algorithm in addition to hydrocarbons. Hopefully, the next step will be to develop a methane algorithm.

Governor Burgum noted that there is a goal of zero spills and because of recent spills this is very timely.

**It was moved by Governor Burgum and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Oil and Gas Research Council's recommendation to fund the "Expansion of the intelligent Pipeline Integrity Program (iPIPE)" application and authorize the Industrial Commission Executive Director and Secretary to execute an amendment to contract G-046-088 with the Energy and Environmental Research Center, increasing the contract award amount by \$1,000,000, noting that \$500,000 of the funding would be allocated from the 2019-2021 biennium and \$500,000 would be allocated from the 2021-2023 biennium appropriation.**

Mr. Helms noted that it is hoped that these technologies can move beyond the pipe to detect leaks, giving an example of vegetative health.

In response to a question, Mr. Almlie noted that the sensor technology is currently commercially available and being utilized. The UAS technology is in the process of determining how to split costs fairly on a basin wide basis as well as how to work with the regulatory environment. It could be commercially utilized next year.

Mr. Almlie indicated that the goal is to double the number of partners in the next year. There are efforts underway with Texas, which is interested in joining. If that happens, several Texas operators will join. There is an annual membership fee of \$75,000. Some current members are not operating in North Dakota but see value in the project. North Dakota is leading the country in this effort.

**On a roll call vote, Governor Burgum and Attorney General Stenehjem voted aye, with Commissioner Goehring absent and not voting. The motion carried.**

*G-051-08: “Development of Operational Aerial Analytics for Remotely Measuring Reclamation Success in North Dakota” – SolSpec, Inc.; Project Duration: 16 months; Total Project Cost: \$330,800; Request for: \$163,200*

This project seeks to develop and validate a suite of automated analytics that bring remote reclamation assessment technology to operational capacity for industry, agencies, and the interested public of North Dakota. An examination of the cost effectiveness of aerial imaging and analysis methodologies for use in establishing an operational remote reclamation program will be part of the project.

**It was moved by Attorney General Stenehjem and seconded by Governor Burgum that the Industrial Commission accepts the Oil and Gas Research Council’s recommendation to fund the grant application “Development of Operational Aerial Analytics for Remotely Measuring Reclamation Success in North Dakota” and to authorize the Industrial Commission Executive Director and Secretary to execute a contract with SolSpec, Inc. not to exceed \$163,200 in funding.**

Governor Burgum noted that this seems to be an excellent synergy between strengths and needs that we have.

Mr. Helms noted that some of the challenges with having someone onsite for inspections, including physical accessibility, can be easily resolved by utilizing drones. DMR loses a great deal of time and uses a lot of manpower for inspections, and this could speed things up drastically.

**On a roll call vote, Governor Burgum and Attorney General Stenehjem voted aye, with Commissioner Goehring absent and not voting. The motion carried.**

*G-051-02: “NDIC Funding to Support Research of Petroleum Engineering Program at University of North Dakota (UND)” – UND Petroleum Engineering Program; Project Duration: 3 years; Total Project Cost: \$7,317,150; Request for: \$3,728,000 – OGRC recommendation is \$2,788,000*

This proposal includes a request for the installation of Full-Scale Reservoir Simulated Drilling and Completion Labs. These labs will offer drilling at 15,000 psi pressure suitable for geothermal simulations. It is a unique set up for educating and providing hands on and practical experience for students ready to go and work in the field upon completion of their B.S. degree. It also provides valuable resources for grad students to do research and great support for industry to do pilot projects and proof of concept before doing any field scale operations. Funding was also requested to support Ph.D. students and faculty. The Council’s recommendation is to support with contingencies.

Attorney General Stenehjem expressed concern about spending money into the next biennium. There is a track record of tremendous investments. New projects may come along in the next biennium and funds won’t be available. In response, Mr. Helms noted that in the last legislative session, specific requests totaling \$6.3 million was granted indicating that the legislature has an appetite to support the program to a greater extent. However, those discussions have not been held.

Mr. Helms stated that while it is not as easy to measure successes for this activity, these funds have revitalized the program. The approach has been to bring in Ph.D. students. The program is the first in the nation for Ph.D. students. Over 90 peer reviewed papers have been published across the nation, resulting in

a growing and well-known program. The core library is utilized as well. This will be the only program with full scale equipment. Part of the graduation requirements includes two sessions of laboratory research. This will offer students the opportunity to work on actual oil field scale equipment and none of the other schools have that capability.

Ms. Fine stated that she had prepared a revised motion that funded only the laboratory portion of the project. A couple of questions had come up in regards to the proposed student/faculty research and budget and she is requesting additional information from the applicant before the Commission acts on that portion of the application.

**It was moved by Attorney General Stenehjem and seconded by Governor Burgum that the Industrial Commission accepts the Oil and Gas Research Council's recommendation to fund the New Laboratories portion of the grant application "NDIC Funding to Support Research of Petroleum Engineering Program at University of North Dakota (UND)" and authorizes the Industrial Commission Executive Director and Secretary to execute a contract with the University of North Dakota not to exceed \$970,000 in funding noting that \$700,000 would come from the 2019-2021 biennium and \$270,000 from the 2021-2023 biennium appropriations and with the conditions that no OGRP funding will be used for the Lab Manager Salary including benefits and Lab Consulting Fees and the funding and progress shall be reviewed after year two.**

Mr. Helms stated that the vacant Minnkota building will be the site for the equipment. It was clarified that the motion ensures that research components will be funded, not items that should fall under the higher education budget.

**On a roll call vote, Governor Burgum and Attorney General Stenehjem voted aye, with Commissioner Goehring absent and not voting. The motion carried.**

Mr. Brannan presented the Oil and Gas Research Council recommendation regarding a proposal for a study on produced water. This study is a legislative directive that was included in Section 19 of House Bill 1014. It was noted that the first stage will be completed by October 1, 2020 in accordance with the legislation.

*"Produced Water Management Through Geologic Homogenization, Conditioning, and Reuse"; EERC; Principal Investigators: Project Duration: 2 years; Total Project Cost: \$1,299,993; Request for: \$300,000*

The objective of this project is to assess the techno-economic viability of using the Inyan Kara Formation as a geologic solution for produced water treatment and recycling, with the benefit of providing a potential solution to pressurization of the Inyan Kara due to saltwater disposal. The first phase of the project will be updating prior work done by the EERC and providing current information on the recycling of produced water. Building on this information the EERC will investigate the economic, regulatory, scientific, and technological considerations to assess the commercial viability of a concept referred to as geologic homogenization, conditioning and reuse (GHCR) for produced water management. It is anticipated that the field work will be done at the Johnsons Corner SWD site (Brine Extracted and Storage Test (BEST) site).

Pending a favorable techno-economic disposition, Stage 1 work will provide the requisite information and confidence for project partners to progress the GHCR concept to a Stage II pilot demonstration of beneficial end use of GHCR water.

**It was moved by Attorney General Stenehjem and seconded by Governor Burgum that the Industrial Commission accepts the Oil and Gas Research Council's recommendation to fund "Produced Water Management Through Geologic Homogenization, Conditioning, and Reuse" in response to a legislative directive and to authorize the Industrial Commission Executive Director and Secretary to execute a contract with Energy and Environmental Research Center in an amount not to exceed \$300,000. On a roll call vote, Governor Burgum and Attorney General Stenehjem voted aye, with Commissioner Goehring absent and not voting. The motion carried.**

#### **DEPARTMENT OF MINERAL RESOURCES (DMR)**

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

*Case 28132, Order 30584 – request for authority for an enhanced oil recovery pilot operation in Bear Creek-Bakken Pool*

This involves a request to implement a pilot to demonstrate the technical feasibility of increasing oil production through enhanced oil recovery from the Bakken pool utilizing produced gas. The project aims to optimize injection/soak/production strategies to improve the gas injection/production performance and maximize achievable EOR benefits. Produced hydrocarbon gas will be sourced from pads within the unit and operated pads nearby.

- Expected injection rate will be up to maximum 8 MMSCF/D
- Maximum allowable Surface (Wellhead) Injection Pressure 5000 psi under the constraint of not exceeding the formation fracture pressure gradients (~7500 psi)
- Proposed Injection Period approximately 2 years
- Proposed Injection Volume approximate volume of 5 BCF
- Daily monitoring and recording of oil, gas and water rates, GOR and Water cut trends
- Wellhead pressure data monitored for all wells. Some injection wells might be equipped with bottom-hole gauges to record pressure during injection/soak/production cycles
- Monitor and record operational and production data from the offset pads (all operated by XTO Energy)

The recommendation is to approve the project as proposed. The project location is very remote. What is different about this proposal is that there are nine injection wells. It is an expansion from other projects because of its vertical sweep and will have very robust monitoring. XTO operates all the wells around it. There are several wells, depth/thicknesses, access to the produced gas from the surrounding spacing unit as well as the spacing unit that contains the nine wells.

Mr. Helms stated that this project will test the feasibility of temporary gas storage, provide information on enhanced oil recovery, and reduce flaring.

Commissioner Goehring joined the meeting at this time.

**It was moved by Attorney General Stenehjem and seconded by Governor Burgum that Order 30584, issued in Case 28132 granting temporary authority to use wells located in a spacing unit comprised of Sections 27 and 34, T.148N., R.96W., Dunn County, ND, as injection wells for an enhanced oil recovery pilot operation in the Bear Creek-Bakken Pool, be approved this 17th day of December, 2019. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

*Case 28075, Order 30527 – consideration of natural gas capture strategies and regulatory clarity regarding gas gathering agreements*

Previously, the Commission called for DMR to hold a hearing to consider natural gas capture strategies and regulatory clarity regarding gas gathering agreements with the goal to achieve less service interruptions on gathering pipelines, thereby encouraging quicker and larger infrastructure expansion resulting in less service interruptions and less flaring.

Accordingly, a hearing was held. Many companies testified in support of firm capacity contracts and clarifying NDCC 38-08-06.2. Some individuals submitted comments opposing firm capacity if it will increase post production royalty deductions.

DMR staff is concerned that firm capacity contracts could crowd out small producers, result in new capacity being built to no more than firm capacity contract volumes, and create inequities with current contracts. To address this, the recommendation is to limit firm capacity to 90 percent of system capacity and at least 10 percent of system capacity be reserved for interruptible service and limit the application of new definitions to prospective contracts.

In the past, the Federal Energy Regulatory Commission (FERC) approved requests to offer priority service at a premium rate to shippers that entered into long-term volume commitments in support of a pipeline expansion while preserving access to uncommitted shippers. This FERC precedent supports the reservation of 90 percent of capacity for committed shippers while ensuring that uncommitted shippers have access to at least 10 percent of capacity.

Mr. Helms clarified that this order would make the determination that firm capacity arrangements are not discrimination. Gas production is not expected to stabilize for the next 20 years. Approximately \$18 billion of investment is required from 2021 on to capture projected gas production. There are several possibilities, such as petrochemical processing, pipeline expansion, electrical generation, and enhanced oil recovery. However, all those options will require large amounts of investment. It was noted that there is fierce competition for the investment. As a result, it is vital to remove as many barriers as possible and put incentives in place to encourage investment in North Dakota.

This is a way to add a tool to the toolbox by de-risking infrastructure investment for a processor to build infrastructure. Not everyone will use it, but this will open the door. This not only opens the door to firm capacity, it also defines the parameters of discrimination that will be considered.

In response to a question, Mr. Helms stated that the PSC did not provide any comments during the hearing process. He indicated that there were a small number of royalty owners that were concerned that it might result in larger post deductions from royalty checks. This may be true, but a smaller payment is better than no royalty payment, which would occur if gas is flared.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 30527, issued in Case 28075 be approved this 17<sup>th</sup> day of December, 2019, with the provisions clarifying that firm service in gathering, processing and purchasing arrangements for gas, natural gas liquids, and related products is not discriminatory under 38-08-06.2 of the North Dakota Century Code or other applicable laws and regulations as long as the producers are not similarly situated and no more than ninety percent of system capacity is reserved for firm service, and noting that:**

- **in assessing whether producers are similarly situated for purposes of determining whether any discrimination has occurred or whether good cause exists for any discrimination, the**

**Commission will consider similarly-situated producers to mean producers that receive gathering, processing and purchasing services under the same or substantially the same conditions of service as any other producer of a gathering, processing or purchasing service provider, and**

- **the factors the Commission may consider in deciding whether producers are similarly situated include location of facilities, receipt and delivery points, length of haul, quantity, volume commitments, acreage dedications, financial commitments, creditworthiness, duration of service, start and end dates of gathering, processing, and purchasing agreements, gas quality, pressure, connection requirements, and any other conditions and circumstances existing at the time of agreement or negotiation; and**
- **the new definitions are limited to prospective contracts.**

In response to a question, Mr. Helms stated that he believes this will result in larger plants being built at the outset. Processors have been looking at flared volumes and considering it as next year's availability. This will prevent that because the gas will be guaranteed. Additionally, compressors will not be delayed since it can take 40 weeks for delivery. This has the potential to accelerate investments between 1-2 years.

Some operators are vertically integrated. Questions were raised regarding whether this would apply to them and if they also would need to have 10% for other parties. Mr. Helms affirmed that this would apply to those operators as well. The hope is that this would incentivize them to construct bigger plants because they are basically doing a firm commitment with themselves.

Mr. Helms clarified that this is optional.

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

*Case 28123, Order 30575 – request for a location exception and revision of inter-well distance in the Northwest McGregor-Bakken Pool, Williams County*

Liberty Resources petitioned for a revision of the approved inter-well distance, indicating that an inter-well distance of 842 feet is ideal to maximize oil and gas recovery. However, the ideal location for the subject well is 36 feet further from the section line than the 250-foot corridor in the current spacing order. This distance is less than the error distance Liberty typically uses to avoid violating spacing unit set back rules. The proposed well is one of three to be drilled in a 1,970-foot corridor. Drilling this well 214 feet from the section line will change the inter-well distance from 842 feet to 880 feet (4.5%) resulting in no measurable oil and gas recovery difference.

The recommendation is to deny the petition. The 500-foot corridors for section line wells was arrived at as the most protective of correlative rights while maximizing recovery. The Liberty proposal could marginally increase recovery but would have a more significant impact on correlative rights. It was clarified that the company already has approval to drill the wells, but the wells will just need to be spaced out more.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 30575, issued in Case 28123 denying Liberty Resources Management Co., LLC petition for an order modifying Order No. 28103 and field rules for the Northwest McGregor-Bakken Pool, Williams County, ND, be approved this 17th day of December 2019. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**



Commissioner Goehring left the meeting at this time.

Mr. Bruce Hicks, Oil and Gas Division Assistant Director, provided a quarterly report. (A copy of the quarterly report is available in the Commission files.) Of note, the number of permits requested for designated areas of interest has increased significantly. These requests are mostly for permits near the river.

The rig count has dropped. This will be monitored, but it is believed that the reduction is largely due to efficiencies in technology.

The number of producing wells and the number of barrels per day are both record high numbers but the number of wells waiting on completion has decreased from last quarter.

In response to a question, Mr. Helms stated that he believes the number of wells waiting on completion can be attributed largely due to lack of gas processing. This should start to resolve itself in the next quarter as plants come online. Even though the rig count is down, we can continue to see production increase due to the wells waiting on completion. The State revenue forecast is based on 90 wells. The 921 wells waiting on completion could be viewed as a 10-month inventory.

It was noted that while the rig count has decreased, the wells located within MHA lands has increased by 4 wells (16 total.) The Tax Agreement signed earlier in the year is helpful.

The gas-oil ratio appears to be stabilizing. The amounts of gas produced and sold are at record highs while the amount flared has decreased.

Many plants are expanding their capacity. The expansions would bring the total plant capacity to nearly 4 billion cubic feet of gas. Many plants are waiting for additional pipeline capacity to come online.

We are moving closer to achieving the 88% capture rate. The capture goal increases to 91% on November 1, 2020. It was noted that gas prices continue to decrease so the increases in gas capture are due to the gas capture policies established by the Commission.

Regarding complaints, Mr. Hicks reported that Case 25928 with Azar is close to being resolved. A consent agreement has been signed resulting in approximately \$140,000 of garnished funds being put towards the fines. Azar has agreed to the garnishment of income from three wells they have a working interest in. The hope is to collect \$250,000 from those wells.

There were two new complaints. Work on consent agreements will continue.

#### **OUTDOOR HERITAGE FUND (OHF)**

Ms. Fine provided the Outdoor Heritage Fund Financial Report, indicating that the current cash on hand available is \$8,335,225.47. It is anticipated by the revenue forecast that there will be \$19,093,268.41 available for the biennium.

Mr. Bob Kuylen, OHF Advisory Board Chair, provided the Commission with a list of the 13 applications that had been received for Grant Round 15 totaling \$4,178,082. He indicated that the OHF Advisory Board, after reviewing the applications and hearing the presentations from the applicants, recommended the following 7 applications totaling \$921,478 for the Commission's consideration:

1. 15-5: “Cannonball River Fish Passage at Karey Dam” - Hettinger County Water Resource District; Total Project Cost: \$1,295,100; Request for: \$253,770
2. 15-6: “Sheyenne River Fish Passage at Bouret Dam” – Benson County Water Resource Board; Total Project Cost: \$789,000; Request for: \$115,750
3. 15-7: “McKenzie Bay Recreation Area Improvements” – Watford City Park District; Total Project Cost: \$19,127; Request for: \$14,345
4. 15-8: “North Dakota Grassland Restoration Project 2” – North Dakota Natural Resources Trust; Total Project Cost: \$255,000; Request for: \$100,000
5. 15-10: “Cavlandic Trail Redevelopment” – City of Cavalier; Total Project Cost: \$868,031; Request for: \$310,316
6. 15-11: “Grand Forks Area Prairie Management Toolbox Phase II” – Audubon Dakota; Total Project Cost: \$1,924,821; Request for: \$1,268,170 – OHF Advisory Board recommendation is for \$78,730 with the condition that only the grazing infrastructure portion of the application is included in the scope of work of the project.
7. 15-13: “Belcourt Lake Park Rejuvenation Project” – Turtle Mountain Band of Chippewa; Total Project Cost: \$68,567; Request for: \$48,567

There was discussion about low head dams across North Dakota. Mr. Kuylen asked the Commission for guidance as it is anticipated that the OHF will receive additional applications regarding low head dams in the future. It was noted that the Water Commission has been studying the issue to determine the number of low head dams and to establish a removal/replacement priority list. The consensus of the Commission was that the priority list completed by the Water Commission should be provided to the OHF Advisory Board. Applications falling lower on the priority list could receive a lower amount. Other factors that should be considered included access in relationship to population and environmental concerns such as river connectivity.

**It was moved by Governor Burgum and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendations of the Outdoor Heritage Fund Advisory Board and approves funding of the following seven projects in the total amount of \$921,478 and authorizes the Industrial Commission Executive Director and Secretary to enter into contracts with the applicants as noted below:**

1. **Hettinger County Water Resource District: Cannonball River Fish Passage at Karey Dam, \$253,770**
2. **Benson County Water Resource Board: Sheyenne River Fish Passage at Bouret Dam, \$115,750**
3. **Watford City Park District: McKenzie Bay Recreation Area Improvements, \$14,345**
4. **North Dakota Natural Resources Trust: North Dakota Grassland Restoration Project 2, \$100,000**
5. **City of Cavalier: Cavlandic Trail Redevelopment, \$310,316**
6. **Audubon Dakota: Grand Forks Area Prairie Management Toolbox Phase II, \$78,730 with the condition that only the grazing infrastructure portion of the application is included in the scope of work of the project.**
7. **Turtle Mountain Band of Chippewa: Belcourt Lake Park Rejuvenation Project, \$48,567**

**On a roll call vote, Governor Burgum and Attorney General Stenehjem voted aye, with Commissioner Goehring absent and not voting. The motion carried.**

In response to a question, Ms. Pfennig stated that a density map is available online that shows the amount of project specific funds awarded to each county. This information was provided to the legislature during the last session. Additionally, all progress reports are posted online.

Governor Burgum suggested that applicants be required to include pictures with their applications.

Mr. Kuylen noted that a project that would have improved school trust lands was not recommended by the Board because there was concern about ownership once the lease was terminated. Attorney General Stenehjem indicated that a stipulation can be included in the contract requiring the lessee to abandon the fence in the case that the lease is terminated. The Land Board should be consulted. It was determined that Ms. Pfennig will follow up on this issue.

Ms. Andrea Pfennig, Industrial Commission Deputy Executive Director, reported that the Sheyenne River Water Trail Development project is complete and has been recognized by the U.S. Forest Service – Northern Region. The project received the 2019 Regional Forester Honor Award for providing outstanding benefits to the public.

Ms. Pfennig reported on discussion the Board had regarding phased project funding. The consensus of the Board was while open to phased projects, it would be helpful to know in advance if a project will be phased. The Board also noted that the law allows for extenuating circumstances.

Mr. Kuylen noted that he would like to see more smaller projects with community buy in. Governor Burgum requested some analysis of large-scale projects compared to smaller projects.

#### **BANK OF NORTH DAKOTA (BND)**

Mr. Eric Hardmeyer, BND President, presented a revised Bank of North Dakota Bonus Policy for consideration which would bring the policy in compliance with OMB's policies.

Commissioner Goehring joined the meeting.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approve the amendments to the Bank of North Dakota Bonus Policy as follows:**

- 1. Recruitment and Retention Bonuses - Recruitment and retention bonuses are available if an employee occupies a position identified as a hard-to-fill occupation. A hard-to-fill occupation includes an occupation or position in which demand exceeds supply, special qualifications are required, competition with other employers is the strongest, there is a risk of losing an incumbent with rare skills, the position is filled by a highly skilled employee who is in high demand in the marketplace, loss of the employee would result in significant replacement cost, the position is filled by key personnel, or the position has other unique recruitment or retention issues identified and documented by the appointing authority. Bonuses paid under this program are approved by the Bank President and the Human Resource Manager and are reported to ND Human Resource Management Services. Eligibility criteria may include recruitment efforts, turnover statistics, labor market factors, special qualifications, and budget availability. Individuals receiving retention bonuses will be required to sign a bonus agreement and will be expected to repay the bonus if they do not fulfill the terms of the agreement.**

**Recruitment Bonus - A lump-sum payment which is not part of an employee's base salary, paid to recruit a new employee into a Bank position. A recruitment bonus is used in extraordinary circumstances where there is a demonstrated need to fill a position and normal methods of filling the position are not satisfactory. The recruitment bonus normally will not exceed one month's salary.**

**Retention Bonus - A lump-sum payment which is not part of an employee's base salary and is paid to retain a Bank employee where there is critical need, recruitment has been difficult, or the risk of losing an employee is high. The retention bonus normally will not exceed one month's salary.**

- 2. Performance Bonus - May be provided to Bank employees if the employee has at least one year of service and if the employee's overall performance meets or exceeds standards. Employees eligible for a performance bonus must be a regular full-time or part-time employee holding a regularly funded non-temporary position. An employee may not receive more than one performance bonus per fiscal year and may not receive more than one thousand five hundred dollars in bonuses per fiscal year. The Bank must fund the performance bonus program from within its agency budget for salaries and wages.**

In response to a question, Mr. Hardmeyer indicated that the 25% allowance had been maxed out every year. Now that the requirement has been lifted, the approach will be modified and individuals that have exceeded expectations will be considered.

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

Mr. Hardmeyer provided an update on the agriculture assistance meeting that was held on December 5<sup>th</sup> with individuals that represent various segments of the ag industry, including: Livestock Association, USDA Farm Service Agency (FSA), crop insurance experts, NDSU ag specialists, and bankers from throughout the state. Commissioner Goehring and his staff members were also present. The purpose was to gather information in order to more fully understand the current situation with respect to both the livestock and crop industries and the assistance that is already in place.

Based on the input from the meeting and follow up information, BND believes that a loan program to assist crop producers is necessary. However, the data/information received is still being analyzed. A small task force is needed to further define the parameters and scope of the assistance. The Bank plans to bring a recommendation to the Commission in January.

BND feels that it should work immediately to provide a loan program to assist with sourcing and procuring feed for the livestock producers. A draft of the loan program was presented. It was noted that the Agriculture Department has received approval from the Emergency Commission to aid with feed transportation costs to livestock producers. The two programs will complement each other.

In response to a question, Mr. Hardmeyer clarified that there is a limit of \$250,000 per borrower. The Bank plans to ask the local lenders to provide assurance of operating loans next year.

Mr. Steinwand noted that the Bank did not want to duplicate efforts of FSA. It is their belief that this program will supplement other efforts. This was run by the Credit Review Board and they had very positive comments.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission authorize the Bank of North Dakota to offer the following Livestock Feed Loan Program effective immediately:**

### **Livestock Feed Loan Program**

#### **Purpose**

**This program is designed to assist with feed costs for livestock producers who can establish an expected shortfall in the amount of feed needed to sustain existing breeding livestock and backgrounding livestock operation levels for those impacted by the 2019 extreme weather conditions. Applications will be accepted until June 30, 2020 at 5:00 p.m. CT.**

#### **Eligibility**

**The borrower must be a North Dakota resident who is an active livestock producer. Borrower must show the ability to repay and have an operating plan in place for 2020.**

### Use of Proceeds

**This program will provide borrowers with financing for the additional costs associated with feeding livestock because of the extreme weather conditions including but not limited to:**

- **Purchasing feed**
- **Remote haying**
- **Hauling hay**
- **Hauling livestock to feedlot**
- **Feedlot fees**
- **Harvest of cash crops for feed**

### Loan Amount/limit

**BND will participate up to a maximum of 90 percent of the total loan amount. BND's maximum participation amount is \$250,000.**

### Interest Rate and Fees

- **Fixed rate: BND to net 3.50%. The lead lender may charge up to a 0.25% service fee.**
- **Fees: BND receives a \$100 origination fee**

### Lending Criteria

**BND uses its normal credit standards in reviewing the loan.**

### Collateral

**Adequate collateral coverage will be required. BND and lead bank will share the collateral pro rata. Any FSA loans secured by the chattel will require FSA subordination.**

### Participation Requirement

**Any financial institution in North Dakota can be the lead lender. BND will participate up to a maximum of 90 percent of the total loan amount. Lead lender is responsible for servicing the loan.**

### Loan Terms

**Fully amortizing term loan. Up to a 5-year amortization depending on lead bank discretion. Interest only for the first year and principal and interest payments the remaining term.**

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

Commissioner Goehring left the meeting at this time.

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 20 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 3:03 p.m. to discuss the following items:

- **Consideration of loan application**
  - **Problem Loans**
  - **Presentation of Bank of North Dakota Advisory Board October 24, 2019 confidential meeting minutes**
  - **Other Bank of North Dakota confidential (as defined under N.D.C.C. 6-09-35) business**
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BND EXECUTIVE SESSION

**Members Present:**

Governor Doug Burgum

Attorney General Wayne Stenehjem

**Bank of North Dakota Personnel Present:**

Eric Hardmeyer Bank of North Dakota

Todd Steinwand Bank of North Dakota

Craig Hanson Bank of North Dakota

**Others in Attendance:**

Reice Haase Governor's Office

Jessie Pfaff Department of Agriculture

Karlene Fine Industrial Commission Office

Andrea Pfennig Industrial Commission Office

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The meeting reconvened in open session at 3:25 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 vote, Governor Burgum and Attorney General Stenehjem voted aye, with Commissioner Goehring absent and not voting. The motion carried.**

**NORTH DAKOTA BUILDING AUTHORITY**

Ms. Fine presented the North Dakota Building Authority Facilities Improvement Revenue Bonds 2020 Series A Resolution Relating to the Issuance of Bonds and The Reimbursement of Certain Expenditures for consideration. She stated that with the adoption of this resolution the agencies can be reimbursed for costs the agencies incurred on their projects prior to the bonds being issued.

**It was moved by Attorney General Stenehjem and seconded by Governor Burgum that the Industrial Commission accept the recommendation of the Executive Director and adopt the following resolution:**

**NORTH DAKOTA BUILDING AUTHORITY  
FACILITIES IMPROVEMENT REVENUE BONDS  
2020 SERIES A**

**RESOLUTION RELATING TO THE ISSUANCE OF BONDS AND  
THE REIMBURSEMENT OF CERTAIN EXPENDITURES**

**BE IT RESOLVED** by the Industrial Commission of North Dakota (the "Commission"), acting as the North Dakota Building Authority, as follows:

**Section 1. RECITALS.**

(a) Treasury Regulation Section 1.150-2 (the "Regulations") restricts the use of tax-exempt bond proceeds to reimburse the issuer or borrower for project expenditures made by the issuer or borrower prior to the date of issuance of such bonds.

(b) The Regulations generally require that (i) the issuer or borrower declare its official intent to reimburse itself for prior expenditures from the proceeds of a subsequent issue of tax-exempt bonds no later than 60 days after making such expenditures, (ii) the bonds be issued within 18 months after making an expenditure or

within 18 months after the project is placed in service, but in no event more than three years after the date the original expenditure was made, and (iii) the expenditure be either a capital expenditure or a cost of issuance of the bonds.

(c) Pursuant to and in accordance with N.D.C.C. Chapter 54-17.2, House Bill No. 1003 and Senate Bill No. 2297, as enacted by the Sixty-sixth Legislative Assembly, the Commission plans to issue and sell its evidences of indebtedness to make funds available for the cost of acquisition and construction by the respective Agency, Department or Institution (the "Borrowers") of the following described projects:

<u>Name of Agency, Department or Institution</u>	<u>Type of Facility</u>	<u>Construction/ Acquisition Funds</u>
North Dakota State University	Dunbar Hall	\$ 40,000,000
North Dakota State University	Agriculture Products Development Center	\$ 20,000,000
Valley City State University	Communications and Fine Arts Building	\$ 30,000,000
University of North Dakota	Gamble Hall Project	\$ 6,000,000
University of North Dakota	Deferred Maintenance & parking projects	\$ 30,000,000
Dickinson State University	Pulver Hall	<u>\$ 4,000,000</u>
		<b>\$130,000,000</b>

The Commission desires to comply with the Regulations in order to preserve the option of the Commission and the Borrowers to be reimbursed for certain expenditures from the proceeds of tax-exempt bonds. The total costs of the improvements to be paid by the Commission and the Borrowers are estimated to be approximately \$130,000,000. The Borrowers currently expect to pay a portion of the costs from funds on hand until such costs can be reimbursed for such expenditure from the proceeds of bonds.

Section 2. OFFICIAL INTENT DECLARATION. The Commission and the Borrowers reasonably expect to be reimbursed for all or part of the expenditures made for the construction of the projects from the proceeds of bonds to be issued by the Commission. The maximum principal amount of such bonds or other obligations which may be issued for such purposes is approximately \$130,000,000.

On a roll call vote, Governor Burgum and Attorney General Stenehjem voted aye, with Commissioner Goehring absent and not voting. The motion carried.

#### ADMINISTRATIVE BUSINESS

Ms. Fine presented the draft November 25, 2019 non-confidential meeting minutes for consideration.

It was moved by Attorney General Stenehjem and seconded by Governor Burgum that the November 25, 2019 non-confidential meeting minutes be approved. On a roll call vote, Governor Burgum and Attorney General Stenehjem voted aye, with Commissioner Goehring absent and not voting. The motion carried.

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 3:26 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary