

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on December 15, 2020 beginning at 1:00 p.m.
Ft. Union Room - State Capitol

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

Also Present: This meeting was open through Microsoft Teams so not all attendees are known
Members of the Press

Governor Burgum called the Industrial Commission meeting to order at approximately 1:00 p.m. and the Commission took up Student Loan Trust business.

STUDENT LOAN TRUST

Ms. Karlene Fine, Industrial Commission Executive Director/Secretary and Student Loan Trust Authorized Officer, introduced Mr. Jared Mack, Eide Bailly. Mr. Mack reported on the Independent Audit of the Student Loan Trust as of June 30, 2020. (A copy of the audit is available in the Commission files.) It was a clean audit with an unmodified opinion. There were no findings or recommendations and no internal control deficiencies were identified.

Ms. Fine presented a Resolution to name an additional Authorized Officer for the Student Loan Trust. She recommended that DeAnn Ament, Public Finance Authority Executive Director, be named an Authorized Officer. Even though the Student Loan Trust is not currently issuing any bonds, Ms. Ament's expertise would be valuable if the Trust was asked to issue bonds in the future.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring to approve the following resolution.

**INDUSTRIAL COMMISSION OF NORTH DAKOTA
DESIGNATION OF AUTHORIZED OFFICERS**

WHEREAS, the Industrial Commission of North Dakota, acting as the North Dakota Student Loan Trust (the "Commission"), pursuant to and in accordance with N.D.C.C. § 54-17-24 and 54-1 7-25 has issued evidences of indebtedness, and WHEREAS, the Commission has previously named Karlene Fine, Industrial Commission Executive Director/Secretary as its Authorized Officer; and

WHEREAS, the Commission wishes to name an additional Authorized Officer;

THEREFORE, BE IT RESOLVED:

- 1. The Commission hereby reaffirms the appointment of Karlene Fine, the Executive Director and Secretary of the Commission, and appoints DeAnn Ament, Executive Director of the Public Finance Authority as its Authorized Officers jointly or severally to carry out and perform the obligations of the Commission as required under any outstanding Student Loan Trust documents.**

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

PUBLIC FINANCE AUTHORITY (PFA)

Ms. DeAnn Ament, PFA Executive Director, presented the following Drinking Water State Revolving Fund (DWSRF) loan applications for consideration.

City of Jamestown - \$1,344,000

This project will replace the low-pressure water line with a new PVC line from the existing water plant to the ND State Hospital. This will allow for the looping of the entire southeast portion of the City of Jamestown. The requested term for the loan is 20 years. The average annual payment on the net loan will be approximately \$56,488. The City will issue improvement bonds payable with special assessments. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City levy a general deficiency tax in the event that the revenues from the collection of special assessments are not sufficient to pay the debt service on the improvement bonds. The City has 4,832 residential and 319 commercial users which pay a monthly water base rate of \$27.20.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem to approve the following resolution.

**RESOLUTION APPROVING
LOAN FROM DRINKING WATER STATE REVOLVING FUND**

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Drinking Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4, 61-28.1, and 61-28.2; and

WHEREAS, the State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the "Indenture"), between the North Dakota Public Finance Authority (the "NDPFA") and the Bank of North Dakota (the "Trustee"); and

WHEREAS, the City of Jamestown (the "Political Subdivision") has requested a loan in the amount of \$1,344,000 from the Program to replace a low-pressure water line with a new PVC line from the water plant to the ND State Hospital; and

WHEREAS, NDPFA's Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

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

- 1. The Loan is hereby approved, as recommended by the Advisory Committee.**
- 2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.**
- 3. The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.**
- 4. The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.**

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

City of Mandan - \$7,255,000

This project will construct a new intake along a more stable segment of the Missouri River to provide a more reliable source of water and minimize the amount of sediment that must be removed during the treatment process. The total cost is \$36,587,000 with Marathon Oil providing \$7,255,000 and State Water Commission providing \$22,077,000. The project will serve 22,752 people plus the Missouri West Water System which serves 4,238 people. The requested term for the loan is 20 years and the average annual payment loan will be approximately \$425,319. The required debt service reserve is \$441,525 and the 120% net operating coverage requirement is \$510,383.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem to approve the following resolution.

**RESOLUTION APPROVING
LOAN FROM DRINKING WATER STATE REVOLVING FUND**

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Drinking Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4, 61-28.1, and 61-28.2; and

WHEREAS, the State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the "Indenture"), between the North Dakota Public Finance Authority (the "NDPFA") and the Bank of North Dakota (the "Trustee"); and

WHEREAS, the City of Mandan (the "Political Subdivision") has requested a loan in the amount of \$7,255,000 from the Program to construct a new intake along a more stable segment of the Missouri River; and

WHEREAS, NDPFA's Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

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

- 1. The Loan is hereby approved, as recommended by the Advisory Committee.**
- 2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.**
- 3. The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.**
- 4. The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.**

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

City of Cavalier - \$1,750,000 increase, total loan of \$4,845,000

This is an increase to the previously requested water tower loan of \$3,095,000. The additional funds will be used to replace the aging ground storage reservoir (GSR) and pump station within the footprint of the existing GSR including associated demolition of the existing reservoir, piping and pumps along with connecting to the existing water distribution system. The requested term for the DWSRF loan is 30 years. The City of Cavalier will issue revenue bonds payable with utility user fees. The average annual payment for the net revenue bonds will be \$145,213. The reserve requirement will be \$162,400 and the 120% coverage requirement will be \$174,256. The City has 668 residential water users that pay a monthly base rate of \$16.50 per user and 23 commercial water users that pay a monthly base rate of \$38 per user. An increase of \$3.78/1,000 gallons was implemented in 2020 and all users pay \$10.38/1,000 gallons. This is anticipated to generate \$106,000 annually. Operations and maintenance are anticipated to decrease \$10,000 annually.

It was moved by Attorney General Stenejem and seconded by Commissioner Goehring to approve the following resolution.

**RESOLUTION APPROVING
LOAN FROM DRINKING WATER STATE REVOLVING FUND**

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Drinking Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4, 61-28.1, and 61-28.2; and

WHEREAS, the State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the "Indenture"), between the North Dakota Public Finance Authority (the "NDPFA") and the Bank of North Dakota (the "Trustee"); and

WHEREAS, the City of Cavalier (the "Political Subdivision") has requested a \$1,750,000 increase to their previously approved \$3,095,000 loan (total \$4,845,000) from the Program to replace the ground storage reservoir and pump station, demolish the existing reservoir, piping, and pumps, and connect to the existing water distribution system; and

WHEREAS, NDPFA's Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

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

- 1. The Loan is hereby approved, as recommended by the Advisory Committee.**
- 2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.**
- 3. The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.**
- 4. The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.**

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

Ms. Ament reported on loans approved by the Public Finance Authority Advisory Committee to the following entities:

City of Walcott, Clean Water – increase of \$32,000, total loan \$459,000

The project will construct a new lift station to ensure all residents have access to adequate capacity and that the control panel is above grade for easy maintenance and access. The requested term is 30 years for the CWSRF loan. The City will issue revenue bonds payable with utility user fees.

City of Dickinson, Drinking Water - \$565,000

The project will install approximately 5,500 feet of 12” PVC water main along State Avenue South from 2nd Street SW to 8th Street SW. The project also includes boring under the Heart River for 1,800 feet. This project will add reliable redundancy to the southern part of the City. The requested loan term is 30 years. The City of Dickinson will issue revenue bonds payable with the 50% of the 1% city sales tax dedicated to infrastructure. Additionally, oil and gas gross production tax (GPT) will be a secondary source of security. The total project cost is \$1,603,000. The State Water Commission will provide an \$846,000 grant and the City will contribute \$192,000.

Ms. Ament and Mr. Kelvin Hullet, BND, provided an overview of the Governor’s proposed bonding bill which authorizes bonding up to \$1.25 billion with debt service repayment coming from Legacy Fund earnings over the life of the bonds.

PFA would issue bonds for \$1.25 billion, anticipated \$100,000,000 segments. The proceeds would go to agencies as follows: Higher Education - \$19 million, DOT - \$302.4 million, Parks and Recreation - \$30.5 million, BND - \$700 million for revolving funds, NDSU Agricultural Development Center - \$14 million, Career and Technical Education - \$45 million, OMB - \$137.1 million. Approximately \$550 million would be used as project and grant funding. The \$550,000,000 is further broken down as follows:

- Higher Ed - \$19 Million for Tier II & Tier III Infrastructure Improvements
- Parks & Recreation - \$20.6 million grants to park districts; \$9.9 million for State Park Infrastructure
- OMB - \$130.5 million for State Building Maintenance, \$5.5 Capitol Complex Space Utilization Improvements, \$600,000 Capitol Complex Accessibility improvements, \$500,000 to renovate Brynhild Haugland Room
- DOT - \$15 million for bridge improvements, \$237.4 million for DOT Infrastructure Improvement Plan, \$50 million for Highway 85 improvements
- Career Technical Education - \$45 million for career academy cost share projects
- Dakota College - \$2 million to renovate Old Main
- NDSU Agricultural Development Center - \$14 million

It was noted that the Legislature previously authorized bonding for the NDSU Agricultural Development Center. However, because they were unable to raise the required matching funds of \$20 million – they raised \$6 million—the project had not moved forward. This would close the funding gap, allowing construction to begin.

The remaining \$700 million would be used for permanent revolving loan funds (RLF), including Water RLF (\$450 million), County Bridge RLF (\$50 million), and Infrastructure RLF (\$200 million). PFA would issue bonds and BND would administer the loans. For developing policies and reviewing funding

applications, the State Water Commission would be responsible for the WATER RLF, the Department of Transportation for County Bridge RLF and BND for the Infrastructure RLF.

It was noted that PFA would utilize a BND line of credit to provide the initial funding until the PFA issued the bonds and bond proceeds would be used to pay the BND line of credit. Legacy Fund earnings would be used for bond payments.

Governor Burgum noted that both PFA and BND would play significant roles in providing this funding. Because of this, he wanted to ensure the other Industrial Commission members did not have any questions. Attorney General Stenehjem indicated that he would like the Commission to receive updates on this legislation as it progresses.

Discussion was held regarding the strategy of taking advantage of low interest rates. Ms. Ament indicated that the interest rate environment will depend on timing. It is important to use caution when comparing appropriation bonds to other bond issues. The term will be the key piece in determining interest rates, which may not be under 2%.

Ms. Ament noted that the Commission has approved \$1.6 billion in SRF loans since the program started in 1989. Of that amount, \$465 million was received in grants from the EPA. Those funds have been leveraged to obtain today's results.

HOUSING FINANCE AGENCY (HFA)

Mr. David Flohr, HFA Executive Director, introduced Ms. Jennifer Henderson, HFA, to provide a report on the Low-Income Housing Tax Credit (LIHTC) and National Housing Trust Fund (NHTF) awards and the applications received. A total of \$3,254,723 LIHTC tax credits were available and \$2.76 million of NHTF awards. This application round was competitive, and each program was oversubscribed. Applications were received for seven projects, of which five were funded along with a project that received a forward commitment of 2021 credits in the September 2019 application round. The projects receiving awards are as follows:

- Sierra Townhomes, West Fargo – conditional commitment of LIHTC- \$47,790.
- The Milton Earl, Fargo – conditional commitments of LIHTC- \$804,375 and NHTF- \$1,310,000.
- Jackson Flats Community, Grand Forks – conditional commitments of LIHTC- \$796,000 and NHTF- \$950,000.
- City Flats, Fargo – conditional commitments of LIHTC-\$804,375 and NHTF-\$500,000.
- MDI 117- Holiday Village, Devils Lake – conditional commitment of LIHTC- \$208,753.

Mr. Flohr provided a legislative update regarding the Housing Incentive Fund (HIF). He thanked the Governor for including \$8 million for HIF in the executive budget. HIF will be used in conjunction with the LIHTC and the NHTF Programs. HIF funds are used to fill a funding gap focused on projects needing supportive tenant services and existing properties being rehabilitated. In the current biennium, \$7.5 million was provided for HIF and was allocated to six projects with a total development cost of \$63,521,815.

Mr. Flohr stated that the HFA budget includes a request for four additional FTEs:

- Two FTE transfer from the Commerce Department due to HOME program transfer.
- Two FTE positions are requested for the mortgage loan servicing responsibilities being transferred from the Bank of North Dakota (BND).

It was noted that while mortgage loan servicing is transferring from BND to HFA, the employees are not being transferred. In order to maintain industry standards, HFA would like the flexibility to hire two employees as needed.

Mr. Eric Hardmeyer, Bank of North Dakota President and CEO, clarified that there is a proposed reduction in Bank staffing of 16 FTEs, which include all IT employees. A net reduction of 10 FTEs is requested, however. The six additional employees would address valuation services needs and the growth of the loan portfolio. The two mortgage loan servicing FTEs will be repurposed at BND into valuation services or other areas of the Bank experiencing growth. Some employees may leave due to attrition.

STATE ENERGY RESEARCH CENTER (SERC)

Mr. Tom Erickson, SERC, presented the Assessing North Dakota's Energy Future (Phase I) report. The project took a comprehensive approach incorporating all North Dakota energy resources. It was not an energy plan. Existing studies were combined and assimilated to look at different causes and effects to assess resiliency over the next 20 years and a model was developed. The project approach included:

- Mapped resiliency variables
- Initial focus areas
- Subject matter expert meetings to discuss challenges and opportunities
- Research data sets and studies
- Constructed system dynamic models
- Prioritized focus areas
- General validation of models
- Developed scenario outcomes.

Mr. Erickson gave a demonstration on how the model works.

Mr. Erickson noted the major sustainability opportunities/challenges identified through this effort:

- Coal CO₂ capture to be used for traditional and Bakken EOR will provide significant future opportunities such as: increased oil production; increased state revenues; increased jobs; increased electricity demand; protection against future carbon taxes and resulting energy reliability.
- Increased likelihood of future Rare Earth Elements mining.
- Investment in storage technologies is essential for the future growth of wind while maintaining energy reliability.

Mr. Erickson stated the conclusion of this Phase I work are:

- CO₂ Capture and Bakken EOR implementation, in the near-term, are critical to maintaining and significantly enhancing North Dakota's resiliency/sustainability in the future.
- With the continual growth of wind, electricity reliability will become a critical factor. Energy storage will improve electricity reliability, benefiting both coal and wind.
- The future of solar may create significant changes in the next 20 years.
- The model constructed is useful in understanding the future of energy in North Dakota, however, it has limitations, weaknesses and missing components.

A question was raised regarding how electron storage will help coal. Mr. Erickson indicated that, if attached to units that can generate on a regular basis, the coal plant can be run at a more level capacity. This would provide a consistent steady supply vs. a peaking plant.

Mr. Erickson indicated that there is \$125,000 - \$150,000 remaining of the funding that had been allocated for this project. He would like an extension in order to continue model development including changes and additions as requested by the Commission and provide support during the legislative session.

It was the consensus of the Commission that work should continue on the model which will be very helpful during the legislative session.

Mr. Erickson suggested future phases, if desired, that would include: Enhance the robustness of the model, Include additional model components, and Create a simplified user interface.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring to authorize the Industrial Commission Executive Director to execute an amendment extending the current contract through June 30, 2021. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

DEPARTMENT OF MINERAL RESOURCES (DMR)

Mr. Bruce Hicks, Oil & Gas Division Assistant Director, presented the Oil and Gas Division Quarterly Report.

- Permits are down 70% compared to the third quarter a year ago.
- DUC wells decreased by 93 over the last quarter.
- Barrels per day in both gas and oil are up over the second quarter, indicating a rebound.
- Inspections decreased from the second quarter. This is due to the higher demand in witnessing the plugging of abandoned wells.
- Bond funds doing well, partly due to the rule changes implemented on April 1st.
- The gas capture rate is at 93%. Flared volumes continue to decline.
- The Sanderson plant and Tioga plant are being constructed; however, the other planned plants are currently on hold until the economic situation improves.
- Ten permits have been received in an Area of Interest. It was noted that nine out of the ten permits are in an Area of Interest adjacent to Lake Sakakawea.

Mr. Hicks stated the following regarding complaint cases:

- Apollo Resources LLC case has been rescheduled to 2021.
- Blue Appaloosa, Inc. case has been heard and is waiting for the Administrative Law Judge determination.
- Samson Oil & Gas USA, Inc. signed a consent agreement to pay over \$800,000 in penalties, January – May 2021. Additionally, over \$1.25 million will be spent to get wells into compliance.
- Drawings, LLC complaint case, three wells have been confiscated and are currently being plugged.

Questions were raised regarding the plants with pending construction as to whether there is a trigger price to begin construction and whether the proposed plants are fully permitted and just waiting for economic conditions to improve. Mr. Helms indicated that he will ask those questions when the staff meets with the mid-stream operators in early 2021.

Mr. Lynn Helms, DMR Director, provided a report on the Bakken Restart Plugging, Reclamation, and DUC program indicating that while things are on track, activities have slowed due to weather. As of 12/15/2020 the total wells plugged were 234 with 57 reclaimed. There are 45 wells in the 2020 workplan to be plugged and 87 sites to reclaim. The 2021 workplan includes 96 wells to plug and 233 sites to reclaim. A bigger factor to the slowdown is that some extremely difficult wells have also been encountered ranging in costs

from \$250,000 - \$525,000. The current strategy is to plug wells and identify those wells that will be the most difficult. There are 21 rigs running today, half of which are on tough wells. The goal is to take care of the most difficult wells prior to December 30th. It is expected that another 45 wells will be taken care of this year, which will leave ~100 for next year when weather improves.

Reclamation is running according to plan, but a few expensive reclamations have been added. An example was provided of a \$1.2 million reclamation project that will remove a leaky fiberglass saltwater system located in the middle of USFS land in McKenzie County. In the process, an old fiberglass system from a different operator that is no longer around was found. This is also being addressed. Another example was given of a treating plant that will cost ~\$600,000. Addressing these projects decreases that pace but takes care of the most difficult cases. Mr. Helms stated that there is not any expected turn back. All funds are anticipated to be expended.

The DUC Well Completions program received 97 applications. Of those, 81 sundries have been approved to accommodate well pad packages. Only 80 of the 81 will be funded, so there will be a bit of a race. Invoices are starting to come in.

The water supply industry has seen an increase in sales. Four frack crews have been added and at least 800 people have been employed as a result of the program. The employment of workers was a primary goal of the program. Mr. Helms noted that an open records request was received that stated concerns about the eligibility for CARES Act funds to be used for this program. He stated that this issue was carefully vetted by OMB and the Emergency Commission. Mr. Helms will respond accordingly. In response to questions, Mr. Helms reviewed the items listed in the open records request and indicated DMR will respond to the open records request.

There was discussion as to whether the Commission would respond to the issues raised about the Commission's policy in approving this program. Since the letter had just been received the Attorney General indicated he would have his staff review the letter.

Mr. Helms responded to the Commission's previous request for information on the costs of oil conditioning. Mr. Helms provided a follow up report indicating that there has not been any negative feedback received from operators on the policy that the Commission adopted earlier this year. It was determined that the average cost is \$0.028/barrel for a total annual cost of \$7,156,297 on approximately 259,000,000 barrels of oil for the months of October – March Bakken oil production. There is no measurable difference between 13.7 and 14.7 psi. Operators said the expenditure for the test was worth it. Marketers and refiners like to know they are getting a stable consistent supply from the Bakken. The recommendation is to leave the policy in place and make no changes at this time.

Mr. Helms provided an update on legislation. 38-08-02 – the responsible corporate officer amendment -- is anticipated to get significant pushback. Mr. Helms proposed an amendment to define when this would be utilized. The consensus of the Commission was that Mr. Helms should propose an amendment defining the parameters when this definition of responsible corporate officer would be used.

38-08-04 (1) (b) (6) relates to underground storage. The underground salt cavern study has been completed by EERC and identifies several concerning issues. The pre-filed bill satisfies many concerns, including amalgamation of pore space and percentage of pore space. The study notes some tax issues but the Tax Commissioner is pre-filing legislation to deal with the tax implications of temporary gas storage. Royalties are not under the Commission's purview as to when and how the royalties get paid on produced gas. Minerals versus pore space, EERC is concerned that if they create salt caverns, they are extracting a mineral and then that extraction creates a pore space and so they are suggesting that the mineral owner should own

the storage rights for man made caverns but that would require the reversal of the law passed nearly 12 years ago which says the surface owner owns pore space. That is something that must be discussed and addressed. Some items in the study will be addressed in the permitting process. Some duties between Geologic Survey (regulates salt mining operations) and the Oil and Gas Division regulate utilization of the cavern left behind) would need to be sorted out, but both mining and storage would be regulated by the Industrial Commission. The pre-filed bill does not include natural gas liquids (NGLs) which should be amended in. Brine storage is a concern of the study, but that would be a regulatory issue, not statutory.

Mr. Helms provided a map presentation on the Ordinary High-Water Mark (OHWM) litigation cases. Northern filed a motion to dismiss Civil Case No. 31-2020-CV-00199, which leaves the remaining case, Civil Case No. 31-2020-CV-00198. This involves the north half of Section 27, T 153N, R 093W. The two different experts will explain their methodology and the Judge will make a determination.

At the request of the Commission, Mr. Helms provided a list of mineral claims filed by Mr. Sorum, Mr. Nelson, and Mr. Coachmen. This was filed under the Dormant Minerals Act. There is a question as to how they could make a claim that these minerals have been unused for 20 years; whether they provided the notice required under the Act; and whether they are a surface owner. Under the Act the individual making the claim must be a surface owner to claim the minerals under 38-18.1. Out of 92 tracts (approximately 120,000 acres), five tracts may have a conflict with the Wenck OHWM. He showed on the maps where the five tracts are located.

Questions were raised regarding what happens to existing mineral owners and whether they have to file civil suit. Mr. Helms stated that he believes they will have to do a quiet title and will likely need an attorney to clear the claim.

Ms. Katie Haarsager, DMR, provided an update on the knowledge retention program. The program captured the knowledge of employees with decades of experience to be used as a resource for newer field inspectors. The information is available in a digital format making it easily accessible and searchable. It has been well received by employees. The Commission commended the team at DMR for capturing institutional knowledge noting that this is critical for a regulatory agency.

Mr. Helms noted that the House Appropriations Committee has requested an Oil and Gas outlook to be presented on January 6th regarding the 2021-2023 timeframe.

ADMINISTRATION

Ms. Fine presented the November 23, 2020 Industrial Commission non-confidential minutes for consideration.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the November 23, 2020 Industrial Commission non-confidential minutes be approved. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

BANK OF NORTH DAKOTA (BND)

Mr. Eric Hardmeyer, BND President and CEO, presented Resolutions designating a depository of the Bank of North Dakota for the following entities: (Copies of the Resolutions are available in the Commission files.)

- Federal Home Loan Bank
- JP Morgan Chase
- US Bank
- First Horizon National
- Wells Fargo
- Federal Reserve Bank (Open Accounts)
- Federal Reserve Bank (Advances)

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the Resolution designating the Federal Home Loan Bank of Des Moines as a depository for the Bank of North Dakota as presented and available in the Commission files. 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 approve the Resolution designating JPMorgan Chase as a depository for the Bank of North Dakota as presented and available in the Commission files. 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 approve the Master Services Agreement with US Bank and authorize the Industrial Commission Executive Director and Secretary to execute the Master Services Agreement on behalf of the Industrial Commission and the Bank of North Dakota as presented and available in the Commission files. 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 approve the Resolution designating First Horizon Bank as a depository for the Bank of North Dakota and authorize the Industrial Commission Executive Director and Secretary to certify the adoption of the Resolution as presented and available in the Commission files. 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 approve the Resolution for Depository Accounts and Treasury Management Services with Wells Fargo and authorize the Industrial Commission Executive Director and Secretary to execute the Authorization Certificate on behalf of the Industrial Commission and the Bank of North Dakota as presented and available in the Commission files. 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 approve the Resolutions authorizing the Bank of North Dakota to Open and Maintain Accounts and Use Services of the Federal Reserve Bank and authorize the Industrial Commission Executive Director and Secretary to certify the adoption of the Resolutions on behalf of the Industrial Commission and the Bank of North Dakota as presented and available in the Commission files. 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 approve the Resolutions authorizing the Bank of North Dakota to request Advances(s) and be a Borrower of the Federal Reserve Bank and authorize the Industrial Commission Executive Director and Secretary to certify the adoption of the Resolutions on behalf of the Industrial Commission and the Bank of North Dakota as presented and available in the Commission files. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Hardmeyer presented a recommendation to rescind the BND Americans with Disabilities Act Policy for consideration. BND would like to instead adopt the North Dakota HRMS Americans with Disabilities Act Policy. It was clarified that there will be a policy in place.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem to rescind the Bank of North Dakota Americans with Disabilities Act Policy and replace it with the North Dakota HRMS Americans with Disabilities Act Policy. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Hardmeyer and Mr. Jeff Weiler, Bank of North Dakota Chief Innovation Officer, presented amendments to the BND Technology Steering Committee Policy for consideration noting that BND is working with ITD to ensure there is a consistent approach in place. (A red-lined version of the policy is available in the Commission files.)

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem to approve amendments to the Bank of North Dakota Technology Steering Committee Policy and restate the Policy as follows:

PURPOSE

This policy establishes and outlines the duties of the Innovation Steering Committee (ISC). The purpose of the ISC is the following:

- 1) Identify and prioritize all innovation efforts for BND.
- 2) Make decisions around innovative efforts ensuring alignment with the Bank's strategic plan, IT strategic plan and within budget.
- 3) Act as governance to oversee accountability around Bank's innovation strategies.

ELEMENTS

I. Membership

- A. The Chief Innovation Officer (CIO) or designee (appointed by the CIO), shall serve as Chairman.
- B. All members shall be appointed by the CIO, including NDIT representatives.
- C. Alternate members may be designated by either a member or presiding officer.
- D. The Chairman shall appoint a recording secretary of the Committee.

II. Meetings

- A. Innovation Steering Committee meetings will be held the second Tuesday of each quarter unless otherwise noted by the Chairman.
- B. When necessary, the Chairman may call a special meeting at any time.
- C. One-half or more of Committee members shall constitute a quorum.
- D. A majority of committee members present must vote favorably to carry a motion.
- E. Meeting minutes will be kept by the recording secretary and be designated non-confidential or confidential.

III. Duties

- A. Review and approve business innovation needs and priorities for BND.
- B. Review and approve the innovation/technology strategic plan prior to its consideration and approval by Executive Committee.
- C. Review innovation (technology and project management) priorities to assure achievement of the technology plan and alignment with the Bank's overall strategic plan.
- D. Serve as the specific business unit's change management leader and champion.
- E. Responsible to communicate to specific business unit meetings talking points.
- F. Recommend innovation/technology projects to Executive Committee for consideration in accordance with established procurement processes.
- G. Review training needs of staff related to evolving the Bank's culture around innovation and business process improvement.
- H. Review reports on innovation/technology projects and IT/IS/PMO activities.
- I. Make recommendations regarding expenditures for innovation purchases to the Bank's Executive Committee in accordance with established expenditure guidelines.
- J. The Chief Executive Officer, or CIO, may from time to time assign other duties to the Innovation Steering Committee for its consideration and action.

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

Mr. Hardmeyer presented the Bank of North Dakota Advisory Board October 22, 2020 nonconfidential meeting minutes.

Under other business, Mr. Hardmeyer noted that BND is requesting a net reduction of 10 positions in their appropriation—a reduction of 16 IT staff and an addition of 6 employees for the new valuation services being offered by the Bank. This would allow BND an FTE count of 171.5. Discussion was held, and it was noted that BND generates income. The new positions will be generating revenue for the Bank and will be providing a service that local banks need.

An update on COVID Programs was provided as the programs closed at the end of November. Activity included:

- SELF – 910 loans were issued, totaling \$30.8 million.
- CPR 1 – 277 loans were issued, totaling \$377 million. \$35 million of CARES Act funds will be used for buydown.
- CPR 2 – 810 grants were approved totaling \$35 million.

Between CPR 1 and CPR 2, the full \$70 million of CARES Act funding authorized was used. It was noted that the programs received a significant amount of positive feedback indicating that it was crucial to many businesses.

In response to a question, Mr. Steinwand noted that there are two CPR1 loans that are not moving forward. As a result, \$590,000 of buydown could be turned back.

Pursuant to N.D.C.C. 6-09-35 the Industrial Commission entered into executive session. Governor Burgum noted that any formal action by the Commission on the loan applications would occur after reconvening in open session. Only the Commission members, their staff, and BND staff were present in the executive session. Governor Burgum reminded the Commission members and those present in the executive session that the discussion must be limited to the announced purpose for entering into executive session which was anticipated to last between 15-20 minutes.

The BND executive session began at 3:33 p.m.

BND EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Bank of North Dakota Personnel Present (Remotely):

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

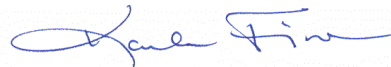
Others in Attendance:

Leslie Bakken Oliver	Governor's Office
John Schneider	Department of Agriculture
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

The BND executive session ended at 4:13 p.m. Governor Burgum noted that during Executive Session the Commission made a motion regarding two loan requests. **On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 4:15 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary