

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on June 19, 2020 beginning at 10:30 a.m.
Pioneer Room - State Capitol

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

Also Present: Some attendees are listed on the attendance sheet available in the Commission files
This meeting was open through a call-in number so not all attendees are known
Members of the Press

Governor Burgum called the Industrial Commission meeting to order at approximately 10:30 a.m. and the Commission took up Department of Mineral Resources Business.

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 28495 – Regarding Confiscation of Wells

Order 30977 3 TS SWD LLC
Order 30978 31 OPERATING, LLC
Order 30979 ABRAXAS PETROLEUM CORP.
Order 30980 ALEXANDER SWD, LLC
Order 30981 ALTURAS ENERGY, LLC
Order 30982 BALLANTYNE OIL, LLC
Order 30983 BERENERGY CORPORATION
Order 30984 BERG SPECIALTY FLUIDS-HOLDING, LLC
Order 30985 BPI-BOH, LLC
Order 30986 CHALLENGER POINT ENERGY, LLC
Order 30987 CITATION OIL & GAS CORP.
Order 30988 COBRA OIL & GAS CORPORATION
Order 30989 CORNERSTONE NATURAL RESOURCES LLC
Order 30990 CYPRESS ENERGY PARTNERS - BAKKEN, LLC
Order 30991* Davidson SWD LLC
Order 30992 DES, LLC
Order 30993 DRAWINGS, LLC
Order 30994 ENERGYQUEST II, LLC
Order 30995 FILCO INCORPORATED
Order 30996 FOUNDATION ENERGY MANAGEMENT, LLC
Order 30997 FOX OPERATING COMPANY
Order 30998 FRAM OPERATING LLC
Order 30999 GENESIS ST OPERATING LLC
Order 31000* GREAT AMERICAN ROYALTIES, INC.
Order 31001* HJG NORTH DAKOTA-WILLISTON, LLC
Order 31002 JORDAN EXPLORATION COMPANY, L.L.C.
Order 31003 LEGACY RESERVES OPERATING
Order 31004 LELAND OIL & GAS, LLC
Order 31005 LIBERTY RESOURCES MANAGEMENT COMPANY, LLC
Order 31006 MADISON DISPOSAL 2-1, L.L.C.

Order 31007	MBI OIL & GAS, LLC
Order 31008	MCRAE & HENRY, LTD.
Order 31009	MISSOURI BASIN WELL SERVICE, INC.
Order 31010	MUREX PETROLEUM CORPORATION
Order 31011	NEW HORIZON RESOURCES, LLC
Order 31012	NP RESOURCES, LLC
Order 31013	PAUL RANKIN INC.
Order 31014	PETRO HARVESTER OPERATING COMPANY, LLC
Order 31015	Phoenix Petroleum LLC
Order 31016	PPJV, LLC
Order 31017	PRAIRIE PRODUCTION, INC.
Order 31018	PRIDE ENERGY, AN OKLAHOMA GENERAL PARTNERSHIP
Order 31019*	RAMPART ENERGY COMPANY
Order 31020	RANCH OIL COMPANY
Order 31021	REMUDA ENERGY DEVELOPMENT LLC
Order 31022	RICK AALUND
Order 31023*	RIM OPERATING, INC.
Order 31024	RITTER, LABER & ASSOCIATES, INC.
Order 31025	SAMSON OIL AND GAS USA,
Order 31026	SCOUT ENERGY MANAGEMENT LLC
Order 31027*	SECURE ENERGY SERVICES USA, LL
Order 31028*	SLAWSON EXPLORATION COMPANY, INC.
Order 31029	SOLUTIONS ENERGY LLC
Order 31030	TITAN ENERGY, LLC
Order 31031	VAST OPERATIONS, LLC
Order 31032*	WHITE OWL ENERGY SERVICES (US) INC.
Order 31033	WHITE ROCK OIL & GAS, LLC
Order 31034	ZARGON OIL (ND) INC.

*(recommendation to dismiss)

Mr. Helms stated that the recommendations he is presenting today are very significant. He indicated that what is being proposed is in response to the unprecedented oil price collapse due to the COVID-19 pandemic. Currently, Job Service data reflects 9,500 unemployment claims from the oil and gas service sector. Those numbers are expected to increase as the federal PPP Program expires. In an effort to support and maintain jobs for workover and reclamation crews, the Budget Section approved \$33 million of CARES dollars for a plugging program for orphan wells. An additional \$33 million will be considered for a reclamation program. The first phase is anticipated to support 550 full time employees (FTE) for six months. The second phase for reclamation, if approved, will support approximately 600 FTEs.

Before the hearing, a list of abandoned wells was identified. Initially, 549 wells were identified and subsequently narrowed down to 368 that were considered orphan wells. The hearing, which was held on June 10th lasted for seven hours. There were many participants, including: 48 operators, 3 non-operators, 3 landowners, North Dakota Petroleum Council, Northwest Landowners Association (representing 400 surface owners in northwest North Dakota), and Salted Lands Council.

There are 58 orders presented for consideration today. The orders are organized by operator so that if an operator appeals an order it won't stop the whole process. The eight orders listed above that are marked with an asterisk (*) will be dismissed as the operators acted after the notice was published; 17 wells were put back on production and 19 wells were plugged. Those eight orders would be signed by Mr. Helms. Of the remaining 50 orders being considered today, 23 orders allow the operators to have until September 1,

2020 to get single well bonding or plug the wells themselves to avoid confiscation. Authority would be delegated to Mr. Helms to sign a Director's Order to confiscate the wells and sites after September 1st if the requirements are not met. The remaining orders will confiscate 239 wells and sites today. The Director's Orders with the September 1st deadline could result in the confiscation of another 93 wells if appropriate action isn't taken by the operators.

Mr. Helms stated that six operators came forward and asked for another 87 orphan wells to be confiscated and put into this program. Those wells and sites can only be confiscated and reclaimed under these programs after a public hearing, so they are being placed on the July docket. After the hearing, orders will be brought to the Commission for its consideration. Additionally, there are 53 sites not associated with a well that will be placed on the July docket. For example, pipeline risers abandoned before underground gathering rules were in place. There are 53 sites like the example above, and this is a good opportunity to remove those from the landscape.

Mr. Helms noted that every well that is being confiscated has been transferred at least once and 75% have been transferred between 3-4 times. Additionally, 70% are from 1985 and before. As of April 1, 2020, the new rules state that no abandoned well will be allowed to transfer without a full plugging and reclamation bond in place.

In response to a question, Mr. Helms provided four maps and stated that the locations of the wells are spread across 15 counties in northwestern North Dakota, largely focused on Burke, Renville, and Bottineau Counties. He indicated that McKenzie County—one of the largest and oldest producing counties—also has a significant number of wells/well sites. This is an opportunity to help return approximately 2,200 acres of farmland to productive agriculture. (Copies of the maps Mr. Helms provided that show the location of the wells being discussed are available in the Commission files. Map 1 – 368 wells; Map 2 – 239 wells to be confiscated today; Map 3 – 93 wells that have until September 1; Map 4 – 87 wells requested to be added.)

In response to a request, Mr. Helms commented on the number of abandoned wells in oil producing states across the country. North Dakota has 549 wells in abandoned status, of which 368 are being considered today. Texas has approximately 6,200 orphan wells, Kentucky has over 13,000, and Pennsylvania has 9,000 identified and estimates another 100,000 with the location unknown. North Dakota is being looked at as a model for the nation and Congress is looking at a bill modeled on North Dakota's program to make \$1.8 billion accessible to the other states through the Department of Energy and the Interstate Compact Commission. While North Dakota's numbers are small compared to other states, it is a huge problem for landowners.

Mr. Helms indicated that if the orders are approved by the Commission, DMR will publish a request for bids Monday, June 22nd with bids opened on July 10th. Work for plugging will start July 16th. The first group of wells should be ready for reclamation August 1st. A daily reporting form has been put together that will track which service companies were on site, how many people were there, what they did, how much was spent, and all that information will be recorded. The daily report forms will go in the well file and anyone will be able to access that information.

Mr. Helms indicated that he has been working with the consulting companies who will help oversee the work. Mr. Helms reviewed the number of steps that need to happen to get this work done, involvement of the Division field staff, use of North Dakota consulting firms to check if any soil contamination was identified, and making sure that any contaminated soil is removed before putting subsoil and top soil back down. The goal is to have topsoil in place and ready for crops in the spring or native grasses in the fall.

DMR is working with a North Dakota technology company to put the daily form into a smart phone app so that consultants overseeing the daily work can use their cameras to take pictures of invoices and avoid having to process paper copies of documentation.

In response to a question, Mr. Helms affirmed that he believes the work can be done within the year.

Mr. Helms noted that the equipment and salable oil will be confiscated. Royalty owners will be paid when salable oil is sold.

Commissioner Goehring stated that he appreciated the process that has been followed and his concerns have been addressed. This is a commonsense approach.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the following Orders regarding the confiscation, under NDCC §§38-08-04 and 38-08-04.9 of all production and/or injection related equipment and salable oil at certain abandoned wells, located in Billings, Bottineau, Bowman, Burke, Divide, Dunn, Golden Valley, McHenry, McKenzie, Mountrail, Renville, Slope, Stark, Ward and Williams Counties, be approved and effective this 19th day of June, 2020:

Case 28495, Orders 30977-30990

Case 28495, Orders 30992-30999

Case 28495, Orders 31002-31018

Case 28495, Orders 31020-31022

Case 28495, Orders 31024-31026

Case 28495, Orders 31029-31031

Case 28495, Orders 31033-31034

And further noting that the following Orders, which indicate that the wells in question are currently active and should be dismissed, will be signed by the Department of Mineral Resources Director/Oil and Gas Division Director:

Case 28495, Order 30991

Case 28495, Order 31000

Case 28495, Order 31001

Case 28495, Order 31019

Case 28495, Order 31023

Case 28495, Order 31027

Case 28495, Order 31028

Case 28495, Order 31032

Governor Burgum thanked Mr. Helms and his team for putting together this plan that meets all of the federal requirements for CARES funding.

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

Case 26715, Order 29540 – Dissolution of the Coyote Creek-Red River Unit, Bowman County

This involves a small 640-acre unit located four miles south of Rhame with traditional vertical wells that was developed in 1980s. The wells have all been plugged and reclamation has been done. The reclamation will be further examined prior to release of the bond. The operator wanted to go through a process of

getting a termination vote of all non-operating working interest owners and recording it at the Bowman County Courthouse. The unit termination from operator/nonoperators is now signed and recorded.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 29540 issued in Case 26715 dissolving the Coyote Creek-Red River Unit, Bowman County, effective November 6, 2018 be approved this 19th day of June, 2020. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Case 28425, Order 30884 – Correction

This involves the order establishing the Surgis-Spearfish Madison Unit. Legal counsel for the operator pointed out that one tract of land was inadvertently left out. The proposed corrected order includes the missing tract.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Corrected Order 30884 issued in Case 28425 be approved this 19th day of June 2020. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

LIGNITE RESEARCH, DEVELOPMENT, & MARKETING PROGRAM

Mr. Jason Bohrer, Lignite Research Council Chairman, noted that at the May 29, 2020 Commission meeting, a recommendation of the Lignite Research Council was presented to fund the grant application “Drill Stratigraphic Test Well & Determine Feasibility of Central ND Geology to Safely and Permanently Store Carbon Dioxide.” Their recommendation included a contingency that 100% of State funds would be repaid if the project is successfully/commercially operational or the project’s fuel source was switched away from North Dakota lignite within the next five years.

The following motion was made at the May 29, 2020 Commission meeting:

It was moved by Commissioner Goehring and seconded by Governor Burgum that the Industrial Commission accepts the recommendation of the Lignite Research Council to fund the grant application “Drill Stratigraphic Test Well & Determine Feasibility of Central ND Geology to Safely and Permanently Store Carbon Dioxide” and authorizes the Industrial Commission Executive Director/Secretary to execute an agreement with Midwest AgEnergy Group to provide a total of Industrial Commission Lignite Research Program funding (advanced technology) in an amount not to exceed \$3,388,000 with the following contingencies:

- *Technical Advisor participates in project reviews.*
- *Technical Advisor reviews the project management plan with the project team.*

It is noted that funding sources for the Lignite Research Fund and the Advanced Energy Technology projects come from sources other than lignite taxes such as oil and gas taxes.

This motion did not include the clawback contingency.

Prior to taking a vote on that motion, another motion was made to obtain additional information from Mr. Jason Bohrer, Lignite Research Council Chairman regarding:

- 1) Would the Lignite Research Council have supported funding for the project without the “clawback” contingency?

- 2) Would Midwest AgEnergy Group move forward with the project if the “clawback” contingency was approved by the Industrial Commission?

Mr. Bohrer reported that the Lignite Research Council (LRC) reconvened on June 8, 2020 in response to the request for clarification from the Commission. Additional information was provided to the LRC members including the background and scope of the Advanced Energy Technology program area and the sources of funding. Approximately \$1 out of every \$2 comes from oil and gas taxes.

Midwest AgEnergy Group (MAG) provided some additional information to LRC indicating that the project scope would provide additional geological data beyond the needs of MAG and would most likely reduce the scope of the project and not partner with the NDIC in the grant and subsequent sharing of data.

It was noted that this project has the potential to make Coal Creek a more attractive option to possible investors as it relates to CO₂ capture and storage. The LRC members then voted to indicate their level of support for the project without a clawback clause, and the results were as follows: Fund – 19; Do Not Fund – 1; Abstain – 1.

Governor Burgum brought the motion back on the floor.

It was moved by Commissioner Goehring and seconded by Governor Burgum that the Industrial Commission accepts the recommendation of the Lignite Research Council to fund the grant application “Drill Stratigraphic Test Well & Determine Feasibility of Central ND Geology to Safely and Permanently Store Carbon Dioxide” and authorizes the Industrial Commission Executive Director/Secretary to execute an agreement with Midwest AgEnergy Group to provide a total of Industrial Commission Lignite Research Program funding (advanced technology) in an amount not to exceed \$3,388,000 with the following contingencies:

- **Technical Advisor participates in project reviews.**
- **Technical Advisor reviews the project management plan with the project team.**

It is noted that funding sources for the Lignite Research Fund and the Advanced Energy Technology projects come from sources other than lignite taxes such as oil and gas taxes.

Attorney General Stenehjem thanked Mr. Bohrer for providing the answers to the questions asked and noted that this is a good project that could benefit many industries, including coal. He also thanked MAG for indicating interest in proceeding, but due to logical concerns would likely have scaled back the project. Commissioner Goehring expressed appreciation that LRC discussed the project further. This can help make Coal Creek viable. We are leading the nation in so many areas, including being the only state with Class VI injection capabilities. Governor Burgum noted that all sectors of energy will need to collaborate and find a viable solution for carbon.

Mr. Bohrer stated that everybody wanted to make this project work and all parties worked together to find a resolution.

The Commission asked that Mr. Bohrer extend the Commission’s thanks to the Lignite Research Council for coming back together to hear additional information about the funding and helping to move this project forward.

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

Ms. Fine presented a budget modification request for Contract FY20-XCI-223 – Annual Lignite Energy Council Education Program. Due to Covid-19 the annual Teachers Seminar has been cancelled. The direct costs related to the seminar total \$55,600. As a result, they are requesting that the funding for that event be reallocated to plan, create, design and develop an interactive learning management system for teachers and students. These courses will be primarily interactive which will attract and appeal to students and teachers. This reallocation will also allow for the creation of an online course for teachers that will supplement the Lignite Education Seminar. The Lignite Research Program’s commitment to this project is \$100,000. Approximately 48% (\$26,688) of the reallocation would come from the Lignite Research Program’s funding of the project. It was noted that having the capabilities for interactive learning may allow for more teachers to have access to the information.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that, in response to health guidelines issued because of COVID-19 resulting in the cancellation of the Teachers Seminar, the Industrial Commission accept the recommendation of the Industrial Commission Executive Director/Secretary and authorize the Executive Director to amend Contract LRP FY20-XCI-223 “Annual Lignite Energy Council Education Program” for a no cost budget modification to reallocate the teacher seminar costs of \$55,600 to allow for the planning, creating, designing, and development of an interactive learning management system for teachers and students. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Mike Holmes, Lignite Research Program, presented a recommendation regarding revisions to Contract FY20-XCI-224 – Preliminary Front End Engineering and Design (pre-FEED) Study for a Full-scale Carbon Dioxide Capture System at Coal Creek Station (CCS2). This project provides an initial investigation of the potential for CCUS at Coal Creek through a pre-FEED study and includes investigation of the storage geology.

Great River Energy (GRE) and the Energy & Environmental Research Center (EERC) will work together to transfer the project to the EERC. The full scope of work as originally proposed by GRE on September 30, 2019 will be completed with the EERC leading the effort and with support from the originally proposed project partners. The schedule and total project costs are not anticipated to change. The EERC anticipates utilizing US Department of Energy (DOE) funding to help fulfill cost share requirements. GRE will provide \$1,347,848, of which \$1.2 million is cash and the remainder would be in-kind by continuing to work with EERC to help reduce risks and uncertainties. The conservative rate of return is estimated at 22%, however it could go as high as 35%. The proposed cost share will be changing with the Department of Energy (DOE) providing \$2.4 million through a modification of the existing Cooperative Agreement between DOE and the EERC instead of GRE providing the cost share.

Mr. Holmes indicated that the final steps are in place for securing the funding from DOE and approval is anticipated any day.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Industrial Commission Lignite Research Program Technical Advisor and authorizes the Industrial Commission Executive Director/Secretary to execute an Assignment Agreement for Contract FY20-XCI-224 – “Preliminary Front End Engineering and Design (pre-FEED) Study for a Full-Scale Carbon Dioxide Capture System at Coal Creek Station (CCS2)” to include the following:

- 1) Naming of the Energy & Environmental Research Center (EERC) to lead the project;**

2) Replacing a portion of the match funding from Great River Energy with Department of Energy funding in the amount of \$2,400,000.

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

ADMINISTRATION

Ms. Fine presented Resolutions of Appreciation for consideration. Three employees from the Mill's management staff will be retiring: Mr. Ed Barchenger, Mr. Jeff Bertsch, and Mr. Mike Jones. Attorney General Stenehjem noted that it has been a pleasure to work with the individuals over the years as the Mill has continued to expand and improve. Commissioner Goehring thanked them for their efforts, noting that they have been instrumental in the Mill's success. Governor Burgum expressed appreciation for their work and specifically thanked Mr. Barchenger for the financial presentations he has provided during the past 20+ years.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approve the following resolutions of appreciation:

Resolution of Appreciation

Whereas, Mike Jones began his career at the North Dakota Mill in 1999 and over the past 21 years served as the Mill's Traffic Manager, Transportation and Logistics Manager and his current position as Vice President Transportation; and

Whereas, Mike has, over these 21 years, seen the Mill expand its sales across the United States thereby increasing transportation needs and technology improvements to move and track all the Mill's products; and

Whereas, Mike was instrumental in the establishment of multiple rail/truck transfer sites to help grow the Mill's business and meet the needs of the Mill's customers; and

Whereas, Mike has also dealt with blizzards, floods and hurricanes and still got the Mill's products to its customers in a timely manner whether by rail or by truck; and

Whereas, Mike has now decided that it is time to retire and spend more time with his wife, Roxy, and work on his golf game, enjoy time hunting and watching NDSU sports—Go Bison!!

Now, therefore, the Industrial Commission hereby expresses deep gratitude to Mike Jones for his 21 years of service to the North Dakota Mill and the citizens of North Dakota and wishes him the very best in his retirement.

Resolution of Appreciation

Whereas, Jeff Bertsch began his career at the North Dakota Mill in 1977 as an elevator attendant and over the past 42.5 years served as Assistant Elevator Manager, Truck Grain Buyer & Inspector, Grain Grader, Grain Inspection Technician, Supervisor of Terminal Operations, Grain Buyer, Grain Procurement Manager, including his current position as Vice President Grain Procurement; and

Whereas, Jeff has, over these 42.5 years, been a part of the Mill's expansion and overseen the need to increase grain purchases from across North Dakota and surrounding states; and

Whereas, Jeff has developed relationships with elevator managers and grain growers to assure that the Mill always had enough grain, especially during times when weather impacted the quantity and quality of wheat and durum, to ensure the Mill could produce the best flour in the world; and

Whereas, Jeff has now decided it is time to retire and spend more time with his wife Susan at their lake cabin to enjoy time on their pontoon and do some fishing and hunting.

Now, therefore, the Industrial Commission hereby expresses deep gratitude to Jeff Bertsch for his 42.5 years of service to the North Dakota Mill and the citizens of North Dakota and wishes him the very best in his retirement.

Resolution of Appreciation

Whereas, Ed Barchenger began his career at the North Dakota Mill in 1998 and over the past 22 years served as the Mill's financial manager including his current position as Chief Financial Officer; and

Whereas, Ed has, over these 22 years, seen the Mill expand in size as well as continually updating and improving its operations; and

Whereas, Ed has always been responsive to questions from the Industrial Commission and provided detailed information on the Mill's operations and financial condition; and

Whereas, under Ed's leadership the Mill's audits have been excellent—a reflection of his diligence in accurate financial accounting; and

Whereas, Ed has now decided that it is time to retire and along with his wife, Kari, relocate to Arizona where he can spend more time pursuing his interests in classic cars.

Now, therefore, the Industrial Commission hereby expresses deep gratitude to Ed Barchenger for his 22 years of service to the North Dakota Mill and the citizens of North Dakota and wishes him the very best in his retirement.

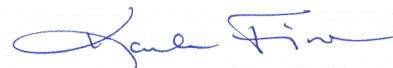
On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Fine presented the April 28, 2020 non-confidential meeting minutes for consideration.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the April 28, 2020 non-confidential meeting minutes be approved. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 11:31 a.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary