

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on May 29, 2020 beginning at 9:30 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 9:30 a.m. and the Commission took up Renewable Energy Program Business.

RENEWABLE ENERGY PROGRAM

Ms. Karlene Fine, Industrial Commission Executive Director, provided a financial report. There is currently approximately \$4 million available.

Mr. Jonathan Russo, Department of Commerce, presented the Renewable Energy Council Grant Round 43 recommendation for consideration.

R-043-A: Research in Support of Integrated Carbon Capture and Storage (CCS) for North Dakota Ethanol Production; Submitted by the EERC, Total Project Costs: \$1,200,000; Amount requested and recommended: \$500,000

The objective of this project is to create a blueprint for the first integrated ND ethanol and CCS facility, compliant with ND Class VI regulations, to strategically maximize the marketability of ND ethanol through evolving CCS incentives. Tasks include:

- A summary of site-specific geologic evaluation steps necessary to finalize CCS designs that ensure safe injection and storage.
- Contrast & compare the federal and state incentive requirements with the ND Class VI program, to establish potential business cases and ensure economic viability.
- Detailed interpretations and documentation needed to ensure regulatory compliance for CO₂ injection and storage.
- Community engagement and information dissemination, and impact assessment to ensure public knowledge sharing. A CCS Outreach Tool Kit will be developed to assist others interested in moving forward.
- Compilation of a CO₂ Storage Facility Permitting Guidance Document to assist implementation of CCS by other ND renewable energy or biofuel producers.

If successful, this project could help the ND ethanol industry be at the forefront of CCS technology and implementation in ethanol, creating a first-to-market advantage. It will provide the framework that could be used to implement CCS by other ND biofuel and renewable energy producers.

This is the fourth phase of the project. To date, \$1,335,000 of Renewable Energy Program funds have been used for the prior phases with a match amount of \$2,985,000.

Mr. Russo indicated that the three technical reviewers and the technical advisor recommended the project be funded. Five members of the Renewable Energy Council voted yes with one member being absent and one member abstained.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Renewable Energy Council to fund the grant application “Research in Support of Integrated Carbon Capture and Storage for North Dakota Ethanol Production,” and authorizes the Industrial Commission Executive Director/Secretary to execute a contract with EERC in an amount not to exceed \$500,000. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

OUTDOOR HERITAGE FUND (OHF)

Ms. Fine provided the OHF Financial Report, indicating that the current cash on hand available is \$12.1 million. This amount does not include funds that were anticipated to be received in the second half of the biennium.

Mr. Bob Kuylen, OHF Advisory Board Chair, provided the Commission with a list of the 12 applications that had been received for Grant Round 16 totaling \$32,932,033. He indicated that the OHF Advisory Board, after reviewing the applications and hearing the presentations from the applicants, recommended the following five applications totaling \$166,174 for the Commission’s consideration:

- 16-1: Columbus Cougar Park submitted by City of Columbus; Total project costs - \$32,495; Request for - \$8,000
- 16-2: Cass County Cover Crop Project submitted by Cass County SCD; Total project costs - \$100,000; Request for - \$60,000
- 16-6: Turtle Lake Park submitted by City of Turtle Lake; Total project costs - \$10,197; Request for - \$6,597
- 16-7: Creel Bay Dock and Boat Slip Project submitted by Devils Lake Park Board; Total project costs - \$94,600; Request for - \$50,000
- 16-10: Silver Lake Dam Improvements submitted by Sargent County Water Resource District; Total project costs - \$273,000; Request for - \$41,577

In response to a question, Mr. Kuylen indicated that the projects recommended for funding have secured the majority of match being proposed. Feedback is provided on projects that are not funded so the applicant can make revisions and resubmit at future grant rounds.

The Commission requested that, in the future, a one-page summary be provided on the vote for all project applications along with information on whether the match is secured and the source of matching funds.

Mr. Kuylen noted that this was the first online meeting for the program and that it went very well. He thanked the staff for their efforts.

It was moved by Commissioner Goehring 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 five projects in the total amount of \$166,174 and authorizes the Industrial Commission Executive Director and Secretary to enter into contracts with the applicants as noted below:

1. **City of Columbus: Columbus Cougar Park, \$8,000**
2. **Cass County SCD: Cass County Cover Crop Project, \$60,000 with the second budget option presented by the applicant used.**
3. **City of Turtle Lake: Turtle Lake Park, \$6,597**
4. **Devils Lake Park Board: Creel Bay Dock and Boat Slip Project, \$50,000**
5. **Sargent County Water Resource District: Silver Lake Dam Improvements, \$41,577 with the contingency that Outdoor Heritage Fund dollars may only be used for engineering costs up to \$2,078.85 and construction costs.**

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

PUBLIC FINANCE AUTHORITY

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

City of Dunn Center – \$2,448,000

The purpose of the project is to improve hydraulic capacity with the construction of new large diameter water mains and replacing selected small diameter mains to improve pressure and flow to modern standards. Sanitary sewer service will be expanded to areas in the southwest quadrant of town neighboring the city park. A new storm sewer system will be installed that conveys water under highway 200 to Spring Creek.

The requested term is 30 years for the DWSRF loan. The City will issue revenue bonds payable with water user fees and oil and gas gross production tax (GPT). The average annual payment for the revenue bonds will be \$102,415. The reserve requirement will be \$109,725 and the 120% coverage requirement will be \$122,898. She noted that in reviewing the loan they had “stressed” the 2016 GPT revenues – reducing it by 75% and that level of revenues would generate \$164,000.

On April 9, 2020, the City raised the monthly residential water rates \$30 per user and commercial water rates \$41.25 per user. The City has 104 residential connections and 3 commercial connections which pay base rates depending on meter size ranging from \$22.50 to \$6,356.25 per connection per month.

In response to a question, Ms. Ament stated there has been no indication that the goal of the project is to attract new residents or increase economic activity. This is a need of the community and the community has been saving up dollars to pay a portion of the costs on this project.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approves the resolution as follows:

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 Dunn Center (the “Political Subdivision”) has requested a loan in the amount of \$2,448,000 from the Program to improve hydraulic capacity with the construction of new large diameter

water mains and replacing small diameter mains, expand sanitary sewer service, and install a new storm sewer 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 presented the following *Clean Water* State Revolving Loan Fund (CWSRF) loan applications for consideration.

City of Dunn Center – \$3,195,000 (net after forgiveness \$2,417,000)

The purpose of the project is to improve hydraulic capacity with the construction of new large diameter water mains and replacing selected small diameter water mains to improve pressure and flow to modern standards. Sanitary sewer service will be expanded to areas in the southwest quadrant of town neighboring the city park. A new storm sewer system will be installed that conveys water under Highway 200 to Spring Creek.

The requested term is 30 years for the CWSRF loan. The City will issue revenue bonds payable with sewer user fees and oil and gas gross production tax (GPT). This project is eligible for \$778,000 of loan forgiveness, so the net loan will be \$2,417,000. The average annual payment for the net revenue bonds will be \$101,104. The reserve requirement will be \$108,150 and the 120% coverage requirement will be \$121,324.

A question was raised as to whether a sensitivity analysis had been conducted and if the entity could meet the payment with oil at \$30/barrel with substantially lower production. Ms. Ament indicated that she believes Dunn Center will be able to make the payments, noting that historical data is analyzed. For this project, data from 2016 was utilized which was a low point in gross production tax revenues. Based on the data, a 75% reduction would reduce their revenues to approximately \$164,000 and the bond payment would be \$203,000. This is why they have raised rates and will continue to do so in order to be well positioned should the gross production tax be further reduced.

In response to a question, Ms. Ament clarified that Spring Creek is not a development but is an actual creek and is the site where they will drain the storm sewer system.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approves the resolution as follows:

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

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

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

WHEREAS, the City of Dunn Center (the "Political Subdivision") has requested a loan in the amount of \$3,195,000 from the Program to expand sanitary sewer service, install a new storm sewer system, and improve hydraulic capacity with the construction of new large diameter water mains and replacing small diameter mains; and

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

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

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

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

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

Stutsman Rural Water District – \$3,027,000

The purpose of the project to refinance USDA-RD and Bank of North Dakota bonds which were issued for Phase 3 construction which added approximately 420 users to the system and 400 miles of pipe.

The requested term for the DWSRF loan is 30 years. The Stutsman RWD will issue revenue bonds payable with user fees. The average annual payment for the revenue bonds will be \$125,320. This would be an

approximate \$7,500 annual decrease in payments and reduce the term by eight years. The reserve requirement will be \$137,025 and the 120% coverage requirement will be \$150,384.

Stutsman Rural Water District provides water services to 2,424 residential users, 3 bulk city users and 3 industrial users in the Counties of Stutsman and portions of Foster, Griggs, LaMoure, Logan and Kidder. They also provide water to the Cities of Woodworth, Cleveland and Montpelier.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approves the resolution as follows:

**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, Stutsman Rural Water District (the "Political Subdivision") has requested a loan in the amount of \$3,027,000 from the Program to refinance USDA-RD and Bank of North Dakota bonds; 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 Wildrose – \$2,630,000 (net after forgiveness \$1,852,100)

The purpose of the project is to replace clay sanitary sewer pipe with PVC pipe and new manholes. The storm sewer will be replaced as it will no longer be able to infiltrate into the sanitary sewer system. This will protect existing structures and roads.

The requested term for the CWSRF loan is 20 years. The City of Wildrose will issue revenue bonds payable with water and sewer user fees and oil and gas gross production tax (GPT). This project is eligible for \$777,900 of loan forgiveness, so the net loan will be \$1,852,100. The average annual payment for the net revenue bonds will be \$108,234. The reserve requirement will be \$121,800 and the 120% coverage requirement will be \$129,881.

The City has 70 residential users that pay a monthly sewer base rate of \$20.50 and \$.50/1,000 gallons. There are 2 multi-family and 11 commercial users that pay a monthly water and sewer base rates ranging from \$18.50 to \$30.50 and \$.50 to \$.75/1,000 gallons. The city intends to raise the water and sewer rates annually. The 2016 GPT revenues were "stressed" and at a 75% reduction the revenues would be reduced to \$72,000 and the Clean Water payment would be \$108,000. The City is fully aware of this situation and is making progress in raising their rates so if GPT revenues decrease they can make their bond payments. The Advisory Committee recommended approval of the loan.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approves the resolution as follows:

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

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

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

WHEREAS, the City of Wildrose (the "Political Subdivision") has requested a loan in the amount of \$2,630,000 from the Program to replace clay sanitary sewer pipe with PVC pipe and new manholes, and replace the storm sewer; and

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

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

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

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

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

Western Area Water Supply Authority (WAWS) – \$16,500,000

The purpose of the funding application includes system expansion to those without rural water service, capacity expansion to existing rural service areas, and design for the next expansion of the water treatment facility. The projects will bring service to an estimated 450 new rural users and provide service to Powers Lake.

The project has received a \$40,000,000 grant from the State Water Commission (SWC) and these State Revolving Fund dollars will be used as the cost share for the SWC grant.

The requested loan term is 30 years. The member districts will issue revenue bonds payable with domestic user fees for this loan. The average annual payment will be \$698,308. The required debt service reserve is \$731,375 and the 120% net operating coverage requirement is \$837,970.

Ms. Ament noted that the SWC cost share may change due to diminished Resources Trust funding. All district members of WAWS have adequate coverage to make payments. If the SWC reduces their grant, it will reduce how much is borrowed from the SRF program. WAWS has received bids on all of the projects noted above, but the bids will not be awarded until there is a final decision on the level of funding from the SWC.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the proposed resolution.

In response to questions, Ms. Ament indicated that no construction will begin until the funds have been secured for the entire project. Ms. Ament agreed that a contingency requiring that no funds be expended until SWC funds have been secured would be appropriate.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the motion be amended to include “with the condition that no funds be expended until State Water Commission funds have been secured.”

On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye to approve the following resolution, with the condition that no funds be expended until State Water Commission funds have been secured:

**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 Western Area Water Supply Authority (the “Political Subdivision”) has requested a loan in the amount of \$16,500,000 from the Program to expand capacity to new and existing water service areas, and design for expansion of the water treatment facility; 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, contingent upon no loan funds being expended until the State Water Commission construction funding has been secured.

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.

The motion carried unanimously.

Ms. Fine presented a recommendation to reappoint Mr. Keith Lund to the Public Finance Authority Advisory Committee. Mr. Lund brings a background in economic development, which is required by policy. He has demonstrated knowledge and understanding of the work of PFA and provided important input in the Advisory Committee's recommendations. It was noted by the Commission that Mr. Lund has done a great job, and they are thankful that he is willing to serve again.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Commission's Executive Director/Secretary and reappoint Keith Lund of Grand Forks to the Public Finance Authority Advisory Committee for a three-year term extending to July 1, 2023. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

HOUSING FINANCE AGENCY (HFA)

Mr. Dave Flohr, HFA Executive Director, presented a recommendation for appointment of a public hearing officer for consideration. Mr. Flohr noted this is for the Boulevard Avenue project, which has been before the Commission in the past. However, due to a change in core developer (from Lutheran Social Services to Community Works North Dakota—the co-developer is stepping in as the developer), another hearing is required.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Dave Flohr, Housing Finance Agency Executive Director, be named as the Industrial Commission's public hearing officer for the TEFRA hearing scheduled for June 11, 2020 for the issuance of Multi-family Revenue Bonds and approve publication of the Notice of Public Hearing on June 1, 2020. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Flohr provided a summary report on the North Dakota Housing Finance Agency Housing Finance Program 2020 Series A \$100,000,000 bond sale (Non-AMT), which was successfully held on April 21st. (A copy of the written summary report is available in the Commission files.) The sale was oversubscribed by 3.5 times.

Ms. Jennifer Henderson, HFA, reported on the Housing Incentive Fund (HIF) awards. A total of \$1,839,194 was available due to turn back of funds from a developer that was no longer able to move a project forward. The Agency received applications for three projects and two were selected as follows:

Lakeland Court Apartments II, Devils Lake – HIF conditional commitment of \$1,289,527

This application is a resubmission of a prior HIF award with a new developer. The prior developer returned the HIF award and the current landowner resubmitted for HIF funds as prime developer. The application proposed the new construction of 24 units of senior housing located adjacent to a successful HIF development for essential service workers. Since this is a resubmission of a previously approved application, the project is nearly shovel ready and is expected to begin construction this summer.

Prairie Ridge Residences, Fargo – HIF conditional commitment of \$549,667

This application is proposing the new construction of 120-unit, 55+ senior project located in Fargo. The project is proposing a financing structure utilizing 4% tax credits and is in the process of putting the non-competitive application together. The current HIF allocation plan prioritized 4% applications; however, these deals can be complex and take time to bring together. Additionally, this project is proposing to maintain rents below the LIHTC rent levels to maintain affordability for the residents. Of the 120 units, 51 will be targeted towards 50% AMI and 68 will be targeted towards 60% AMI.

In response to a question, Ms. Henderson clarified that existing infrastructure is a requirement for funding.

TRANSMISSION AUTHORITY

Mr. John Weeda provided an update on transmission including the following items:

- North Dakota Transmission Capacity Study by Power System Engineering Results including Modeling of the North Dakota grid through 2038 and Nodal pricing analysis.
- Summary of Industry learnings including MISO/SPP Presentations, Midwest Governors Association (MGA) meetings and Grid Impact Modeling.
- Coal Creek Station impacts.
- Conclusions.

(A copy of Mr. Weeda's PowerPoint presentation is available in the Commission files.)

Mr. Weeda reported the following key findings from the Transmission Flow study that was completed in January:

- The power flows in North Dakota show the grid uniformly loaded but approaching need for local improvements with a couple of years of growth.
- The export points near the North Dakota border are operating at comfortable levels but will also need improvement with a couple years of growth.
- Generation interconnect requests are greatly outpacing forecasted demand within North Dakota- thus exports must increase.
- Modeling shows thermal and voltage violations increase from 2022 to 2026 and become very high in the 2038 analysis.

- Wholesale power pricing has become negative in the 2016-2019 review and increased peaks and valleys in the \$/MWhr prices.
- Energy storage for up to 6 months will be required for high concentrations of renewable energy.

Moving forward, a shortfall is anticipated regarding export capacity on the AC system. The ability to inject electrons for sale out of state will be limited moving forward. Market pricing has become more volatile and substantially negative at times. He noted the following regarding what an export limit means to North Dakota:

- Limited ability to inject generation into the MISO and SPP grids in the near term;
- Injection capacity declining between 2022 and 2026 and by 2038 having negative injection capacity;
- Generation curtailment will result from these export limits;
- Locational Marginal Prices for North Dakota generation will continue to fall without additional high voltage transmission;
- In summary, North Dakota will be a less attractive place to do generation business.

Mr. Weeda pointed out that the pricing on the grid is also showing more volatility especially on a negative basis.

Substantial storage would be required to increase renewables. There are a variety of opportunities and risks associated with renewables.

- Simulate using wind to meet the demand that is currently met by 900 MW of coal capacity;
- Replace with 1727 MW of wind generation;
- Goal is to level the surplus and deficit that would result from wind generation without storage;
- Storage for this scenario is 5,600 GWhr;
- Current storage prices are significant – estimates of \$250/MWhr suggesting a cost of \$1.4 billion one-time capital costs

Mr. Weeda outlined examples of opportunities that include economic investment and examples of risks that include the cost with the expiration of the Production Tax Credit:

Opportunity:

- Additional development of wind resources in North Dakota
- Development of an electric storage industry in North Dakota
- Economic activity of building additional transmission lines

Risks:

- Public acceptance of major additional generation
- Electric storage technology changes and storage in North Dakota becomes a stranded investment
- Full cost of wind following end of Production Tax Credits causes downturn in the industry
- Transmission lines that are added are not in the right place or do not get fully utilized

Regional groups, such as MISO, SPP, and MGA have been studying the situation as well. Mr. Weeda pointed out some of the work that has been done:

- MISO (RIIA) Renewable Integration Impact Assessment Shows rapid rise in complexity above 30% renewable generation
- Transmission is less than a majority of the complexity
- Cost and complexity have correlation
- North Dakota currently at 25.2% per 2018 Energy Information Administration (EIA)

- SPP in a very high wind region
 - Faces challenges such as loss of 1400 MW on hour for 8 hours on 12/12/19
 - Often has wind offering into market at minus \$25 to \$30 per MWhr
 - Has natural gas at negative pricing at times in their southwest region so wind and natural gas are competing to drive the market down

In response to questions, it was stated that natural gas gets priced so low because West Texas is willing to go negative rather than limit oil production associated with the gas production. This trend is more likely to occur with higher oil prices.

There is an agreement that transmission is needed, but barriers exist, including:

- Who pays? North Dakota consumers shouldn't have to pay for energy going somewhere else.
- There is not a comprehensive long-term planning process that coordinates generation and transmission.
- There is no entity with authority over decisions of plant shutdown for resource adequacy of the grid.
- Long distance transmission crosses over state lines and utility territories that all have a "what is in it for me" interest and aren't satisfied with being paid for easements of transmission line.
- General public does not have an awareness of the magnitude of transmission lines and generation facilities that are needed for the desired low carbon future, which can create siting and permitting challenges.
- Financial mechanisms are not in place to support capital costs.
- Most new generation is being built for tax credits as opposed to replacement.
- Utilities hold on to interconnection points even when there is a retirement, which doesn't free up transmission.
- A frequent scenario to achieve high level of renewable energy is to overbuild – up to 7 or 8 times in some analyses.
- Will time of day conversion (storage) be at the generation or consumption end of transmission?
- Dispatchable Intermittent resources only accredited at 15% unless demonstrated higher (some feel there should be no accredited capacity).
- How do you plan dispatchable resources for days when there is no wind or sun?
- Will overbuilt result in facilities that do not have a positive rate of return financially?
- Many MGA members are promoting renewable energy in their state for economic development and don't want out-of-state renewable energy even though the return on investment is higher elsewhere.
- Lack of agreement on who pays for transmission could keep renewable development at a standstill for years in many areas.

Mr. Weeda clarified that eminent domain is still an available tool. However, utilities have become hesitant to use it because there are so many challenges. Issues also come up with the regulatory agencies that authorize it as well.

Mr. Weeda included a slide that outlined the studies that are being released on this topic – Texas Public Policy Information; Clean Air Task Force; Excel Report; and Center of the American Experiment that all indicate high costs in the future to manage renewables and the loss of high capacity generation. There are no mechanisms in place to prepare for those high costs.

Mr. Weeda provided some key points from the CapX2050 First Report and highlighted that--Non-dispatchable resources alone will be incapable of meeting all consumer energy requirements at all times

and therefore, we will need to understand and promote a future electric grid that can continue to meet consumer energy requirements safely, reliably, and affordably.

Mr. Weeda provided the following information on how the Coal Creek Station decision affects transmission:

Energy Information Administration Data for 2019:

- Total net generation for North Dakota = 40,188 GWhr
- North Dakota retail sales = 21,044 GWhr so 19,144 GWhr exported = 47.6%
- Coal Creek Station net generation 8,193 GWhr **(20.3% of ND) (42.7% of export)**
- Wind generation 36 plants of 10,756 GWhr = 26.7%

Without Coal Creek Station

- Total Generation for North Dakota = 31,995 GWhr
- Available for export = 10,951 GWhr = 34.2%
- Wind capacity needed to replace Coal Creek Station GWhr = 1.76 times current
- Would result in North Dakota grid approximately 48% renewable

Coal Creek Station has a huge impact on the North Dakota generation system. The current wind resources would need to be multiplied by 1.76 to replace Coal Creek Station. The Coal Creek Station DC line is important to North Dakota and there are several questions regarding the path forward, such as:

- Whether GRE will continue to own and operate line?
- What are the current interconnections as defined by MISO?
- What is needed to stabilize the grid without Coal Creek Station, but with DC line?
- Should there be another tap into the line in central/eastern North Dakota?
- How do you feed an additional 75% of current wind generation into one line?

Mr. Weeda reviewed the following important steps that should be undertaken:

- Facilitate continued operation of the Coal Creek Station DC line
- Follow the mounting evidence of high costs coming with increased renewable penetration (North Dakota could be at 48% renewable in 3 years)
- Evaluate generation portfolios on cost of capacity as well as energy (any potential successor owner for Coal Creek Station needs capacity income)
- Advocating for a mechanism for the market to reward capacity is essential
- Encourage MISO and SPP to set standards for how reliability can be assured with a proper generation mix of dispatchable and renewable resources
- Prepare the public for the impact of transitioning the grid in terms of land use, visual impacts, and cost so landowner fatigue or rate payer resistance does not prevent the vision
- Adjust policies as need to help provide investors a sound business solution with return on capital as well as operating expense

Mr. Weeda reported that his review of Chapter 17-05 of the North Dakota Century Code provides some options to help find a strategy to move forward, including the Transmission Authority having a transitional ownership role. There was discussion regarding available options. It was noted that the two-year timeframe to find a solution is quite short.

In response to questions, Mr. Weeda provided the following information -- Coal Creek is two equally sized units, and each could be operated separately with some modifications. Utilizing the full 1,000 MW in the current market isn't likely, however, utilizing half may be workable. One potential scenario includes a

carbon capture system that would account for 30% of one unit. Based on information he has received from Mr. Mike Holmes, LRC, and others, there could be a good rate of return—over 22%--for an operator to continue to operate a portion of Coal Creek Station. It was noted that this DC line is an asset for the state/region and should not go unused.

The consensus of the Commission was that Mr. Weeda should continue conversations with GRE and others to find a solution, with the end goal of private ownership.

LIGNITE RESEARCH, DEVELOPMENT, & MARKETING PROGRAM

Ms. Karlene Fine, Industrial Commission Executive Director, provided a Lignite Research Program financial report. The Legislature authorized the Lignite Research Program to receive \$10 million from oil tax revenues during the current biennium. If those funds are received there is approximately \$16.4 million available to fund the applications being considered today.

Mr. Jason Bohrer and Mr. Mike Holmes, LRC, presented the Lignite Research Council Grant Round 92 recommendations for consideration.

LRC-XCII A “Laboratory-Scale Coal-Derived Graphene Process;” Submitted by Energy and Environmental Research Center; Total Project Costs: \$931,564; Total Request: \$162,500; Project Duration: 36 months

This project proposes to develop a technological process for converting North Dakota lignite and other U.S. coals into high-value solid carbon products such as graphene for use in multiple applications. The scope of work will also include an economic feasibility analysis and analysis of product target markets and technology gaps for scale-up or commercialization. The project was recommended for funding by the Technical Reviewers, the Technical Advisor, and the Lignite Research Council.

In response to a question, Mr. Holmes indicated that the value of this project is the potential to create graphene dots at 1/10 of the cost of current high-quality battery graphene. This would potentially also allow the graphene to be used in building products.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Lignite Research Council to fund the grant application "Laboratory-Scale Coal-Derived Graphene Process" and authorizes the Industrial Commission Executive Director/Secretary to execute an agreement with the Energy and Environmental Research Center to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$162,500 with the following contingencies:

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

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

LRC-XCII B “Drill Stratigraphic Test Well & Determine Feasibility of Central ND Geology to Safely and Permanently Store Carbon Dioxide;” Submitted by Midwest AgEnergy Group; Total Project Costs: \$6,956,000; Total Request: \$3,388,000; Project Duration: 12 months

The intent of this proposed project is to provide critical information about central North Dakota geology as required to demonstrate the capacity for long term storage of carbon dioxide (CO₂). Midwest AgEnergy Group (MAG) along with its partners have been studying the feasibility of CO₂ storage in the vicinity of

the Blue Flint Ethanol plant near Underwood, ND. Several feasibility-level projects have been completed with results indicating very strong potential for sequestration in the vicinity of the plant. The intent of this phase of the project is to complete a stratigraphic test well. Drilling this well will enable collection of core samples of the formations currently believed to be suitable injection zones. The data collected from the test well will provide the final pieces of information needed to model and simulate CO₂ storage with a high degree of accuracy and confidence. Results of the project are expected to clearly define the porosity and permeability of target formations and its capacity to safely sequester CO₂.

Mr. Holmes indicated that one Technical Reviewer recommended funding and two Technical Reviewers recommended consider funding. The reviewers questioned whether Lignite Research Fund dollars were the appropriate source for funding this project. Mr. Holmes outlined the value of the project as it related to Coal Creek Station and the continued operation of that facility by the current owners or future owners.

Mr. Jason Bohrer noted that the Lignite Research Council's recommendation was to fund with the contingency that all State funds would be repaid if the project is successfully/commercially operational and the project's fuel source is switched away from North Dakota lignite within the next five years. Considerable discussion took place at the Council meeting regarding the appropriateness of the contingency. It was noted that \$10 million in funding comes from oil and gas tax revenues; not all program funds for advanced energy technology come from the lignite industry. The proposed project has significant value and would benefit multiple industries across North Dakota. Additionally, North Dakota has primacy on Class VI injection. This project would present a good opportunity to study the geology for this purpose.

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.

It was clarified that this motion does not include the Lignite Research Council's contingency for the State funds to be repaid under certain conditions.

The Commission members expressed their support for the project. There was discussion about whether it was fair to include a repayment provision for actions that were beyond the control of the applicant. Mr. Bohrer indicated that the Council was supportive of the project, but the issue of a change in the fuel source from other than lignite had raised concerns. There were also questions about whether the Commission, by statute, could approve the application without the contingency recommended by the Council. It was indicated that there have been instances where the Commission has altered a contingency over a project's duration based on changed circumstances, but not at the initial approval. The Commission has sent projects back to their advisory boards asking that a proposed recommendation or contingency be reconsidered. Also, the question was asked if MAG would move forward with the project if the contingency stayed in place.

It was pointed out that the value of having the ability for carbon capture and storage would be beneficial to future operators of the Coal Creek Station. Having a contingency for repaying the Lignite Research Fund might jeopardize efforts to save the Coal Creek Station plant.

It was moved by Attorney General Stenejem and seconded by Commissioner Goehring to table the discussion until the next meeting in order 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?**

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

Mr. Holmes provided an update on the Lignite Research Program. The North Dakota Geologic Survey is continuing their work to identify Rare Earth Elements (REE.) The project is currently funded at \$90,000 under the Enhanced, Preserve, and Protect contract, but the funding may increase if anticipated federal funds are not received. It was noted the importance that domestic sources of Rare Earth Elements be identified. Mr. Bohrer clarified that it is only cost conducive to mine Rare Earth Elements in North Dakota as a supplement to mining lignite for energy production. It is not cost effective as standalone mining.

Due to the pandemic, the Lignite Energy Council’s teacher seminar will be cancelled. Parallel activity regarding teacher materials and an online version will continue. A revised budget for that contract will be brought forward for consideration at a future Industrial Commission meeting.

Mr. Holmes reported that project “Preliminary Front End Engineering and Design (pre-FEED) Study for a Full-scale Carbon Dioxide Capture System at Coal Creek Station (CCS2)” involving Great River Energy as the lead is underway. The project is approximately 1/3 through the feasibility study and has yielded some good results. There has also been clarification at the federal level on the 45Q tax credit which will be beneficial to the goals of this project. He noted, however, that Great River Energy would like to modify its involvement. The Department of Energy has indicated it is willing to provide replacement cost share and put the Energy and Environmental Research Center in position as the project lead. The consensus of the Commission was that Mr. Holmes should continue discussions to identify strategies that will keep the project moving forward.

In response to a question, Mr. Holmes indicated that utilizing CO₂ emissions for greenhouse applications shows promise—possibility of a project at Spiritwood. He will provide a report with additional information at a future Commission meeting.

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 28220, Order 30953 – construction of a treating plant

Case 28221, Order 30954 – drilling of saltwater disposal well

Case 28222, Order 30675 – determination of bond amounts

Case 28223, Order 30955 – drilling of saltwater disposal well

Case 28224, Order 30677 – determination of bond amounts

This project, proposed by Waste Management, entails the construction of a treating plant and the drilling of two slurry fracture injection wells in the Inyan Kara formation and the establishment of bond amounts. The treating plant is designed to process approximately 1/3rd of North Dakota's tenorm waste that is found to be too high to be disposed of in landfills. Two slurry fracture injection wells will be used in cycles – one injecting while the other is resting.

Opposition was received from a nearby saltwater disposal well operator that had concerns about the potential impacts on their well and the cumulative disposal capacity. Commission staff examined the evidence and is convinced, based on geology and the engineering modeling that were done, that their concerns are not well founded. Nearby landowners also voiced concern about the dust, noise, and truck traffic. Waste Management enhanced the project as a result of those concerns and will pave the section line road to minimize dust. The processes conducted at the treating plant and slurry manufacturing facility will be enclosed and will incorporate large exhaust fans with filters to minimize any odors. They are also proposing to lay pipelines and bring the saltwater into the facility via pipeline.

The staff recommendation is to approve the treating plant with a \$1,015,000 bond amount. Approve both disposal wells each with a \$200,000 bond amount. These bond amounts should cover any reclamation costs.

This project would be beneficial to North Dakota. If 3-5 of these facilities were to be established, it could handle all of North Dakota's tenorm waste.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the following orders with an effective date of May 29, 2020:

Order 30953 issued in Case 28220 authorizing the construction of a treating plant to be located in the S/2 SE4 of Section 35, T.151N., R.96W., McKenzie County, ND, and requiring a bond in the amount of \$1,015,000;

Order 30954 issued in Case 28221 authorizing the drilling of a saltwater disposal well to be utilized for slurry fracture injection into the Dakota Group in a well to be known as the Blue Buttes 1 well, to be located in the NENE of Section 35, 151N., R.96W., Blue Buttes Field, McKenzie County, pursuant to NDAC Chapter 43-02-05;

Order 30675 issued in Case 28222 determining the bond amount for the Blue Buttes 1 well to be \$200,000 pursuant to NDAC §43-02-03-15;

Order 30955 issued in Case 28223 authorizing the drilling of a saltwater disposal well to be utilized for slurry fracture injection into the Dakota Group in a well to be known as the Blue Buttes 2 well, to be located in the SWNE of Section 35, T.151N., R.96W., Blue Buttes Field, McKenzie County, ND pursuant to NDAC Chapter 43-02-05;

Order 30677 issued in Case 28224 determining the bond amount for the Blue Buttes 2 well to be \$200,000 pursuant to NDAC §43-02-03-15.

In response to questions, Mr. Helms indicated that the concerns were raised at the first hearing, however, due to the pandemic, there were multiple hearings. The response by Waste Management to the concerns raised by the residents was done during the time frame of the multiple hearings. There is a berm requirement around the perimeter of the well site. The treating plant facility has a large amount of storage. It will have a secondary containment around the tanks and berm around the facility. The large bond is due to the

potential large amount of solids that could be stored on site. Anything containing solids will have a liner placed under it. Waste Management owns the land where the facility will be located and has secured the pore space rights.

Regarding the concerns expressed by the saltwater disposal operator from the area, Mr. Helms clarified that the proposed saltwater disposal is at the same depth as the nearby saltwater disposal well. However, the opponents used a model based on fracture geology from Wyoming. Proponents used local geology to disprove the concerns of the saltwater disposal operator located to the SW of the proposed wells.

Waste management has not built one of these before. This would be a very advanced facility and a worldwide consulting firm has been hired that has done this technology in other areas.

The capital investment is estimated at \$6 million for the two slurry injection wells and \$2-3 million for the treatment facility. When the road paving is included, the costs are approximately \$10 million.

Mr. Helms indicated that he has been told that Montana may soon consider legislation that would restrict access to landfills in eastern Montana.

Waste Management expects to be injecting slurry by the end of the year.

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

Case 28425, Order 30884 – unitization of Sergis-Spearfish/Madison Area

Case 28426, Order 30885 – determination of ratifications for Sergis-Spearfish/Madison Area Unit

This project proposes to drill two multiple leg well horizontals and double recovery by implementing a water flood plan. The unit area is appropriate, and the unit formulas are fair and protect correlative rights. The unit operation is expected to prevent waste.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve Order 30884 issued in Case 28425 this 29th day of May, 2020 that provides for the unitized management and operating of the Sergis-Spearfish/Madison Unit, approval of the unit agreement and unit operating agreement constituting the plan of unitization, approval of the plan of operation, and the vacating of the applicable spacing orders. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

In Case 28426 Mr. Helms requested authority to sign Order 30885 when sufficient ratifications have been received, reviewed and determined that they have met the 55% ratification level for the establishment of the unit.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Department of Mineral Resources Director be authorized to sign Order 30885 in Case 28426 regarding the establishment of the Sergis-Spearfish/Madison Unit when sufficient ratifications are submitted. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Helms presented a resolution for Hearing Examiners for consideration. He noted that the current examiner, Hope Hogan, is leaving state government.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approves the resolution as follows:

**RESOLUTION OF THE
INDUSTRIAL COMMISSION OF NORTH DAKOTA
NAMING HEARING EXAMINERS**

Whereas, Section 38-08-04.1 of the North Dakota Century Code provides that the Industrial Commission may use hearing examiners under such rules and regulations as the Commission may prescribe; and

Whereas, Section 43-02-03-93 of the North Dakota Administrative Code provides that the Commission may by motion designate and appoint qualified individuals to serve as examiners,

NOW, THEREFORE, the Industrial Commission rescinds all prior appointments of examiners and designates and appoints the following individuals to serve as the Commission's examiners as it relates to the Commission's responsibilities under Chapter 38-08 of the North Dakota Century Code:

**David Phillips, Assistant Attorney General
David Garner, Assistant Attorney General
Matt Sagsveen, Assistant Attorney General
Lynn D. Helms, Director, Department of Mineral Resources and Director, Oil and Gas Division
Bruce Hicks, Assistant Director, Oil and Gas Division
Mark Bohrer, UIC and Treating Plant Manager, Oil and Gas Division
Michael Ziesch, EGIS Staff Officer, Department of Mineral Resources
Dave McCusker, Petroleum Engineer, Oil and Gas Division**

This Resolution shall be effective as of July 1, 2020.

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

Mr. Ed Murphy, State Geologist, provided the Geological Survey Quarterly Report. He provided an overview of the following areas:

- Wilson M. Laird Core and Sample Library
- Core Received
- Proppant Project
- Rare Earth Project
- Regulatory Programs
- Publications this Quarter
- Presentations this Quarter

Mr. Murphy noted that industry and academia studied 5,418 feet of core during the first quarter of 2020. Due to Covid-19, no industry scientists or engineers have been in the library since March 13th. Due to surgery, the staff photographer will not be able to photograph cores until July.

Mr. Murphy noted that a study done by the Survey staff showed that sand found in North Dakota can now be used as proppant. A pit was set up last year and is providing sand for fracking in Bakken/Three Forks. Mercer County recently issued a permit for another pit. Technology has changed and the operators have more flexibility in the size and crushability of the sand.

Mr. Murphy provided a brief history of the study that the Geological Survey began in the fall of 2015 when rare earth elements were found in the H bed seam in Slope County. Since then the Survey has assisted the University of North Dakota Institute for Energy Studies (UND IES) in collecting three tons of H bed coal for a small pilot project demonstrating that rare earth elements could be removed from lignite. In 2019, UND EIS received several grants totaling \$6.5 million for a demonstration project to remove rare earth elements from lignite containing at least 300 ppm of rare earths. In January, the Survey staff assisted UND EIS staff in the mining of 44 tons of H bed coal.

Mr. Murphy reported that staff provided educational presentations via Zoom for school age children that were at home during the pandemic. The presentations were well received.

Mr. Helms and Mr. Murphy reviewed the following proposed rules (a copy of the rules are available in the Commission files). They requested a motion authorizing publication of the proposed rules for public hearing:

- Amend In Situ Leach Uranium Rules (NDAC 43-02-02.2)
 - Changes the name of the chapter from In Situ Leach Uranium Mining to In Situ Leach Mineral Mining.
 - Replaced the word uranium with the word mineral throughout the chapter
 - In some cases, replaced uranium with the term “radioactive elements” when the intended mining target is still uranium and/or one of the other radioactive elements that required permits from the US Nuclear Regulatory Commission.
 - Changes references of Health Dept. to Department of Environmental Quality.
 - Adds an annual operating fee based on the cost to monitor and inspect the facility.
- Amend Geothermal Energy Production (NDAC 43-02-07)
 - Removes references to deep geothermal wells since that will shift to a new rule chapter.
 - Removes a time frame of ten years for permits as this has not been used.
 - Removes shallow well loop and horizontal loop and replaced it with geothermal energy extraction facilities
 - Removes reference to deep well facilities as it is referenced elsewhere.
- Create a new chapter, Deep Geothermal Energy Production (NDAC 43-02-07)
 - Work is underway for the first geothermal power plant in Canada. If a similar development were to occur in North Dakota, policies would be in place.
 - This new rule incorporates the applicable rules regulating the drilling of oil wells from NDAC 43-02-03.
 - The exploration well bond will be based upon the projected total depth of the well and the surface restoration costs.
 - The permit application to contain a detailed description of the mechanical construction and operating procedures of the facility, infrastructure plans, monitoring systems and reclamation plan.
 - The facility permits to be reviewed at least once every five years.
 - A Class V injection well permit is required for the injection of produced water.
- Create a new chapter, High-Level Radioactive Waste (NDAC 43-02-13)
 - This is in response to NDCC 38-23, which went into effect on July 1, 2019. Almost everything came straight from the statute.
 - The rules are primarily organized by the requirements for exploration and facility permits.
 - An exploration permit is to be accompanied by a permit fee, a notice of opportunity for a position paper from the county where the drilling is to take place, a bond, well construction information, and the plugging program.
 - The size, scope and location of the exploration program must conform to the county zoning regulations.

- A facility permit is to be accompanied by a permit fee, a notice of opportunity for a position paper from the county where the drilling is to take place, a bond, a detailed description of the facility and reclamation plans, site, the active and passive institutional controls, and a deposit of one hundred million dollars or one mill dollars per permitted acres, whichever is the greater amount, into the high-level radioactive waste fund. This money to be used to maintain the passive institutional controls for thousands of years.
- The size, scope, and location of the facility must conform to the county zoning regulations.
- The length of the facility permit is not to exceed five years.
- The Industrial Commission can take up to six months to review an exploration permit and 12 months to review a facility permit.
- The one million dollar minimum annual facility fee is due on January 15th.
- Post closure, the facility to be secured with active institutional controls (security fence, guards, security cameras) for a period of time to be determined by the Industrial Commission after consulting with the advisory council.
- The types of signs and structures comprising the passive institutional controls to be determined by the Industrial Commission after consulting with the advisory council.
- Detailed documents about the waste facility are to be permanently stored in the local, state and national archives.
- The size and the scope of the operation will be evaluated annually and the department may increase or decrease the bond amount to reflect the results of the evaluation.

Mr. Murphy discussed and presented diagrams regarding passive institutional controls. (A copy of the diagrams is available in the Commission files.)

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Department of Mineral Resources/Geological Survey be authorized to proceed with the administrative hearing process and publish for hearing and comment the following:

- **Amendments to In Situ Leach Uranium Mining Rules (NDAC 43-02-02.2) to In Situ Leach Mineral Mining Rules;**
- **Amendments to Geothermal Energy Production (NDAC 43-02-7) to remove deep geothermal;**
- **Create a new Chapter, Deep Geothermal Energy Production (NDAC 43-02-07)**
- **Create a new Chapter, High-Level Radioactive Waste (NDAC 43-02-13)**

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

Mr. Helms provided a report on the Bakken Restart Task Force which he is leading. (A copy of the current report is available in the Commission files although this report is updated on a weekly basis.) He reported on the Situation Overview page and noted that currently there are 6,800 shut-in wells out of 16,255 wells that were active earlier in the year. Production was at 1,435,000 barrels/day with 475,000 barrels/day now shut in. There were 52 drilling rigs operating and now there are only 10 drilling rigs and the State had 25 frac crews working and there is now 1 frac crew operating. Most frac supply contracts have been cancelled through the rest of the year. There are 791 abandoned wells and commercial well produced water volumes have significantly decreased. Gas plants are close to the maximum turn down capacity of 35%. Currently in North Dakota, 8,900 people are unemployed in the oil industry when previously there were 51,000 people working in the oil industry and related service sectors. The unemployment numbers are expected to increase in the near future—when the PP program dollars expire these individuals will go on unemployment.

Mr. Helms indicated there are three Focus Areas that the Task Force is working on. 1) Regulatory relief; 2) Economic Stimulus; and 3) Bakken Restart. In the Regulatory Relief area they have identified some areas where the agencies can offer regulatory relief either by extending some deadlines or reducing fees.

There have also been economic stimulus activities identified. One of which is a \$33+ million program to plug orphaned wells. Funding from the CARES dollars has been approved by the Emergency Commission and will be considered by the Budget Section. A hearing will be held on June 10th for 368 wells that are in the orphan status and those wells will be brought before the Commission on June 19th for order(s) to confiscate wells as appropriate in order to proceed with plugging work in early July. The timing is fortuitous as it will dovetail with people coming off the federal PPP program. The goal is to put approximately 600 people back to work. A second phase of the program is anticipated in August, which will allow for reclamation of the well sites after harvest.

A cost share program being considered would allow the Department of Environmental Quality (DEQ) to reimburse operators for putting a new style thief hatch on oil storage tanks that can reduce methane emissions by approximately 90%. It is anticipated that some of the manufacturing could take place in North Dakota. The operator would purchase the thief hatch and hire a roustabout to install it then apply for reimbursement for the cost of the thief hatch from DEQ. The operator would pay for labor. This could help employ 300-600 currently unemployed roustabouts.

Western Area Water Supply has three large projects, including Spring Creek, West White Earth, and service to Stanley. This could pay labor costs (approximately 100,000 manhours) for rural water expansions that go through oil fields and already have significant interest from oil companies for maintenance water. This would utilize experienced pipeline workers (200 to 300 experienced pipeline people) that are unemployed since they're not building any gathering or disposal pipelines at this time. These projects are rural projects and there is interest by oil and gas companies because of the need for maintenance water which requires certain chemical characteristics.

Regarding the third Focus Area – Bakken Restart, options for incentivizing the restart of the 6,800 wells that are currently shut down are being investigated. The goal is to identify ways to make it easier for operators to start wells that will generate the most jobs. Currently the price of oil in North Dakota is \$23.50. Getting lower rate, high water producer wells back online would be a good fit because they won't flood the market and will help employ numerous ancillary services. One option may be to split wells into tiers with potential BND loans or tax incentives.

Discussion was held regarding the current price of oil and associated market activity. Currently, the first part of next year is anticipated to be opportune for putting wells back online in North Dakota. A goal is to try to keep people here until that time. It was noted that the price basis spread between Brent and WTI has gone down. It is estimated that the price needs to be at \$35 WTI to bring wells back on production. The price needs to be at \$40 or \$45 before wells are completed and above \$45 for 3 or 4 months before rigs will start drilling again. Oil storage in Cushing has dropped from 90% to 70%+ full.

In response to a question, Mr. Helms stated that industry has been involved in the development of the Bakken Restart Focus Area. Industry has been asked to break the shut-in wells into 4 Tiers. Tier 1 (high rate, low water production wells) which will come on without an incentive. Tier 2 wells (yield the highest return on investment – high rate, high water production Bakken wells) and Tier 3 (lower rate, with significant water cuts) will need some incentives. The Tier 4 wells (low rate producing wells with a lot of water) will need a significant amount of investment. The work of the group is to strategically incent and identify Tier 2 and Tier 3 wells. The goal would be to incent those wells that will maximize gross production tax, oil extraction tax, oil fee, and employment and income taxes.

It was noted that access to capital is a challenge. One solution may be to set up a BND loan program to borrow money to put wells back on and pay back with cash flow. If there is a group of wells still struggling,

a reduced extraction tax rate may need to be considered during the next legislative session to pay the loans back.

Mr. Helms reported on the Case 28471 Oil Waste special hearing that was held on May 20, 2020. Feedback was received from 45 parties/individuals, of which 3 were in favor of a waste determination and proration, 2 were neutral and 40 were strongly opposed. He indicated that 16 were carbon copies stating opposition or no jurisdiction on Fort Berthold. There was good participation from all stakeholders. Information was sought and received regarding the following topics:

- Market price, production costs, and post-production costs that result in economic waste of North Dakota crude oil
- Volatility of North Dakota crude oil price
- Crude oil price differential projections
- Hedged crude oil production and challenges of getting to market
- Oversupply and reduced demand of North Dakota crude oil
- Storage capacity for North Dakota crude oil
- North Dakota refinery crude oil demand
- Implications of temporary crude oil storage
- Prevention of waste of North Dakota crude oil
- Protection of correlative rights and jeopardized title to leasehold
- Impacts on royalty owners when crude oil price reaches a negative value
- Processes and challenges of curtailing or shutting in crude oil production from North Dakota wells
- Processes and challenges of protecting the environment, health and safety of the public when curtailing Production or shutting in crude oil production from North Dakota wells
- Impacts on continuation of business for the entities that service curtailed or shut in North Dakota oil wells
- Impacts on continuation of business for the entities that provide transportation, storage, marketing, and refining of North Dakota crude oil
- Impacts on continued employment of North Dakota operator's staff

Mr. Helms reported on PMSHA actions on May 11, 2020. PHMSA preempted the Washington State legislation. The State of Washington has 20 days to file a petition for reconsideration and 60 days to file court action (July 14).

On May 11th PHMSA had published an advanced notice of proposed rulemaking with regards to Reid vapor pressure. On May 20th PHMSA withdrew that notice. Mr. Helms pointed out that in each of these notices comments were made about North Dakota's oil conditioning rule. The Commission will need to look at that rule in the future. It was Mr. Helm's recommendation that the Commission direct the Oil and Gas Division staff to look at this rule (13.7 vapor pressure) and develop a recommendation for a path forward in North Dakota. It was indicated that the issue wasn't with the standard, but that no state can have a standard that differs from federal standards. Mr. Helms indicated that PHMSA has no vapor pressure standard. API has one which is an industry standard so PHMSA's note was that no state can have a standard that differs from federal standards and the federal government has no standards. They did not come out against North Dakota's rule, but they offered to do so. Attorney General Stenehjem noted that the North Dakota rule was mentioned in passing, however the rule wasn't preempted. Attorney General Stenehjem also noted that the rule should be looked at again in light of the Sandia Lab study and the determination made on vapor pressure. Based on that information North Dakota was correct in the science and in the law.

The consensus of the Commission was that the oil conditioning rule needs to be reviewed. Mr. Helms indicated that the Commission's vapor pressure rule generally switches off in the summertime based on the changes the Commission previously made and will switch back on October 1. The Oil and Gas Division staff was directed to bring back a recommendation to the Commission before October 1st.

Appreciation was expressed by the Commission for all the individuals that worked on the PHMSA petition regarding the Washington State legislation.

Mr. Helms noted that the 45Q guidelines have been released and are being reviewed. State certification of CO₂ stored volumes was requested. The federal guidelines did not accommodate that request. On a positive note, the EPA MRB plan is still in place and North Dakota's Class VI rule mirrors that completely.

BANK OF NORTH DAKOTA

Mr. Eric Hardmeyer, BND President, provided a report on Agriculture Disaster Relief Loan Program activities. Several factors have created a need for an extension of the program. Planting season caused delays on the agricultural side and local banks have been delayed in working with their agricultural customers because of the demand for processing federal COVID-19 loan programs. Mr. Hardmeyer reported that 196 loans have been funded for \$102 million out of the \$300 million available which also included the \$100 million that was carry over from the Financial Stability Loan Program. There remains approximately \$98 million of additional volume that is available if the program is extended. Bank management continues to work with the Agriculture Commissioner on agriculture programs that may be needed as a result of COVID-19.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem to extend the application deadline from June 30, 2020 to September 30, 2020 for the Agriculture Disaster Relief Loan Program. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Hardmeyer provided a report on other COVID-19 related activities.

- Small Employer Loan Fund (SELF): This \$50 million program is funded from the Bank's capital. Currently 316 loans totaling \$11 million have been processed. Approximately 20% of the authorized amount has been utilized, and the loans have averaged about \$35,000 per application. Interest in the program started strong, but it appears to be reaching a plateau in usage.
- COVID-19 PACE Recovery (CPR): This program is just starting to see demand. Currently there are 32 loans in process totaling \$33 million using approximately \$1.6 million of buydown. There is more underwriting involved, and the slower start was anticipated. Participation in the program is now starting to increase.
- Student loan deferments: 8,300 deferments have been authorized for a total of \$238 million.

Mr. Hardmeyer presented the Bank of North Dakota Advisory Board March 19, 2020 nonconfidential meeting minutes.

Pursuant to N.D.C.C. 6-09-35 the Industrial Commission entered into executive session. Governor Burgum reminded the Commission members and those present in the executive session that the discussion must be limited to those items listed on the agenda which was anticipated to last between 30 and 45 minutes. It was noted that any formal action by the Commission on the loan applications would occur after it reconvened in open session.

Commission members, their staff, and BND staff were asked to join the executive session at this time utilizing the Teams meeting invitation and the public was asked to leave the room.

Governor Burgum closed the meeting at 1:03 p.m. for the BND executive session to discuss the following items:

- Consideration of loan applications
- Concentrations of Credit Report
- Problem Loans
- Presentation of Bank of North Dakota Advisory Board March 19, 2020 confidential meeting minutes
- Other Bank of North Dakota confidential business (as defined under N.D.C.C. 6-09-35)

BND EXECUTIVE SESSION

Members Present:

Governor Doug Burgum

Attorney General Wayne Stenehjem

Agriculture Commissioner Doug Goehring

Bank of North Dakota Personnel Present:

Eric Hardmeyer Bank of North Dakota

Todd Steinwand Bank of North Dakota

Kirby Evanger Bank of North Dakota

Others in Attendance:

Reice Haase Governor's Office

John Schneider Department of Agriculture

Karlene Fine Industrial Commission Office

Andrea Pfennig Industrial Commission Office

The meeting reconvened in open session at 1:40 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 two loan applications. **On a roll call vote, Governor Burgum, Attorney General Stenehjem, Commissioner Goehring voted aye. The motion carried unanimously.**

ADMINISTRATION

Ms. Fine presented a request for authorization to send the following letter to the Legislative Council Agriculture and Transportation Interim Committee regarding a road train pilot project outlined in Senate Bill 2176.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission authorizes the Industrial Commission Executive/Secretary to submit the following letter to the Agriculture and Transportation Committee regarding Senate Bill 2176:

**The Honorable Dennis Johnson, Chairman
Agriculture and Transportation Committee
Legislative Council
State Capitol
Bismarck, ND 58505**

Dear Chairman Johnson:

Thank you for your invitation to comment on the feasibility and desirability of creating a road train pilot program as discussed in Senate Bill 2176 (2019).

The Industrial Commission oversees the Department of Mineral Resources (DMR) and the North Dakota Pipeline Authority—DMR regulates oil and gas development and the Pipeline Authority focuses on pipelines and the transporting of energy commodities. I have contacted the Directors of these entities asking for any comments on creating a road train pilot program. After reviewing the minutes from your prior meetings, they commented that they would be interested in a study being done by the Upper Great Plains Transportation Institute on this topic. They had no other comments to provide on the creation of a road train pilot program.

If you have questions, please contact me at kfine@nd.gov.

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

Ms. Fine presented a recommendation for the Commission's consideration regarding transfers of Bank of North Dakota earnings to the N.D. University System as outlined in HB 1003. House Bill 1003 authorized the transfer of BND profits in the amount of \$10,000,000 for the Tier II Capital Building Funds and \$7,000,000 for the Tier III Capital Building Fund Pool. The law states that the Industrial Commission "shall transfer" to the North Dakota University System (NDUS) institutions the amounts noted, or so much of the sum as may be necessary.

BND management has been working with NDUS on the process to facilitate these transfers. Therefore, they are recommending at this time that the Industrial Commission approve the transfers up to \$10,000,000 for Tier II Capital Building Funds and up to \$7,000,000 for the Tier III Capital Building Fund Pool from BND current earnings and accumulated undivided profits as directed in House Bill 1003. It is noted that it will be the responsibility of the NDUS to determine if the matching funds required in the law have been obtained by each University System institution prior to requesting a transfer from the Bank.

In addition, House Bill 1003 in Section 32 also authorized the transfer of BND profits for Campus Network Upgrades in an amount up to \$3,000,000. It is requested that the Commission authorize the transfer of up to \$3,000,000 from BND current earnings and accumulated undivided profits upon receipt of a request from the Commissioner of Higher Education for campus network upgrades.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission authorizes transfers from the Bank of North Dakota's current earnings and accumulated undivided profits to the North Dakota University System pursuant to House Bill 1003 for the 2019-2021 biennium as follows:

- **Up to \$10,000,000 for the Tier II Capital Building Funds**
- **Up to \$7,000,000 for the Tier III Capital Building Fund Pool**
- **Up to \$1,500,000 for the University of North Dakota campus network upgrades**
- **Up to \$1,500,000 for the North Dakota State University campus network upgrades**

and further noting that it is the responsibility of the North Dakota University System to determine if the matching funds required in the law have been obtained by each University System institution prior to requesting a transfer from the Bank. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Fine presented the April 24, 2020 non-confidential Industrial Commission meeting minutes.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the April 24, 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.

OIL & GAS RESEARCH PROGRAM

Ms. Andrea Pfennig, Industrial Commission Deputy Executive Director, presented a budget modification request on G-047-091, Energy of North Dakota, for consideration. Due to Covid-19, some of the planned activities such as CookFests and Teacher Seminars will not be able to occur. As a result, the North Dakota Petroleum Foundation is requesting to shift the unspent funds in those budget categories to advertising.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Industrial Commission Executive Director/Secretary that in response to health guidelines issued because of COVID-19, budget modifications be allowed for Contract No. G-047-091 and authorizes the Industrial Commission Executive Director/Secretary to amend Contract No. G-047-091, "Energy of North Dakota" submitted by the North Dakota Petroleum Foundation as follows:

Remove:

- **\$16,394 from Cookfest budget line item;**
- **\$5,981 from Safety & Environment budget line item;**
- **\$6,000 from Education Sessions budget line item and**
- **\$29,589 from Teacher Seminar budget line item**

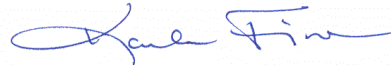
Add:

- **\$57,964 Advertising budget line item.**

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 1:45 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary

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.

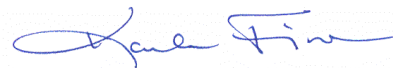
On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

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