

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on December 20, 2021 beginning at 1:00 p.m.
Governor's Conference Room - State Capitol

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

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

Governor Burgum called the Industrial Commission meeting to order at approximately 1:00 p.m. and the Commission took up North Dakota Mill business.

NORTH DAKOTA MILL (Mill)

State Auditor, Josh Gallion, presented the State Auditor's Stewardship Award to the North Dakota Mill. The Commission congratulated the Mill on their efforts. Ms. Dub stated that the Mill will continue to strive for excellence.

CLEAN SUSTAINABLE ENERGY AUTHORITY (CSEA)

Ms. Karlene Fine, Industrial Commission Executive Director/Secretary, provided a financial report noting that \$25,000,000 had been appropriated for the CSEA Program during the regular legislative session for CSEA grants and \$20,000,000 was appropriated from federal funds to CSEA in the special session for the purpose of providing hydrogen development grants. The \$25,000,000 transfer has been made and the dollars have been deposited in the Fund and interest is being earned on that Fund. There is currently legislative authority to expend \$45,000,000 plus interest. The \$20,000,000 appropriation is from federal funds and federal regulations require that the funds must be obligated by December 31, 2024 and expended by December 31, 2026. These federal dollars will not be transferred to the CSEA Fund until such time that a payment is made to the approved project recipient.

Mr. Al Anderson, CSEA Director, provided a summary of the CSEA process for the Grant Round 1 applications including the number of applications received, the review process that was followed for each application and the final recommendation by the CSEA of the six applications being considered today. In total, approximately 30 people reviewed the applications being presented to the Commission for consideration today.

Mr. Anderson reviewed the steps that had been taken at the CSEA Technical Committee level and at the Authority level regarding potential conflicts of interest. On the advice of the Ethics Commission Executive Director, they had followed the Industrial Commission Ethics Policy guidance which is that if a member has any question about whether there is a conflict of interest that the member declare the potential conflict of interest and that the Committee would then vote whether to allow them to vote on the application. At the Technical Committee level, the Committee had voted not to allow the EERC representative to vote on the application that the EERC had submitted and the EERC representative had not voted on that application.

Mr. Todd Steinwand, Bank of North Dakota President, reviewed the process that the Bank followed regarding the applications. He stated that the applications were evaluated in the same manner as any loan request received by the Bank. The credit staff completed their review, asked questions of the applicant, and completed a credit write-up that then went to the Bank's Investment Committee which consists of six senior credit employees. The focus of their analysis is whether the project is economically feasible....does

not necessarily mean the project is a bankable loan at this time, but whether the project is economically viable.

Key learnings from the first grant round were reviewed. Working with applicants regarding confidentiality took considerable time. Forms will be modified to try to add clarity to the process. The scoring form for the Technical Committee will be adjusted as well, switching from a “Feasible/Not Feasible” recommendation to a “Fund/Do Not Fund.” Mr. Anderson will reach out to the CSEA members for feedback on how else the process can be improved.

Mr. Anderson noted that bill sponsors for the program, Representative Bosch and Senator Patten, provided comments at the CSEA Technical Committee meeting. Their advice was that the Technical Committee should carefully consider each project and not be a rubber stamp. The funds do not need to all be awarded at once. Projects that are funded should be truly transformative, should be projects that will proceed on a timely basis and as the CSEA prioritizes the applications consider what the level of non-state funding is compared to what is being asked from the state.

It was determined through the process that pilot projects seem to be the best fit for grant funds, large scale development projects were appropriate for both types of funding, and loans were the best fit for commercialization projects.

Mr. Anderson presented a detailed overview of the non-confidential information on each of the following six applications along with information from the Technical Reviewers and the CSEA recommendations:

- C-01-01 – Dakota H2 Hub; Submitted by Bakken Energy LLC; Total Project Costs: \$1.75 billion; Amount Requested: \$10 million (grant) \$100 million (loan); CSEA recommendation: \$10 million (grant); \$80 million (loan)
- C-01-03 – Cerilon GTL; Submitted by Cerilon GTL ND Inc; Total Project Costs: \$2.8 billion; Amount Requested: \$10 million (grant) \$50 million (loan); CSEA recommendation \$7 million (grant) \$40 million (loan)
- C-01-07 – Unlocking the Full Potential of Produced Water as a Key Component of Clean Sustainable Energy; Submitted by Wellspring Hydro; Total Project Costs: \$2.2 million; Amount Requested: \$1.1 million (grant); CSEA recommendation \$1 million (grant)
- C-01-08 – Commercial Deployment of Carbon Dioxide Capture & Geological Sequestration in McLean County; Submitted by Midwest AgEnergy Group; Total Project Costs: \$58.8 million; Amount Requested: \$5.2 million (grant); CSEA recommendation \$3 million (grant)
- C-01-09 – Front-End Engineering and Design for CO2 Capture at Coal Creek Station; Submitted by EERC; Total Project Costs: \$15,065,200; Amount Requested: \$7,532,600 (grant); CSEA recommendation \$7 million (grant)
- C-01-10 – Solving North Dakota Flaring: Mobile Flare Gas Capture & Fueling Platform Expansion; Submitted by Valence Natural Gas Solutions; Total Project Costs: \$44 million; Amount Requested: \$2.5 million (grant) \$15 million (loan); CSEA recommendation \$15 million (loan)

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 54-63.1-06 and 44-04-19.2(1) enter into executive session for the purpose of considering Clean Sustainable Energy Authority confidential information. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum noted that the Commission will be meeting in executive session to consider Clean Sustainable Energy Authority confidential information and following the completion of CSEA business the Commission will enter into executive session regarding Bank of North Dakota business pursuant to N.D.C.C. 6-09-35 to consider those items listed on the agenda under Bank of North Dakota confidential business. Only Commission members, their staff, the CSEA Director and BND staff will participate in the CSEA executive session and only Commission members, their staff, and BND staff will participate in the BND executive session.

Governor Burgum reminded the Commission members and those present in the executive sessions that the discussion during these executive sessions must be limited to those items listed on the agenda. The executive sessions in total were anticipated to last 45-60 minutes. Any formal action by the Commission regarding the confidential items listed on the agenda would occur after reconvening in open session.

The CSEA closed session began at 1:45 p.m.

CLEAN SUSTAINABLE ENERGY AUTHORITY EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

Others in Attendance:

Leslie Bakken Oliver	Governor's Office
Reice Haase	Governor's Office
Dutch Bialke	Department of Agriculture
Al Anderson	Clean Sustainable Energy Authority
Todd Steinwand	Bank of North Dakota
Kelvin Hullet	Bank of North Dakota
Karlene Fine	Industrial Commission Office

The Clean Sustainable Energy Authority executive session ended at 2:23 p.m. The BND executive session began at 2:24 p.m.

BANK OF NORTH DAKOTA EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

Others in Attendance:

Leslie Bakken Oliver	Governor's Office
Dutch Bialke	Department of Agriculture
Todd Steinwand	Bank of North Dakota
Kelvin Hullet	Bank of North Dakota
Karlene Fine	Industrial Commission Office

The BND executive session ended at approximately 2:35 p.m. and the Commission reconvened in open session.

Governor Burgum noted that during the CSEA closed session, the Commission considered confidential information on the CSEA applications. During the BND closed session, the Commission made motions regarding two loan requests.

On roll call votes, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye on both motions. The motions carried unanimously.

CLEAN SUSTAINABLE ENERGY AUTHORITY (CSEA)

The Industrial Commission then took up each of the applications and CSEA recommendations.

C-01-01 – Dakota H2 Hub; Submitted by Bakken Energy LLC; Total Project Costs: \$1.75 billion; Amount Requested: \$10 million (grant) \$100 million (loan); CSEA recommendation: \$10 million (grant); \$80 million (loan)

The purpose of the Dakota H2 Hub is to establish one of the largest and the lowest cost clean hydrogen production hubs in the country in the shortest amount of time, continue employment of the Synfuels Plant jobs, become a center of innovation and economic development, reduce site CO₂ emissions by 6 million tons/yr. and put North Dakota on a path to permanently solving its natural gas flaring problem.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the Clean Sustainable Energy Authority recommendation and provide financial assistance for the Dakota H2 Hub project submitted by Bakken Energy LLC as a grant in the amount of \$10,000,000 with the grant funding coming from the SB 2345 Hydrogen Projects allocation on a 1:1 basis and a loan in the amount of \$80,000,000 with the following terms:

- **Loan funds be released when the purchase agreement between Basin Electric and Bakken Energy for the purchase of the Dakota Gasification Company is signed.**
- **Bakken Energy may draw the \$80 million loan in two \$40 million segments. The first segment is January 1, 2022 to December 31, 2023. The second is from January 1, 2024 to December 31, 2026.**
- **Loans will be interest only for 2-years from the date when the total amount of \$40 million is drawn from each segment.**
- **P&I payments at 2% with a 15-year amortization starting in 2027.**
- **BND express its preference for the \$80 million be repaid to the CSEA when the project goes to permanent financing.**

and further authorizes the Industrial Commission Executive Director to execute a contract with Bakken Energy LLC regarding the grant funding and the Bank of North Dakota to negotiate and administer the loan to Bakken Energy LLC.

Governor Burgum raised a question regarding CSEA members that reported a potential conflict of interest and the process that was followed. (It was indicated that a copy of a letter that had been sent to the Ethics Commission regarding conflicts of interest had just been received by the Governor's Office today.) Mr. Anderson indicated that CSEA had followed the guidance and procedure provided by Mr. David Thiele, Ethics Commission Executive Director, regarding voting. It was clarified that if the individuals that had stated potential conflicts of interest had not voted, it would not have changed the outcome of any of the recommendations being presented today. It was the consensus of the Commission that CSEA should

continue to follow guidance from the Ethics Commission. In addition, Attorney General Stenehjem noted that he would like CSEA to consult with his office as well on the issue of conflicts of interest/voting.

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

C-01-03 – Cerilon GTL; Submitted by Cerilon GTL ND Inc; Total Project Costs: \$2.8 billion; Amount Requested: \$10 million (grant) \$50 million (loan); CSEA recommendation \$7 million (grant) \$40 million (loan)

The proposed Gas to Liquids (GTL) plant will utilize 240 MMCFD of ND natural gas to convert to high value products. This will help ensure that ND oil production can continue and will not be constrained by lack of local market or transportation to market. The GTL facility recycles natural gas into products that are more green and environmentally friendly. Carbon capture and underground sequestration are planned that would result in approximately 2 million tons of CO₂/yr. injected.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the Clean Sustainable Energy Authority recommendation and provide financial assistance for the Cerilon GTL project submitted by Cerilon GTL as a grant in the amount of \$7,000,000 with the condition that Cerilon provide a private equity match on a 1:1 basis before grant funding is distributed and a loan in the amount of \$40,000,000 with the following terms:

- **Loan funds be released over a 2.5 year period based on agreed to milestones between Cerilon and BND.**
- **Loans will be interest only for 3-years from the date when the \$40 million is drawn down.**
- **Eight years of principal and interest payments at 2% interest rate after interest only period.**
- **BND express its preference for the \$40 million be repaid to the CSEA when the project goes to permanent financing.**

and further authorizes the Industrial Commission Executive Director to execute a contract with Cerilon GTL regarding the grant funding and the Bank of North Dakota to negotiate and administer the loan to Cerilon GTL. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

C-01-07 – Unlocking the Full Potential of Produced Water as a Key Component of Clean Sustainable Energy; Submitted by Wellspring Hydro; Total Project Costs: \$2.2 million; Amount Requested: \$1.1 million (grant); CSEA recommendation \$1 million (grant)

The proposed project will execute the final phase of front-end engineering (FEL-3) and design to recover resources with commercial value from a waste stream from the Bakken oil fields; Confirm produced water feedstock process through pilot testing; and complete validation of lithium extraction process.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the Clean Sustainable Energy Authority recommendation and provide financial assistance for the Unlocking the Full Potential of Produced Water as a Key Component of Clean Sustainable Energy project submitted by Wellspring Hydro as a grant in the amount of \$1,000,000 with the condition that only 50% of the funding be distributed until such time as Wellspring Hydro has initiated the permitting process with the appropriate permitting/regulatory authorities and further authorize the Industrial Commission Executive Director to execute a contract with Wellspring Hydro regarding the grant funding. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

C-01-08 – Commercial Deployment of Carbon Dioxide Capture & Geological Sequestration in McLean County; Submitted by Midwest AgEnergy Group; Total Project Costs: \$58.8 million; Amount Requested: \$5.2 million (grant); CSEA recommendation \$3 million (grant)

The project is to capture and permanently sequester the CO₂ stream associated with an ethanol biorefinery. The production of renewable fuels has had a marked impact on the economy of ND and these facilities provide a value-added market to agricultural producers. There are numerous markets for biofuels that have aggressive carbon reduction goals. This translates into a financial opportunity for renewable fuel producers who can reduce the carbon intensity of the fuel they produce. Success in such an endeavor would ensure market access and enhance the financial stability of existing biorefineries.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the Clean Sustainable Energy Authority recommendation and provide financial assistance for the Commercial Deployment of Carbon Dioxide Capture & Geological Sequestration in McLean County project submitted by Midwest AgEnergy Group as a grant in the amount of \$3,000,000 and further authorize the Industrial Commission Executive Director to execute a contract with Midwest AgEnergy Group regarding the grant funding. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

C-01-09 – Front-End Engineering and Design for CO₂ Capture at Coal Creek Station; Submitted by EERC; Total Project Costs: \$15,065,200; Amount Requested: \$7,532,600 (grant); CSEA recommendation \$7 million (grant)

Carbon capture and storage is vital to continued operation of the Coal Creek Station and an important step toward the State's goal of carbon neutrality. Implementing carbon capture technology allows fossil fuels to continue to meet the nation's energy demand, while also reducing CO₂ emissions. The proposed FEED study is the next step in a due diligence process in project development and is intended to assist in securing financing for CO₂ capture at Coal Creek via the 45Q tax incentive program of the Federal Government.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the Clean Sustainable Energy Authority recommendation and provide financial assistance for the Front-End Engineering and Design for CO₂ Capture at Coal Creek Station project submitted by the Energy and Environmental Research Center as a grant in the amount of \$7,000,000 with the condition that Rainbow Energy Center provide a 1:1 match as grant funding is disbursed and further authorize the Industrial Commission Executive Director to execute a contract with the Energy and Environmental Research Center. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

C-01-10 – Solving North Dakota Flaring: Mobile Flare Gas Capture & Fueling Platform Expansion; Submitted by Valence Natural Gas Solutions; Total Project Costs: \$44 million; Amount Requested: \$2.5 million (grant) \$15 million (loan); CSEA recommendation \$15 million (loan)

This project proposes expansion of proprietary Flare Gas Capture ("FGC") and natural gas fueling platform in North Dakota.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the Clean Sustainable Energy Authority recommendation and provide financial assistance for the Solving North Dakota Flaring: Mobile Flare Gas Capture & Fueling

Platform Expansion project submitted by Valence Natural Gas Solutions as a loan in the amount of \$15 million with the following conditions:

- **loan parameters are for 2-years of interest only payments followed by 7-years of Principal and Interest payments at a 2% interest rate.**
- **BND recommends this administered loan be implemented in cooperation with a lead financial institution selected by the company. The lead bank can provide monitoring of the loan and assist with implementation of covenants. It also assists the company in establishing its relationship for future activities beyond the CSE loan.**
- **The company is also open to discussion on cash sweeps based on company profitability to enable faster paydown of the loans.**
- **Lead financial institution and BND will determine securitization of collateral as available.**

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

The Commission thanked Mr. Anderson for his hard work. They also thanked the Legislature for their foresight in creating the Authority and providing the funding, and the work of the Bank of North Dakota and the Clean Sustainable Energy Authority members.

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 26696, Order 29539 – termination of Subdivision – Lodgepole Unit, Stark County

This unit was an intermittent flood well in a single Lodgepole mound. It is now surrounded by a Dickinson subdivision. The well has been plugged and reclaimed as part of the CARES Act funding. All notices and required documentation has been submitted/filed with the Stark County Offices and the Oil and Gas Division.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order No. 29539 issued in Case No. 26696 terminating the Subdivision-Lodgepole Unit, Stark County, ND, operated by Scout Energy Management LLC and rescinding all previous unit orders be approved this 20th day of December, 2021. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Case 28887, Order 31433 – construction of a treating plant, McKenzie County

This order involves a proposed treating plant and slurry fracture injection project located between Alexander and Williston. This proposed order authorizes the Oil and Gas Division to proceed with the permitting process for the treating plant. The record in the case is clean based on the hearing that was held. After the record was closed, several issues were raised by various parties regarding road access, location to residential area, etc. Under DMR Oil and Gas Division authority an investigation has been initiated. Mr. Helms stated that all issues will be thoroughly investigated, and, based on the findings of the investigation could result in the permit not being issued or that there would be stipulations placed on the permit. The Division has the authority to place stipulations on the permit. The action to be taken by the Commission today is to deal with what is on the record from the hearing. Based on the clean record the staff is recommending approval of the order which authorizes the Oil and Gas Division to move forward with the permitting process.

In response to questions, Mr. Helms stated that the investigation will drive the permitting process. That process will include all the parties that are involved or that have raised a concern about the location of the

plant. If the Director determines that a permit should not be granted Order 31433 (if approved) will automatically expire in a year or staff will bring it back to the Commission to be rescinded.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order No. 31433 issued in Case No. 28887 authorizing GMJS Services LLC to construct and operate a treating plant to be located in the NE/4 NW/4 of Section 7, T.152N., R.101W., McKenzie County, North Dakota in accordance with NDAC § 43-02-03-51 be approved this 20th day of December, 2021. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Case 29066, Order 31617 – creation of spacing unit

Mr. Helms outlined the six things that the proposed order does. The site of this spacing unit is immediately to the southeast of Williston and crosses the Missouri River. What was discussed at hearing was whether this should be a 1280-acre spacing unit with 8 wells or a 1920-acre spacing unit with 10 wells. He reviewed the pros and cons of the two options. He noted that there is currently one well in this area which flares 42% of its gas. Gas capture in that area is incredibly difficult. Under the 1280-acre spacing unit proposal gas capture would continue to be difficult. The gas capture would be 100% with the 1920-acre spacing unit. He noted that there is no controversy on bullet points 1, 2, 4 and 5 between the two operators. Bullet points 3 and 6 is where there were opposing proposals.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order No. 31617 issued in Case No. 29066 establishing the following spacing units be approved this 20th day of December, 2021:

- **1280 acres consisting of Sections 4 and 5, T.153N., R.100W., allowing up to ten horizontal wells in the Last Chance-Bakken Pool**
- **1920 acres consisting of Sections 4, 5, and 6, T.153N., R.100W., allowing one horizontal well in the Last Chance-Bakken Pool**
- **1920 acres consisting of Sections 30 and 31, T.154N., R.100W. and Section 6, T.153N., R.100W., allowing up to ten horizontal wells in the Catwalk-Bakken Pool**
- **2560 acres consisting of Sections 32 and 33, T.154N., R.100W. and Sections 4 and 5, T.153N., R.100W., allowing up to two lease-line horizontal wells in the Catwalk-Bakken Pool**
- **3840 acres consisting of Sections 29, 30, 31, and 32, T.154N., R.100W. and Sections 5 and 6, T.153N., R.100W., allowing up to two lease-line horizontal wells in the Catwalk-Bakken Pool**
- **1280 acres consisting of Sections 30 and 31, T.154N., R.100W. allowing one horizontal well in the Catwalk-Bakken Pool.**

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

Mr. Helms presented an amended Hearing Officer designation Resolution for consideration.

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

**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:

Steven B. Nelson, 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

David Tabor, Field Supervisor, Oil and Gas Division

This Resolution shall be effective as of January 1, 2022.

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

Mr. Hicks presented the Oil and Gas Division Quarterly Report. (A copy is available in Commission files.) It is anticipated that the rig count will rise with six more rigs this spring and an additional six more in the summer. Currently, the industry is trying to hire crews.

The producing well count continues to rise while wells waiting on completion has decreased. Production of barrels of oil per day has been consistent. Gas is starting to reach high levels even though oil production has not come back up as quickly. Gas capture has been at 92%. Prices for oil and gas have doubled compared to a year ago. Inspections are down due to several field inspector vacancies that need to be filled. There was discussion on the workforce issues that all state agencies are facing and the need for a statewide approach to recruiting and retaining state employees. Mr. Helms noted the efforts that their office is taking in reaching out to students in the western part of the state at the high schools, career academies and Williston State College.

There is a record volume of gas being sold. The amount of gas captured is expected to increase in the coming months with gas plant expansions planned and coming online. There was 600 million cubic feet of gas plant capacity added in 2021.

Six wells were permitted on an Area of Interest site with the wells being placed on an existing well pad.

Regarding complaints, Mr. Hicks noted that Blue Appaloosa appealed to District Court which upheld the administrative law judge decision. Blue Appaloosa has now appealed to the Supreme Court.

There were three new complaints. Specialized Technological Threading, Inc. involves reclamation that has not been completed. An administrative office hearing has been requested. LHD Liquids Management LLC had a situation similar to Blue Appaloosa in which they started dirt work prior to receiving a permit. A consent agreement was signed and LHD Liquids Managements paid a \$25,000 penalty with a suspended penalty of \$118,106 for two years. The Scout Energy Management, LLC complaint involves abandoned, producing and UIC wells. An administrative officer hearing has been requested.

A discussion was held regarding gas capture. Mr. Helms indicated that there are three areas that continue to have high gas flaring for which mitigation strategies are being identified and evaluated. All three areas are hampered by federal restrictions and especially the challenges on the reservation. There are many hurdles to get over, including new acquisitions by operators and retirements of individuals who have been working on these issues. However, if those three areas could be addressed, the gas capture percentage would be in the mid-90% range. It was noted that industry seems to be finding solutions and care should be taken to avoid hampering innovation with regulations.

PUBLIC FINANCE AUTHORITY (PFA)

Ms. Ament, PFA Executive Director, presented the following State Revolving loan application for consideration.

McLean Sheridan Rural Water District – increase of \$2,004,000 (\$4,660,000 total)

This is Phase 2 of the project and will add approximately 65 new customers, improve system capacity by adding parallel water lines and expand the water treatment plant by adding a second treatment train for redundancy and expanded capacity. The population that will be served by the system totals 3,425 which includes 5 bulk users which serve a population of 1,134.

The requested term for the Drinking Water State Revolving Fund (DWSRF) loan is 30 years. McLean Sheridan Rural Water District (District) will issue revenue bonds payable with water user fees. The average annual payment for the revenue bonds will be \$198,863. The reserve requirement will be \$218,225 and the 120% coverage requirement will be \$238,635.

The District provides water services to 978 rural connections in Sheridan and McLean Counties and provides bulk water to the cities of Coleharbor, Turtle Lake, McClusky, Pick City and Mercer. The residential monthly base rate is \$59 per user and the volume charge is \$7.21/1,000 gallons. In two years, the District anticipates a monthly base rate increase of \$8 per user. With the combined phases of this project, it is anticipated 124 new residential users will be added over the next three years. These additional users along with the anticipated rate increase will generate annual revenue of approximately \$193,584. Annual operations and maintenance expenses are anticipated to increase by \$30,000. The District has reserves of \$263,453. The increase in new customers coupled with the existing net operating revenue will be sufficient to meet the 120% net operating coverage requirement.

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

RESOLUTION APPROVING LOAN FROM DRINKING WATER STATE REVOLVING FUND

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

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

WHEREAS, the McLean Sheridan Rural Water District (the “Political Subdivision”) has requested a \$2,004,000 loan increase to their previously approved \$2,656,000 loan (total \$4,660,000) from the Program for Phase two of the project to add 65 new customers, improve system capacity by adding parallel water lines, and

**expand the water treatment plant by adding a second treatment train for redundancy and expanded capacity;
and**

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

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

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

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

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

Ms. Ament reported on the PFA Advisory Committee Clean Water SRF loan approval as follows.

Valley City – increase of \$609,000 (\$859,000 total)

The project consists of street reconstruction, watermain, storm and sanitary sewer replacement on 7th Avenue NW between 2nd Street SW and 4th Street NW, 4th Street NW between 8th Avenue NW and 7th Avenue NW and 2nd Ave Northeast between 5th Street NE and 7th Street NE. The requested term is 20 years for the CWSRF loan. The City will issue improvement bonds payable with special assessments. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City will levy a general deficiency tax in the event that the revenues from the collection of special assessments are not sufficient to pay the debt service on the improvement bonds.

Ms. Ament presented proposed amendments to NDPFA Loan Policy P-7 for consideration. This change will make the funding more accessible. There is not a history of defaults, and it is believed that this will not result in increased defaults.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the amended NDPFA Loan Policy P-7 as follows:

- **Change references from Department of Health to Department of Environmental Quality.**
- **B. Loan Approval and Closing. After a loan application has been approved and the Department has confirmed its approval for the project, the political subdivision must execute and deliver all required loan closing documents within twelve months. All loan closing documents are subject to review and approval by the Office of the Attorney General or its Special Assistant Attorney General. If a loan is not closed within twelve months of loan approval, a political subdivision may be required to: 1) provide**

current audited or unaudited financial statements or other information, as requested by the PFA, before the loan may be closed; or 2) the borrower may be required to reapply for a loan.

- 7. All Program loans must be repaid from a dedicated source of revenue. A political subdivision must evidence its obligation under the loan agreement by issuing municipal securities which are approved by the Attorney General for purchase by the PFA. For revenue supported obligations, net operating revenue for the appropriate enterprise fund must be equal to or greater than ~~12~~10% of the amount needed to pay the average annual debt service on the municipal securities and all other debt payable from and secured by the net revenues. The fees to be charged to users of the system or facility must be adjusted as needed to maintain the required net operating revenue coverage amount during the term of the loan. The PFA may require that a reserve fund be established by the political subdivision in the amount permitted under the federal tax laws as a reasonably required reserve or replacement fund. The PFA may also require that approval be requested from the PFA for the issuance of any additional debt supported by the pledged revenues, or that a political subdivision certify that the net operating revenue coverage requirement will continue to be met after the issuance of the additional bonds.

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

Ms. Ament reported on the \$389,200,000 Legacy Fund Infrastructure Program Bonds, Series 2021 sale. The PFA competitively sold the Series 2021 Bonds on December 9th, 2021 to finance the costs of a portion of the Fargo Diversion Project, the Resources Trust Fund, the Infrastructure Revolving Loan Fund under N.D.C.C. Section 6-09-49, the Highway Fund, and an agricultural products development facility at North Dakota State University. The PFA received five bids, as summarized below.

<u>Bidder</u>	<u>Net Interest Cost</u>	<u>True Interest Rate</u>
J.P. Morgan Securities LLC*	\$121,718,794.50	2.6785%
Wells Fargo Bank, N.A.	\$122,662,369.96	2.7245%
TD Securities	\$126,287,249.19	2.7853%
Morgan Stanley & Co, LLC	\$126,961,339.41	2.7938%
Citigroup Global Markets, Inc.	\$137,108,190.99	3.0373%

**Low bidder.*

PFM Financial Advisors reviewed the results of the PFA’s Series 2021 Bonds with regard to prevailing market conditions. PFM believes that the Authority’s Series 2021 Bonds were appropriately priced relative to other issues sold or trading in the secondary market during the same period. While the goal was 2.5%, PFM believes that the final all-in true interest cost of 2.6955% for the Series 2021 Bonds are favorable to the PFA in light of prevailing market conditions.

Under other business, Ms. Ament presented a resolution for consideration noting that this was previously approved in October. The revisions reduce the bond amount and change the year to 2022. It was noted that there is only \$50 million in new money being included in this bond sale due to the large amount of federal funds becoming available.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the following resolution be adopted.

RESTATED SERIES RESOLUTION FOR UP TO
\$110,000,000
NORTH DAKOTA PUBLIC FINANCE AUTHORITY
STATE REVOLVING FUND PROGRAM BONDS

WHEREAS, the North Dakota Public Finance Authority (the “Authority”) is duly constituted as an instrumentality of the State of North Dakota exercising public and governmental functions under the operation, management and control of the Industrial Commission of North Dakota (the “Industrial Commission”), pursuant to Chapter 6-09.4, North Dakota Century Code (the “Act”);

WHEREAS, pursuant to the Act, the Authority is authorized to issue bonds and to make loans to political subdivisions of the State of North Dakota and certain other entities through the purchase of municipal securities and other obligations;

WHEREAS, the Legislative Assembly of North Dakota has established a revolving loan fund (the “Clean Water State Revolving Fund” or “Clean Water SRF”) pursuant to Chapter 61-28.2, North Dakota Century Code (the “Clean Water SRF Act”) to be maintained and operated by the North Dakota Department of Environmental Quality (the “Department”) to provide for loans for the design, construction and rehabilitation of wastewater treatment facilities and certain other activities in accordance with Title VI of the Clean Water Act (the “Clean Water Program”);

WHEREAS, the Legislative Assembly of North Dakota has established a revolving loan fund (the “Drinking Water State Revolving Fund” or “Drinking Water SRF”) pursuant to Chapter 61-28.1, North Dakota Century Code (the “Drinking Water SRF Act”) to be maintained and operated by the Department to provide for loans for expenditures on public water systems and certain other activities in accordance with the Safe Drinking Water Act (the “Drinking Water Program”);

WHEREAS, the Authority has previously issued and there are outstanding under the Drinking Water SRF and Clean Water SRF the State Revolving Fund Program Bonds, Series 2011A, Series 2012A, Series 2015A, Series 2016A and Series 2018A (together, the “Outstanding Bonds”);

WHEREAS, the Authority’s outstanding State Revolving Fund Program Bonds, Series 2011A (the “Series 2011A Bonds”) are subject to redemption and prior payment at the option of the Authority on any date at par plus accrued interest;

WHEREAS, the Outstanding Bonds are secured by an Amended and Restated Master Trust Indenture dated as of July 1, 2011, as amended by a First Supplemental Master Trust Indenture dated as of July 1, 2015 (the “Master Trust Indenture”), as provided therein;

WHEREAS, the Master Trust Indenture authorizes the issuance of bonds in one or more series pursuant to a Series Resolution authorizing each series;

WHEREAS, the Industrial Commission has determined that, subject to the conditions described herein, it is necessary and expedient that the Authority issue at this time a series of tax-exempt bonds to be designated “North Dakota Public Finance Authority State Revolving Fund Program Bonds, Series 2022A ” (the “Series 2022A Bonds”) to refund the outstanding Series 2011A Bonds and to provide additional funds for the Clean Water Program and Drinking Water Program to provide financing for loans made or to be made to various political subdivisions of the State of North Dakota and other eligible borrowers whose applications may be approved from time to time (together the “Borrowers”) through the purchase of debt obligations issued by such Borrowers (the “Municipal Securities”); and

WHEREAS, the Series 2022A Bonds are sometimes referred to herein as the “Bonds”; and

WHEREAS, there have been presented to this Commission, or are on file in the office of the Executive Director of the Authority, copies of the following documents: (i) the Master Trust Indenture; (ii) the form of Continuing Disclosure Certificate (the “Continuing Disclosure Certificate”) to be executed by the Executive Director; and (iii) forms of Loan Agreements (the “Loan Agreements”) between the Authority and the Borrowers;

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of North Dakota that the Series Resolution for up to \$110,000,000 North Dakota Public Finance Authority State Revolving Fund Program Bonds adopted October 19, 2021 is hereby amended and restated to read as follows:

ARTICLE I
Authority and Definitions

Section 1.01. Series Resolution. This Series Resolution is adopted in accordance with the provisions of Sections 2.01 and 2.03 of the Master Trust Indenture and pursuant to the authority contained in the Act, the Clean Water SRF Act and the Drinking Water SRF Act. It is hereby determined pursuant to the Act that the reason for the issuance of the Series 2022A Bonds and the purposes thereof are, with respect to the Series 2022A Bonds, to provide financing for loans to Borrowers through the purchase of Municipal Securities for essential projects at borrowing costs substantially below the costs available to the Borrowers in the private bond markets.

Section 1.02. Definitions. All terms defined in Article I of the Master Trust Indenture or in the Act shall have the same meanings, respectively, in this Series Resolution and with respect to the Series 2022A Bonds as such terms are given in said Article I of the Master Trust Indenture or the Act. References herein to the “Executive Director” are to the Executive Director of the Authority, except the attestation hereof by the Executive Director and Secretary of the Commission.

ARTICLE II
Authorization of Series 2022A Bonds

Section 2.01. Authorization of Series 2022A Bonds. Pursuant to the Master Trust Indenture, a Series of State Revolving Fund Program Bonds to be designated as the “Series 2022A Bonds” is hereby created and authorized to be issued in such aggregate principal amount as the Executive Director may determine, but not to exceed \$110,000,000.

Section 2.02. Purposes. The Series 2022A Bonds are being issued to (a) refund the Series 2011A Bonds, (b) provide funds to be loaned to Borrowers by purchasing the Municipal Securities issued or to be issued by Borrowers, (c) pay costs of issuance, and (d) reimburse funds previously allocated for the purpose of making loans.

Section 2.03. Date, Payment Dates and Series 2022A Maturities. The Series 2022A Bonds shall be dated as of the date of delivery, or such other date as the Executive Director may determine, except that Series 2022A Bonds issued on or subsequent to the first interest payment date shall be dated as of the most recent date to which interest has been duly paid or provided for.

The Series 2022A Bonds shall bear interest payable semiannually on April 1 and October 1 in each year, commencing April 1, 2022.

The Series 2022A Bonds shall mature on October 1 in each of the years and in the principal amounts as the Executive Director may determine, provided that the final maturity shall not be later than October 1, 2041.

Section 2.04. Sinking Fund Installments. The Series 2022A Bonds maturing on any date or dates (the “Term Bonds”) may be subject to mandatory redemption prior to their stated maturity by payment of Sinking Fund Installments, upon notice as provided in Article III of the Master Trust Indenture, on October 1 in each of the years and amounts as follows, in each case at a redemption price of 100% of the principal amount of such Term Bonds or portions thereof to be so redeemed, together with accrued interest to the redemption date on such mandatory redemption dates and in such amounts as the Executive Director may determine.

Section 2.05. Optional Redemption. The Series 2022A Bonds identified by the Executive Director shall be subject to redemption and prior payment at the option of the Authority on October 1 of the year designated by the Executive Director and on any date thereafter in whole or in part in such amounts from such maturities as the Authority

may determine and by lot within a maturity at the redemption prices determined by the Executive Director together with accrued interest to the redemption date.

Section 2.06. Interest Rates. The Series 2022A Bonds shall bear interest at the rates per annum determined by the Executive Director, but not to exceed a true interest cost of 5.00%.

Section 2.07. Denominations, Numbers and Letters. Each Series 2022A Bond shall be in an integral multiple of \$5,000 and shall be numbered separately from R-1 consecutively upwards in order of issuance.

Section 2.08. Sale of Bonds; Acceptance of Offer. The Series 2022A Bonds shall be sold on the basis of competitive bids. Upon receipt of an offer for the purchase of Series 2022A Bonds which she determines to be acceptable, the Executive Director is authorized to execute the official bid form or other document to evidence acceptance of the successful bid.

Section 2.09. Official Statement. The Executive Director shall prepare a Preliminary Official Statement of the Authority in respect to the Series 2022A Bonds, in substantially the form of the draft Preliminary Official Statement on file in the office of the Executive Director with all such changes as the Executive Director may approve, and a final Official Statement shall be distributed with such changes, omissions, insertions and revisions as the Executive Director shall deem advisable in order to make such Official Statement a complete and accurate disclosure of all material facts to prospective purchasers of the Series 2022A Bonds.

Section 2.10. Loan Agreements. The forms of Loan Agreements proposed to be entered into between the Authority and the Borrowers are hereby approved in substantially the forms 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.

Section 2.11. Letter of Representations. The form of Blanket Letter of Representation heretofore executed by the Authority to Depository Trust Company is hereby confirmed and said Blanket Letter of Representation shall be applicable to the Series 2022A Bonds.

Section 2.12. Continuing Disclosure. The form of Continuing Disclosure Certificate in substantially the form on file is approved and shall be executed by the Executive Director in substantially the form on file with all such changes as the Executive Director may approve, which approval shall be conclusively evidenced by the execution thereof. The Continuing Disclosure Certificate shall constitute a contractual obligation of the Authority as provided therein.

Section 2.13. Mandatory Redemption. The Series 2022A Bonds shall be subject to mandatory redemption to the extent that the Executive Director determines such a provision to be necessary to comply with the provisions of Section 149(f) of the Internal Revenue Code.

Section 2.14. Other Documents. The Executive Director is authorized to execute such other documents, instruments and certificates and to take such action as may be necessary or convenient in connection with the issuance and sale of the Series 2022A Bonds and maintenance of the tax exempt status thereof and to take such further actions as may be necessary or convenient for the performance of the Trust Indenture.

ARTICLE III

Use of Proceeds of Bonds; Allocations

Section 3.01. Allocations. Pursuant to Section 4.01 of the Master Trust Indenture, the Commission specifies that the Clean Water Portions and the Drinking Water Portions of each scheduled payment of principal and interest on each maturity of the Series 2022A Bonds shall be as determined by the Executive Director to reflect (i) that the Series 2022A Bonds issued for the Clean Water Program loans are allocated to the Clean Water Portion as provided in the Master Trust Indenture, and (ii) that the Series 2022A Bonds issued for Drinking Water Program loans are allocated to the Drinking Water Portion as provided in the Master Trust Indenture. Within each of the Drinking Water

Portions and Clean Water Portions of principal and interest payments on the Series 2022A Bonds, the Executive Director shall determine the State Match Portion and Leveraged Portion as provided in the Master Trust Indenture. The final percentages, based on the sale results and federal regulations, shall be certified by the Executive Director to the Trustee, subject to modification pursuant to an Allocation Order under the Master Trust Indenture.

Section 3.02. Application of Proceeds. The proceeds of the Series 2022A Bonds shall initially be deposited in the Funds and Accounts established under the Master Trust Indenture as follows:

(a) A portion of the accrued interest, if any, on the Series 2022A Bonds shall be deposited in the Leveraged Bond Accounts of the Drinking Water Bond Fund and Clean Water Bond Fund, and any remainder of the accrued interest on the Series 2022A Bonds shall be deposited as determined by the Executive Director. The amounts shall be determined by the Executive Director.

(b) The amount required to refund the Authority's outstanding Series 2011A Bonds as determined by the Executive Director shall be applied to such purpose.

(c) Amounts determined by the Executive Director shall be deposited in the Clean Water Administration Fund and Drinking Water Administration Fund for payment of the Costs of Issuance of the Series 2022A Bonds and other authorized purposes as allocated by the Executive Director.

(d) The remaining proceeds of the Series 2022A Bonds shall be deposited in the State Match and Leveraged Loan Accounts of the Drinking Water Loan Fund and the State Match and Leveraged Loan Accounts of the Clean Water Loan Fund and to reimburse other Funds and Accounts for amounts drawn to fund loans, all as determined by the Executive Director.

(e) The Executive Director may on behalf of the Authority issue such instructions to the Trustee as she may deem necessary or appropriate to adjust the balances on deposit in the Funds and Accounts under the Master Trust Indenture to reflect the proper loan sources and other accounting matters consistent with the Master Trust Indenture and federal regulations and to determine the appropriate amounts in each of the Funds and Accounts at the time of delivery of the Series 2022A Bonds. All such instructions shall be reported to this Commission.

It is hereby determined that, because a reserve fund is not reasonably required for the Series 2022A Bonds under Section 148 of the Internal Revenue Code, investment of additional deposits to the Reserve Funds under the Master Trust Indenture would be restricted as to yield, the Series 2022A Bonds shall not be Covered Bonds under the Master Trust Indenture and no deposits shall be made to the Clean Water Reserve Fund or Drinking Water Reserve Fund. The procedures for requesting funds from the Legislature under Sections 5.06 and 6.06 of the Master Trust Indenture do not apply to the Series 2022A Bonds.

ARTICLE IV

Form, Execution and Other Details of Bonds

Section 4.01. Form of Bond. The Series 2022A Bonds, the Registrar's Authentication Certificate, and the form of assignment shall be in substantially the form set forth in Exhibit A to the Master Trust Indenture, with all such insertions as may be consistent with this Series Resolution.

Section 4.02. Execution and Delivery. The Series 2022A Bonds shall be executed and delivered as provided in the Master Trust Indenture.

Section 4.03. Uses of Securities Depository; Book-Entry Only System. The provisions of this Section shall take precedence over the provisions of the Master Trust Indenture to the extent they are inconsistent therewith.

(a) The Depository Trust Company ("DTC") has agreed to act as securities depository for the Series 2022A Bonds, and to provide a Book-Entry Only System for registering the ownership interests of the

financial institutions for which it holds the Series 2022A Bonds (the “DTC Participants”), and for distributing to such DTC Participants such amount of the principal and interest payments on the Series 2022A Bonds as they are entitled to receive, for redistribution to the beneficial owners of the Series 2022A Bonds as reflected in their records (the “Beneficial Owners”).

(b) Initially, and so long as DTC or another qualified entity continues to act as securities depository, the Series 2022A Bonds shall be issued in typewritten form, one for each maturity in a principal amount equal to the aggregate principal amount of each maturity, shall be registered in the name of the securities depository or its nominee, and shall be subject to the provisions of this Section. While DTC is acting as the securities depository, the Series 2022A Bonds shall be registered in the name of DTC’s nominee, CEDE & CO; provided that upon delivery by DTC to the Authority and the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of CEDE & CO., the words “CEDE & CO.” in this Resolution shall refer to such new nominee of DTC.

With respect to Series 2022A Bonds registered in the name of a securities depository or its nominee, the Authority and the Trustee shall have no responsibility or obligation to any DTC Participant or other person with respect to the following: (1) the accuracy of the records of any securities depository or its nominee with respect to any ownership interest in the Series 2022A Bonds, (ii) the delivery to any DTC Participant or any other person, other than DTC, of any notice with respect to the Series 2022A Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than DTC, of any amount with respect to the principal of or interest on the Series 2022A Bonds. The Trustee shall pay all principal of and interest on the Series 2022A Bonds only to or upon the order of DTC, and all such payments shall be valid and effective to fully satisfy and discharge the Authority’s obligations with respect to the principal and interest on the Series 2022A Bonds to the extent of the sum or sums so paid. So long as the Book-Entry Only System described in this Section is in effect, no person other than DTC shall receive an authenticated Series 2022A Bond.

(c) Upon receipt by the Authority and the Trustee of written notice from the securities depository to the effect that it is unable or unwilling to discharge its responsibilities under the Book-Entry Only System, the Trustee shall issue, transfer and exchange Series 2022A Bonds of the initial series as requested by the securities depository in appropriate amounts, and whenever the securities depository requests the Authority and the Trustee to do so, the Authority and the Trustee shall cooperate with the securities depository in taking appropriate action after reasonable notice (i) to arrange for a substitute depository willing and able, upon reasonable and customary terms, to maintain custody of the Series 2022A Bonds, or (ii) to make available Series 2022A Bonds registered in whatever name or names the Beneficial Owner registering ownership, transferring or exchanging such Series 2022A Bonds shall designate, in accordance with clause (f) or clause (g) below, whichever is applicable.

(d) In the event the Authority determines that it is in the best interests of the Beneficial Owners that they be able to obtain printed Series 2022A Bonds, the Authority may so notify the securities depository and the Trustee, whereupon the securities depository shall notify the Beneficial Owners of the availability through the securities depository of such printed Series 2022A Bonds. In such event, the Authority shall cause to be prepared and the Trustee shall issue, transfer and exchange printed Series 2022A Bonds, fully executed and authenticated, as requested by the securities depository in appropriate amounts and, whenever the securities depository requests, the Authority and the Trustee shall cooperate with the securities depository in taking appropriate action after reasonable notice to make available printed Series 2022A Bonds registered on the Bond Register in whatever name or names the Beneficial Owners entitled to receive Series 2022A Bonds shall designate, in accordance with clause (f) or clause (g) below, whichever is applicable.

(e) Notwithstanding any other provisions of this Resolution to the contrary, so long as any Series 2022A Bond is registered in the name of a securities depository or its nominee, all payments of principal and interest on the Series 2022A Bond and all notices with respect to the Series 2022A Bond shall be made and given, respectively, to the securities depository as provided in the Blanket Representation Letter given to it by the Authority.

(f) In the event that the Book-Entry Only System established pursuant to this Section is discontinued, except as provided in clause (g), the Series 2022A Bonds shall be issued through the securities depository to the Beneficial Owners.

(g) In the event of termination of the Book-Entry Only System, the Authority shall have the right to terminate, and shall take all steps necessary to terminate, all arrangements with the securities depository described herein, and thereafter shall issue, register ownership of, transfer and exchange all Series 2022A Bonds as provided in Article II hereof. Upon receipt by the securities depository of notice from the Authority, the securities depository shall take all actions necessary to assist the Authority and the Trustee in terminating all arrangements for the issuance of documents evidencing ownership interests in the Series 2022A Bonds through the securities depository. Nothing herein shall affect the securities depository's rights under clause (e) above.

ARTICLE V
Special Covenants

The Commission and the Authority covenant and agree with the persons who at any time are Holders and Owners of the Series 2022A Bonds that so long as any Series 2022A Bonds remain outstanding and unpaid:

Section 5.01. Observe Master Trust Indenture, Series Resolution and Loan Agreements. The Commission and the Authority will faithfully keep and observe all the terms, provisions and covenants contained in the Master Trust Indenture, this Series Resolution and the Loan Agreements.

Section 5.02. Maintenance of Tax-Exempt Status. Neither the Commission nor the Authority shall take, or permit the Political Subdivision to take, any action that would cause the Series 2022A Bonds to be "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended. The Commission and the Authority shall comply with all the rebate requirements imposed under Section 148(f) of the Internal Revenue Code of 1986, as amended, and regulations thereunder, which are necessary to preserve the tax exempt status of the Series 2022A Bonds, including (if applicable) the requirement to make periodic calculations of the amount subject to rebate thereunder and the requirement to make all required rebates to the United States. The Authority agrees to use any moneys on deposit in any Fund or Account maintained under the Master Trust Indenture to pay any such rebate (or penalty in lieu thereof) when due to the extent permitted by the Master Trust Indenture. In addition, the Authority shall make no investment of funds or take or permit the Political Subdivision to take any action that would cause the Series 2022A Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations thereunder. The Executive Director is hereby authorized to make on behalf of the Authority any elections under the provisions of Section 148 of the Internal Revenue Code of 1986 and regulations thereunder as she may deem appropriate. All terms used in this Section 5.02 shall have the meanings provided in the Internal Revenue Code of 1986, as amended, and regulations thereunder. The Executive Director shall execute any certificates and take such action as may be necessary or appropriate to establish and maintain the tax-exempt status of the Series 2022A Bonds.

Section 5.03. Redemption of Series 2011A Bonds. The Executive Director shall provide notice of the redemption of the Series 2011A Bonds, with such redemption to occur on such date as she shall determine not later than 90 days after issuance of the Series 2022A Bonds and shall take such other action as may be necessary to effect the redemption of the Series 2011A Bonds.

ARTICLE VI
Miscellaneous

Section 6.01. Amendments. This Series Resolution may be amended as provided in the Master Trust Indenture.

Section 6.02. Determinations. All determinations of the Executive Director required or permitted to be made hereunder shall be in writing, and the Executive Director shall file a copy thereof with the Trustee and the Secretary of the Industrial Commission.

Section 6.03. Effective Date. This Series Resolution is effective immediately.

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

STUDENT LOAN TRUST

Mr. Jared Mack, Eide Bailly, provided a report on the June 30, 2021 external audit of the Student Loan Trust. It was a clean audit with an unmodified opinion. There were no internal control deficiencies identified and no corrected or uncorrected financial misstatement.

BANK OF NORTH DAKOTA (BND)

Mr. Mack, Eide Bailly, provided a report on the following June 30, 2021 external audits:

- Ag PACE Fund
- PACE Fund
- Medical Facility Infrastructure Loan Fund
- Rebuilders Loan Program
- Addiction Counselors Internship Loan Program
- Infrastructure Revolving Loan Fund
- School Construction Revolving Loan Fund
- Small Employer Loan Fund
- Innovation Technology Loan Fund (LIFT)
- Community Water Facility Loan Fund

They were all clean audits with an unmodified opinion. There were no internal control deficiencies identified. No corrected or uncorrected financial misstatements.

There was a finding associated with the COVID-19 PACE Recovery Program along with an audit adjustment. Originally, the audit was to cover the CPR 1 program, which was an interest buy down program using BND funds. It was decided to include the CPR 2 program in the audit, which was a grant program that used federal funds. Because CPR 2 involved the expenditure of federal funds, it needed to be included in a financial statement audit as well as a single audit. An adjustment was required to include the funds in the financial statement and include a schedule of expenditures of federal awards because the audit had already been started. A finding was necessary because of the material adjustment. However, the testing itself did not identify any instances of noncompliance or findings related to the use of the funds. Mr. Steinwand noted that BND saved \$6,000-\$7,000 by doing one audit, and felt the money saved was worth the finding.

Mr. Steinwand presented Resolutions designating a depository of the Bank of North Dakota for the following entities: (Copies of the Resolutions are available in the Commission files.)

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the Resolution designating JPMorgan Chase as a depository for the Bank of North Dakota as presented and available in the Commission files.

And further moved that

The Industrial Commission approve the Master Services Agreement with US Bank and authorize the Industrial Commission Executive Director and Secretary to execute the Master Services Agreement

on behalf of the Industrial Commission and the Bank of North Dakota as presented and available in the Commission files.

And further moved that

The Industrial Commission approve the Resolution designating First Horizon Bank as a depository for the Bank of North Dakota and authorize the Industrial Commission Executive Director and Secretary to certify the adoption of the Resolution as presented and available in the Commission files.

And further moved that

The Industrial Commission approve the Resolution for Depository Accounts and Treasury Management Services with Wells Fargo and authorize the Industrial Commission Executive Director and Secretary to execute the Authorization Certificate on behalf of the Industrial Commission and the Bank of North Dakota as presented and available in the Commission files.

And further moved that

The Industrial Commission approve the Resolutions authorizing the Bank of North Dakota to Open and Maintain Accounts and Use Services of the Federal Reserve Bank and authorize the Industrial Commission Executive Director and Secretary to certify the adoption of the Resolutions on behalf of the Industrial Commission and the Bank of North Dakota as presented and available in the Commission files.

And further moved that

The Industrial Commission approve the Resolutions authorizing the Bank of North Dakota to request Advances(s) and be a Borrower of the Federal Reserve Bank and authorize the Industrial Commission Executive Director and Secretary to certify the adoption of the Resolutions on behalf of the Industrial Commission and the Bank of North Dakota as presented and available in the Commission files.

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

Mr. Steinwand presented a resolution authorizing certain BND employees the authority to execute loan instruments for the Commission's consideration.

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

**RESOLUTION OF THE INDUSTRIAL COMMISSION
AUTHORIZING BANK OF NORTH DAKOTA EMPLOYEES TO EXECUTE LOAN INSTRUMENTS**

North Dakota Century Code §6-09-26 states that within the scope of authority granted by the Industrial Commission, the President may execute instruments on behalf of the Bank, including any instrument granting, conveying, or otherwise affecting any interest in or lien upon real or personal property. Other officers or employees of, and legal counsel to, the Bank may execute instruments on behalf of the Bank when authorized by the Industrial Commission.

THEREFORE, BE IT RESOLVED by the Industrial Commission that the following named officers and employees of the Bank are hereby authorized to execute all documents and instruments necessary to finalize and close any applicable loan; and to execute and acknowledge conveyances, transfers, assignments,

releases, satisfactions, and other instruments affecting liens on, title to, and interests in real or personal property on behalf of the Bank;

President and Chief Executive Officer
Senior Vice President, Chief Business Development Officer
Senior Vice President, Chief Credit Officer
Senior Vice President, Chief Lending Officer
Special Assets Manager
Business Bankers
Collection and Recoveries Manager

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

Mr. Steinwand presented proposed amendments to the Credit Review Function Policy for the Commission's consideration. These would be internal changes designed to make staff more efficient. The Commission would continue to get the same information that they are currently receiving.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem to approve the following amendments to the Credit Review Function Policy:

Mission of Credit Review Function

To assist BND in achieving its mission and objectives by providing credit risk related analysis and advisory services founded on the review of loan and related servicing activity, ~~the issuance of credit quality reports~~, and the raising of awareness of members of the organization, other state agencies and external entities regarding credit risk analysis and associated issues.

Primary Objectives and Scope of Work

- To act as an internal control function within the Bank of North Dakota by providing credit risk management services, primarily through the loan review and post fund review process.
- Develop risk-based loan review programs and related services.
- Monitor adherence to loan policies, procedures and guidelines and make recommendations, as warranted.
- Inform Bank management-, and the BND Advisory Board of the credit portfolio issues identified during loan review and present quarterly through credit review reports, and ~~the North Dakota Industrial Commission regarding the credit quality of the Bank's loan portfolio through the issuance of reports.~~
- Credit Review will issue an annual report and work plan to the BND Advisory Board Audit Committee for review and approval.
- ~~Analyze the adequacy of the loan loss reserve and recommend changes, when warranted.~~
- Monitor the quality of loan file documentation and make recommendations, when warranted.
- ~~Analyze correspondent financial institution data for use in fed fund determination and e~~Conduct collateral inspection services for letters of credit pledged for public deposits.
- Administer the use and control of the loan documentation software tracking system to ensure integrity of the system and its data.
- Ensure the status of lending related issues identified through the credit review process are reported to the appropriate levels of authority.

Authority, Responsibility and Reporting

Credit Review has full authority to review and participate in any activity involving the monitoring of credit risk functions at the Bank of North Dakota. Lending staff are responsible for monitoring the credit quality of their assigned loan portfolios subject to independent reviews conducted by Credit Review.

The Credit Review function seeks to be responsible and objective in its approach. Every effort is made to be accurate, appropriate, factual, objective and to have a consistent application of credit standards when

reviewing individual loans, loan programs, and other lending and loan asset quality items. Credit Review personnel strive to perform all work in accordance with professional standards usual to and expected within the financial services industry.

Credit Review is a component of Risk Management. The ~~Credit Review~~Banking Compliance Manager is responsible for oversight of the Credit Review Function. The ~~Credit Review~~Banking Compliance Manager reports administratively to the Chief Risk Officer, and functionally to the BND Advisory Board Audit Committee. This reporting line helps ensure the necessary independence of the function.

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

Mr. Steinwand presented proposed amendments to the Criminal History Record and Employment Credit Check Policy for consideration. Currently, BND waits for the results until hiring individuals which can take a month. This would allow BND to hire the individual, noting that if the results are negative, the employment would be terminated.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem to approve the following amendments to the Criminal History Record and Employment Credit Check Policy.

Criminal History Record Checks:

1. In accordance with N.D.C.C. 12-60-24 and at the direction of the Bank President, criminal history record checks are conducted on:

- All external and inter-agency applicants following their acceptance of an *offer* of employment to fill a regular, fully funded position. Criminal history record check results ~~must~~will be reviewed ~~prior to final candidate beginning work as part of the hiring process~~ at BND.
- All temporary employees prior to beginning work at BND. ~~Criminal history record check results must be reviewed prior to temporary employee beginning work at BND.~~ At the discretion of the Service Area manager, for temporary employees and interns returning with less than a one-year gap in employment with BND since last date of employment, the criminal history record review may be based solely on the Advantage Credit Bureau's Multi-State Criminal search, the Global Homeland Security search, and the National Sex Offender Search.
- Contractors, at the discretion of the Service Area manager, prior to beginning work at BND. Criminal history record check results must be reviewed prior to contractor beginning work at BND.

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

Mr. Steinwand presented the nonconfidential Bank of North Dakota Advisory Board October 21, 2021 meeting minutes.

Under other business. Mr. Steinwand provided follow up student loan information previously requested by the Commission. Of the North Dakota borrowers currently attending school:

- 38% attend North Dakota schools.
- 1,005 (approximately 26%) attend outside of the state.

For out-of-state borrowers currently attending school:

- 22% attend North Dakota schools,
- 28% attend schools outside of the state.

In response to a question, Mr. Steinwand clarified that many of the out-of-state borrowers attend schools from the surrounding region. BND covers the guarantee fee for North Dakota residents. Out-of-state residents have to pay the guarantee fee.

Governor Burgum asked how many of the out-of-state students are attending Concordia, MSUM, etc. Mr. Steinwand stated he will provide that information at a later date.

ADMINISTRATION

Ms. Fine presented the November 29, 2021 non-confidential meeting minutes for consideration.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the November 29, 2021 non-confidential meeting minutes be approved. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Fine presented a recommendation regarding the transfer of Bank of North Dakota earnings to N.D. University System as outlined in HB 1506 Section 2. The law states that the Industrial Commission "shall transfer" to the North Dakota University System institutions the amounts noted, or so much of the sum as may be necessary. On May 20, 2020, the Commission authorized those transfers. Transfers were made by the Bank as the funds were requested during the 2019-2021 biennium. However, one of the institutions did not request a portion of their funding prior to June 30, 2021.

During the recent special session, the Legislature passed House Bill 1506, Section 2 which states that the Commission shall transfer \$750,000 to the University of North Dakota from the current earnings and accumulated undivided profits of the Bank of North Dakota for expenses associated with campus network upgrades, for the period beginning December 1, 2021 and ending June 30, 2023.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director and authorize the Bank of North Dakota to transfer \$750,000 of Bank of North Dakota earnings to the University of North Dakota as outlined in House Bill 1506 Section 2. 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 North Dakota Mill President compensation for consideration. According to the contract, he is eligible for a bonus of 30% of his salary based on a formula.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director/Secretary and authorize a bonus for the North Dakota Mill President Vance Taylor for FY 2021 in the amount of \$100,178. 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 3:53 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary