

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on March 30, 2021 beginning at 12:30 p.m.
Governor's Conference Room - State Capitol

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

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 12:30 p.m. and the Commission took up Lignite Research, Development & Marketing Program business.

LIGNITE RESEARCH, DEVELOPMENT & MARKETING PROGRAM

Ms. Karlene Fine, Industrial Commission Executive Director, provided a financial report. There is currently \$4.7 million available for projects in the small research/education/demonstration category. There is an upcoming grant round with an application deadline of April 1, 2021.

Mr. Mike Holmes, Lignite Energy Council, gave an update on research and development regarding rare earth elements, including the following projects:

- Rare Earth Element Extraction and Concentration at Pilot-Scale from North Dakota Coal-Related Feedstocks by University of North Dakota Institute for Energy Studies.
- Economical Extraction and Recovery of REEs and Production of Clean, Value-Added Products from Low-Rank Coal Fly Ash, by EERC.
- Sampling, Characterization, and Round-Robin Analyses of Domestic U.S. Coal-Based Resources Containing High Rare-Earth Element (HREE) Concentrations by EERC.
- Development of Low-Cost Rare Earth Element Analysis and Sorting Methods by Microbeam Technologies.

The results of the studies indicated that this is an area that merits further research and exploration in North Dakota.

Mr. Holmes presented the Lignite Research Council recommendation regarding the Grant Round 95 application for consideration.

95A: North Dakota Rare Earth and Critical Element Resource Evaluation; submitted by Microbeam Technologies, Inc.; Recommended Funding: \$529,529; Total Project Costs: \$1,059,510

The proposed project focuses on the development of rare earth element and critical mineral (REE-CM) production from selected North Dakota coal seams and sediments. The Microbeam Technologies, Inc. team would work with Great Northern Properties and Stantec to develop information on the REE-CM content of the coal seams and associated sediment, evaluate the resource potential, and assess the REE-CM extractability that can be used to determine potential economic production of 85% mixed REE-CM concentrate. An additional objective of the project would be to collect a large sample to allow simulation full scale REE extraction at UND's pilot REE processing plant, and conduct a technical and economic assessment of recovery of REE-CM.

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 “North Dakota Rare Earth and Critical Element Resource Evaluation” and authorizes the Industrial Commission Executive Director/Secretary to execute a contract with Microbeam Technologies, Inc. to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$529,529 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.

Mr. Jason Bohrer, Lignite Energy Council, provided a legislative update. Of note:

- HB 1412 relates to an exemption from the coal conversion facilities privilege tax and the imposition of a lignite research tax and the allocation of the coal conversion facilities privilege tax, and the lignite research tax. It has been rereferred to Senate Appropriations.
- HB 1452 would create a grant program that would help take work that begins at the research level to commercialization. Amendments have been adopted by the Senate and it has been rereferred to Senate Appropriations.
- SB 2152 has been signed into law. It provides a sales and use tax exemption for carbon dioxide used for secure geologic storage.
- SB 2287 has been signed into law. It requires the insurance commissioner, in consultation with the North Dakota insurance reserve fund, to study the availability, cost, and risks associated with insurance coverage in the lignite coal industry.

Discussion was held regarding a low interest loan program. Mr. Bohrer indicated that commercial demonstration can be difficult regarding research that has been proven and now needs to build the business case. ESG policies can make financing even more difficult.

PUBLIC FINANCE AUTHORITY (PFA)

Ms. DeAnn Ament, PFA Executive Director, presented a resolution to refund the CFP 2011A Bonds. The bonds are callable on June 1st and there were four loans made--two to McVille and two to Drayton. There is approximately \$2.3 million outstanding. This financing would refund the outstanding bonds and result in a \$620,000 savings. The estimated net interest costs are 2.5%. In response to a question, Ms. Ament clarified that this will be refinancing the same loans for the same communities at a lower interest rate.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem to adopt the resolution as follows:

**SERIES RESOLUTION FOR
UP TO
\$2,500,000
NORTH DAKOTA PUBLIC FINANCE AUTHORITY
CAPITAL FINANCING PROGRAM BONDS
SERIES 2021A**

WHEREAS, the Industrial Commission of the State of North Dakota (the “Commission”), acting pursuant to provisions of the North Dakota Public Finance Authority Act, Chapter 6-09.4, North Dakota Century Code (the “Act”), and pursuant to the General Bond Resolution adopted by it on March 2, 1990, as amended March 16, 1990, March 30, 1992, and May 13, 1998 (the “General Bond Resolution”), desires to authorize and direct the issuance by the North Dakota Public Finance Authority (the “Authority”) (formerly the North Dakota Municipal Bond Bank) of a Series of its Capital Financing Program Bonds (the “Bonds”);

WHEREAS, the General Bond Resolution authorizes the issuance of Bonds in one or more Series pursuant to a Series Resolution authorizing each Series;

WHEREAS, the Industrial Commission of North Dakota has determined that it is necessary and expedient that the Authority issue at this time a Series of Bonds to be designated “North Dakota Public Finance Authority Capital Financing Program Bonds, Series 2021A” (the “Series 2021A Bonds”) to provide approximately \$2,350,000 net proceeds to refund the Authority’s outstanding Capital Financing Program Bonds, Series 2011A (the “Series 2011A Bonds”) and thereby refinance loans made to the Cities of McVille and Drayton with the proceeds of the Series 2011A Bonds, all pursuant to the General Bond Resolution;

WHEREAS, the Series 2011A Bonds are subject to redemption at the option of the Authority on June 1, 2021 and any date thereafter at par plus accrued interest;

WHEREAS, funds for the payment of the Series 2021A Bonds are to be provided by a) the revenue bonds issued by the City of McVille and b) the improvement bonds issued by the City of Drayton, as the same will be amended, which bonds are referred to herein as the “Municipal Securities;”

WHEREAS, the Reserve Requirement for the Bonds is provided by the letter of credit issued by the Bank of North Dakota pursuant to the Capital Financing Program Reserve Fund Master Letter of Credit and Reimbursement Agreement (the “Reimbursement Agreement”) between the Bank of North Dakota and Authority;

WHEREAS, the Municipal Securities will mature on June 1 of each of the years and in the principal amounts determined by the Executive Director, not exceeding an aggregate of \$2,500,000, and having a final maturity not later than June 1, 2041;

WHEREAS, in connection with the issuance of the Series 2011A Bonds, the Commission received and reviewed a report of PFM Financial Advisors LLC, financial consultants to the Commission, describing the estimated costs to certain above-named entities (the “Political Subdivisions”) of borrowing for their projects through the Capital Financing Program as compared to the costs of borrowing through other alternatives available to such Political Subdivisions, copies of which are on file in the offices of the Commission.

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

ARTICLE I

Authority, Definitions and Findings

Section 1.01. Series Resolution. This Series Resolution is adopted in accordance with the provisions of Section 2.02 of the General Bond Resolution and pursuant to the authority contained in the Act.

Section 1.02. Definitions. All terms defined in Article I of the General Bond Resolution or in the Act shall have the same meanings, respectively, in this Series Resolution and with respect to the Series 2021A Bonds as such terms are given in said Article I of the General Bond Resolution or the Act.

Section 1.03. Findings. The Commission hereby determines with respect to the Political Subdivisions that the reasons for the Authority’s involvement in the bond issue through the Capital Financing Program are that (a) the net borrowing costs for the Political Subdivisions for the financings are expected to continue to be lower under the Capital Financing Program than they would be under any other borrowing method available to the Political Subdivisions, (b) issuance costs and reserves required to be funded by the Political Subdivisions are lower than would be the case under other methods so that the aggregate amount required to be borrowed by the Political Subdivisions is less than other competitive means of borrowing, and (c) the Political Subdivisions voluntarily requested refinancing through the Authority’s Capital Financing Program.

ARTICLE II

Authorization of Series 2021A Bonds

Section 2.01. Authorization of Series 2021A Bonds. Pursuant to the General Bond Resolution, a Series of Capital Financing Program Bonds to be designated as the “Series 2021A Bonds” is hereby created and authorized to be issued in the aggregate principal amount of up to \$2,500,000.

Section 2.02. Purposes. The Series 2021A Bonds are being issued to provide funds to refinance loans to the Political Subdivisions evidenced by the Municipal Securities as approved by this Commission pursuant to the Act. It is hereby found and determined in accordance with Section 2.11 of the General Bond Resolution that the Municipal Securities, as amended in connection with the issuance of the Series 2021A Bonds, will be in an amount and will mature and bear interest at rates sufficient to pay the principal of and interest on the Series 2021A Bonds when due.

Section 2.03. Date, Payment Dates, and Maturities. The Series 2021A Bonds shall be dated as of a date determined by the Executive Director to be appropriate, except that Series 2021A 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 2021A Bonds shall bear interest from their date, payable semiannually on June 1 and December 1 in each year, commencing December 1, 2021. The Series 2021A Bonds shall mature, or at the option of the purchaser be subject to mandatory redemption, on June 1 in each of the years and in the principal amounts determined by the Executive Director to be necessary to accommodate the needs of the Political Subdivisions. The Series 2021A Bonds may be issued in any amount not more than \$2,500,000 and maturing in amounts on each June 1 as determined by the Executive Director.

Section 2.04. Redemption. The Series 2021A Bonds are subject to redemption and prior payment at the option of the Authority at par plus accrued interest on a date no later than June 1, 2031, as determined by the Executive Director, and any date thereafter, in whole or in part in such order as the Executive Director may determine.

Section 2.05. Interest Rates. The Series 2021A Bonds shall bear interest at such rate or rates as the Executive Director may approve based on the public sale procedure described in Section 2.08, provided that the net interest rate for the Series 2021A Bonds shall not exceed 4.00% per annum.

Section 2.06. Denominations, Numbers, and Letters. Each Series 2021A 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 2.07. Registrar and Paying Agent. The principal of the Series 2021A Bonds shall be payable upon presentation and surrender thereof at the main office of the Bank of North Dakota, Bismarck, North Dakota, which is hereby appointed Registrar and Paying Agent under the General Bond Resolution. Interest on the Series 2021A Bonds shall be payable by wire transfer or by check or draft mailed to the registered Owners of record as of the 15th day of the month preceding each interest payment date at their registered addresses.

Section 2.08. Sale of Series 2021A Bonds. The Series 2021A Bonds shall be sold at public sale pursuant to and in accordance with the Official Terms of Offering which shall be prepared by the Executive Director in customary form and shall be mailed to prospective bidders in advance of the sale. Upon receipt and acceptance of a bid conforming to the Official Terms of Offering, the Executive Director is authorized to execute the bid form submitted by the successful bidder in acceptance thereof and to return the good faith deposits of the unsuccessful bidders.

Section 2.09. Official Statement. A Preliminary Official Statement of the Authority in respect of the Series 2021A Bonds, similar in form to previous official statements shall be prepared by the Executive Director and made available to members of the Commission, 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 2021A Bonds. The Executive Director shall sign one or more copies of such final Official Statement on behalf of the Authority, and at least one such signed copy shall be filed with the permanent records of the Commission.

Section 2.10. Loan Agreement. The forms of Loan Agreement heretofore entered into between the Authority and the Political Subdivisions have been approved and the Executive Director is hereby authorized to execute amendments thereto to reflect debt service reductions corresponding to the debt service reductions resulting from the refunding of the Series 2011A Bonds.

Section 2.11. Findings. As required by the General Bond Resolution it is hereby determined that the issuance of and application of the proceeds of the Series 2021A Bonds will not adversely affect the cash flow from the Municipal Securities available to pay the principal, interest and Sinking Fund Installment on the remaining Bonds when due or violate the provisions of any Loan Agreement.

ARTICLE III **Use of Proceeds of Series 2021A Bonds**

Section 3.01. Reserve Fund Deposit; Letter of Credit. The Authority has received a letter of credit provided by the Bank of North Dakota in accordance with the Reimbursement Agreement (the “Letter of Credit”) in an amount at least equal to the largest amount of money required by the terms of the Series 2021A Bonds to be paid on maturing principal of and interest on the Series 2021A Bonds in any period of 24 consecutive months (the “Series Reserve Fund Requirement”), less such amounts as may be deposited in the Reserve Fund from the proceeds of the Series 2021A Bonds as directed by the Executive Director or from funds deposited by the Political Subdivisions. The Executive Director is authorized to deposit up to one half of the Reserve Fund Requirement into the Reserve Fund from Series 2021A Bond proceeds. The proceeds of any draw on the Letter of Credit are pledged to the Reserve Fund and may be applied only for the purposes for which the Reserve Fund may be applied. The Authority shall make a draw on the Letter of Credit at any time funds thereunder are necessary to pay principal of or interest on Bonds issued under the General Bond Resolution when due. In the event of a draw on the Letter of Credit which has not been reimbursed by legislative appropriation, the Authority shall reimburse the Bank of North Dakota only after payment of the Series 2021A Bonds and solely from amounts on deposit in the Series 2021A Account of the Reserve Fund, subject and subordinate to the prior pledge to the holders of Bonds under the General Bond Resolution.

Section 3.02. Deposit to Costs of Issuance Fund. Upon receipt of the proceeds of sale of the Series 2021A Bonds, the Authority shall deposit in the Costs of Issuance Fund from the proceeds of the Series 2021A Bonds the sum determined by the Executive Director to be used to pay Costs of Issuance of the Series 2021A Bonds in accordance with the provisions of the General Bond Resolution.

Section 3.03. Deposit to Optional Redemption Account of Redemption Fund. The Authority shall deposit all other proceeds derived from the sale of the Series 2021A Bonds which are not deposited in the Reserve Fund or Cost of Issuance Fund in the Optional Redemption Account of the Redemption Fund, which is hereby created, to be applied to the redemption of the Series 2011A Bonds. Prior to the issuance of the Series 2021A Bonds the Authority shall have received an opinion of Bond Counsel that such application will not adversely affect the tax- exempt status of any Series of Bonds. The Series 2011A Bonds shall be called for prior redemption on a date determined by the Executive Director for which notice of redemption may be given following issuance of the Series 2021A Bonds.

ARTICLE IV **Form, Execution and Other Details of Series 2021A Bonds**

Section 4.01. Form of Series 2021A Bonds. The Series 2021A Bonds, the Registrar’s Authentication Certificate and the form of assignment shall be in substantially the form set forth in Exhibit A to the General Bond Resolution, with all such insertions as may be consistent with this Series Resolution and the successful bid. The approving legal opinion of bond counsel may be printed on the reverse side of the Bonds and certified by the Executive Director.

Section 4.02. Execution and Delivery. The Series 2021A Bonds shall be executed by the facsimile signatures of the Chairman and Executive Director and delivered as provided in the General Bond Resolution.

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 2021A Bonds that so long as any Series 2021A Bonds remain outstanding and unpaid:

Section 5.01. **Observe General Bond Resolution, Series Resolution, and Loan Agreement.** The Commission and the Authority will faithfully keep and observe all the terms, provisions and covenants contained in the General Bond Resolution, 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 Subdivisions to take, any action that would cause the Series 2021A Bonds to be “private activity bonds” (other than “qualified 501(c)(3) 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 2021A 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 General Bond Resolution to pay any such rebate (or penalty in lieu thereof) when due. In addition, the Authority shall make no investment of funds or take or permit any Political Subdivisions to take any action that would cause the Series 2021A Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations thereunder. 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 as may be necessary or appropriate to establish the tax-exempt status of the Bonds.

Section 5.03. **Continuing Disclosure.** The Continuing Disclosure Certificate proposed to be executed and delivered in connection with the Bonds is hereby approved and the Authority’s undertaking therein shall be a contractual obligation of the Authority for the benefit of the holders of the Bonds.

ARTICLE VI
Book-Entry Bonds

Section 6.01. **Depository.** The Bonds shall be initially issued in the form of a separate single typewritten or printed fully registered bond. Upon initial issuance, the ownership of each such Bond shall be registered in the registration books kept by the Bond Registrar in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York, and its successors and assigns (“DTC”). Except as provided in Section 6.03 hereof, all of the outstanding Bonds shall be registered in the registration books kept by the Bond Registrar in the name of Cede & Co., as nominee of DTC.

With respect to Bonds registered in the registration books kept by the Bond Registrar in the name of Cede & Co., a nominee of DTC, the Authority, the Bond Registrar and the Paying Agent shall have no responsibility or obligation to any broker dealers, banks and other financial institutions from time to time for which DTC holds Bonds as securities depository (the “Participants”) or to any other person on behalf of which a Participant holds an interest in the Bonds, including but not limited to any responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Participant or any other person other than a registered owner of Bonds, as shown by the registration books kept by the Bond Registrar, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any Participant or any other person, other than a registered owner of Bonds, or any amount with respect to principal of, premium, if any, or interest on the Bonds. The Authority, the Bond Registrar and the Paying Agent may treat and consider the person in whose name each Bond is registered in the registration books kept by the Bond Registrar as the holder and absolute owner of such Bond for the purpose of payment of principal, premium and interest with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Paying Agent shall pay all principal of, premium, if any, and interest on the Bonds only to or on the order of

the respective registered owners, as shown in the registration books kept by the Bond Registrar, and all such payments shall be valid and effectual to fully satisfy and discharge the Authority's obligations with respect to payment of principal of, premium, if any, or interest on the Bonds to the extent of the sum or sums so paid. No person other than a registered owner of Bonds, as shown in the registration books kept by the Bond Registrar, shall receive a certificate Bond evidencing the obligation of the Authority to make payments of principal, premium, if any, or interest pursuant to this Bond Resolution. Upon delivery by DTC to the Executive Director of a written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions herein with respect to record dates, the words "Cede & Co." shall refer to such new nominee of DTC; and upon receipt of such a notice, the Executive Director shall promptly deliver a copy of the same to the Bond Registrar and Paying Agent, if the Bond Registrar or Paying Agent is other than the Executive Director.

Section 6.02. Letter of Representations. The blanket Representation Letter submitted to DTC, which is on file with the Executive Director, is hereby confirmed. Any Paying Agent or Bond Registrar appointed by the Authority with respect to the Bonds shall agree to take all action necessary for all representations of the Authority in the Representation Letter with respect to the Bond Registrar and Paying Agent, respectively, to at all times be complied with.

Section 6.03. Discontinuance of Book-Entry. In the event the Authority, by resolution of the Industrial Commission, determines that it is in the best interest of the persons having beneficial interests in the Bonds that they be able to obtain Bond certificates, the Authority shall notify DTC, whereupon DTC Shall notify the Participants, of the availability through DTC of Bond certificates. In such event the Authority shall issue, transfer and exchange Bond certificates as requested by DTC and any other registered owners in accordance with the provisions of this Bond Resolution. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the Authority and discharging its responsibilities with respect thereto under applicable law. In such event, if no successor securities depository is appointed, the Authority shall issue and the Bond Registrar shall authenticate Bond certificates in accordance with this Series Resolution and the provisions hereof shall apply to the transfer, exchange and method of payment thereof.

Section 6.04. Payments and Notices. Notwithstanding any other provision of this Series Resolution to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the Representation Letter.

ARTICLE VII **Miscellaneous**

Section 7.01. Amendments. This Series Resolution may be amended as provided in the General Bond Resolution.

Section 7.02. 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.

Ms. Ament reported on the following State Revolving Fund Drinking Water loan approved by the PFA Advisory Committee.

City of Davenport – \$527,000

The project will demolish the existing underground storage reservoir, booster pumping station and construct a new reservoir, booster station, controls, electrical generation set, connect to existing water distribution and install approximately 800 linear feet of 6" PVC watermain. The requested term for the loan is 20 years. The City will issue improvement bonds payable with special assessments. The improvement bonds will be

a contingent general obligation of the City, backed by the statutory requirement that the City levy a general deficiency tax in the event that the revenues from the collection of special assessments are not sufficient to pay the debt service on the improvement bond. The total project costs are \$993,000, of which the State Water Commission is providing a \$466,000 grant.

Ms. Ament provided a legislative update. Of note:

- HB 1020: This bill amends in language clarifying that Western Area Water System Authority can borrow from the DWSRF. Senate Appropriations held a hearing on March 22.
- HB 1380: This would establish the Legacy Sinking and Interest Fund. Moneys in the fund may be spent by the PFA pursuant to legislative appropriations to meet the debt service requirements for evidence of indebtedness issued by the authority. These bonds would support the economic diversification research fund, career and technical education support fund, behavioral health support fund, Legacy infrastructure project fund, State building and maintenance project fund, and information technology cybersecurity fund. Rereferred to Senate Appropriations with a hearing on March 31.
- HB 1431: This bill proposes a bond fund for infrastructure projects across the state. Each biennium, the legislative assembly will provide appropriation from the general fund, derived from Legacy Fund earnings, and Bank of North Dakota profits to meet debt service requirements for bonds funding infrastructure projects and programs. Funding includes: \$435.5 million for the Fargo Diversion Project, \$74.5 million to the Resources Trust Fund for Mouse River Flood Control, \$50 million to the Infrastructure Revolving Loan Fund, \$70 million to the Highway Fund, and \$50 million to Agriculture Products Development Center, including a Northern Crops Institute project. Rereferred to Senate Appropriations; the next hearing is on March 31.

HOUSING FINANCE AGENCY (HFA)

Mr. Dave Flohr, HFA Executive Director, presented a resolution authorizing a borrowing, and repayment thereof, in an aggregate principal amount not to exceed \$7,000,000; approving a funding loan agreement, a project loan agreement; and other related documents; and providing for other matters properly relating thereto.

On September 29, 2020, HFA issued a Declaration of "Official Intent" to issue Multifamily Revenue Bonds in the amount not to exceed \$7,000,000. The proceeds of the bonds will be used for the construction of Souris Heights, a 54-unit apartment complex located at 1400 35th Avenue NW, Minot, North Dakota. The issuance of tax-exempt bonds is required in order for a project to qualify for a noncompetitive 4% tax credit allocation. Beyond Shelter, Inc., a North Dakota Non-Profit Corporation, is proposing the new construction of 54 units of senior housing on the North side of Minot. The area is part of the City's National Disaster Resiliency (NOR) plan and the project received an award of NOR funds. The project is being developed in partnership with Minot Housing Authority which will serve as property manager once completed. Onsite supportive services will be provided by Money Follows the Person, Minot Commission on Aging, Ward County Social Services, and Minot Community Action.

Beyond Shelter received a conditional commitment from HFA for \$510,055 in 4% federal Low-Income Housing Tax Credits to be used in conjunction with tax-exempt note proceeds. The proposal is for an acquisition and new construction of the property with total project cost, including acquisition, of \$13,990,890. Beyond Shelter intends the financing to be structured as a private placement tax-exempt loan (TEL) product utilizing Wells Fargo's back-to-back tax-exempt loan program. The TEL structure involves a direct funding loan made by Wells Fargo to HFA as a governmental lender. The proceeds from the funding loan are used to advance a project loan to the developer/borrower. Under this structure, the funding loan replaces the tax-exempt bond proceeds. Under the tax-exempt loan structure there is no change in HFA's

role as conduit provider of tax-exempt financing just as in a traditional private placement bond transaction. The obligations of the governmental lender are secured only by and payable only from payments received from the borrower as in the case of the traditional bond transaction.

Mr. Flohr clarified that public transportation, along with other services, are considered when selecting projects.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem to adopt the resolution as follows:

**STATE OF NORTH DAKOTA
NORTH DAKOTA HOUSING FINANCE AGENCY
MULTIFAMILY NOTE
(SOURIS HEIGHTS)
SERIES 2021**

A RESOLUTION AUTHORIZING A BORROWING, AND REPAYMENT THEREOF, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$7,000,000; APPROVING A FUNDING LOAN AGREEMENT, A PROJECT LOAN AGREEMENT; AND OTHER RELATED DOCUMENTS; AUTHORIZING THE EXECUTION OF SUCH DOCUMENTS; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

WHEREAS, the Industrial Commission of North Dakota (the "Commission") acting in its capacity as the North Dakota Housing Finance Agency (the "Agency"), is empowered by the provisions of the North Dakota Century Code Chapter 54-17 (the "Act") to provide financing, directly or indirectly, of construction, permanent and combined construction and permanent mortgage loans for the acquisition, construction, refurbishing, reconstruction, rehabilitation or improvement of multifamily residential housing in which at least twenty percent of the units are held for occupancy by persons or families of low and moderate income; and

WHEREAS, the Agency intends to borrow on a non-recourse limited obligation basis from Wells Fargo Bank, National Association (or such other financial institution as is approved by the Executive Director, the Director of Planning and Housing Development or the Chief Financial Officer of the Agency) (the "Lender") an aggregate principal amount not to exceed \$7,000,000, the proceeds of which will be used to finance a mortgage loan for the acquisition, construction and equipping of the Souris Heights, a 54-unit affordable housing development located in Minot, North Dakota (the "Project"); and

WHEREAS, the borrowing by the Agency will be pursuant to a Funding Loan Agreement among the Agency, the Lender and Wilmington Trust, National Association, as fiscal agent (the "Fiscal Agent") (the "Funding Loan Agreement"), and the agreement to repay such borrowings shall be reflected in non-recourse revenue multifamily note (the "Note") to be issued to the Lender pursuant thereto, which Funding Loan Agreement and Note will be in substantially the forms attached hereto as Attachment A, subject to the terms, conditions and limitations established herein and in the Funding Loan Agreement; and

WHEREAS, the proceeds of the borrowing will be used to finance a loan (the "Loan") to Souris Heights, LLLP, a North Dakota limited liability limited partnership, or a similar affiliate of Beyond Shelter, Inc., a North Dakota non-profit corporation, (the "Borrower"), pursuant to a Project Loan Agreement, by and among the Agency, the Borrower and the Fiscal Agent (the "Project Loan Agreement") in substantially the form attached hereto as Attachment B; and WHEREAS, the interest on the Note is intended to qualify for a federal tax exemption under Section 142 of the Internal Revenue Code of 1986 (the "Code"), and to ensure that the Note maintains its tax exempt status, the Borrower will enter into a Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreement"), which will be in substantially the form attached hereto as Attachment C.

NOW, THEREFORE, BE IT RESOLVED:

Section 1. Findings. The Commission hereby finds and determines that:

(a) the Project financed through the issuance of the Note constitutes a "multifamily housing facility" within the meaning of Sections 54-1 7-07.2 and 54-17-07 .3(3) of the Act; and

(b) the Loan will provide the Borrower with financing for the acquisition, construction, refurbishing, reconstruction, rehabilitation or improvement of the Project; and

(c) that the Project will be of public use and will provide a public benefit.

Section 2. Approval of Funding Loan Agreement. The Funding Loan Agreement is hereby approved in the form hereinabove described, and the Executive Director, the Director of Planning and Housing Development or the Chief Financial Officer of the Agency (each, including any individual authorized to act on his or her behalf, an "Authorized Officer") is hereby authorized and directed to execute and deliver the Funding Loan Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Funding Loan Agreement.

Section 3. Authorization of the Note. The issuance, execution and delivery of the Note to the Lender is hereby authorized and approved. The final principal amount and terms of the Note shall be determined by any Authorized Officer, subject to the following conditions:

(a) The Note shall not be a general obligation of the Commission or the Agency but shall be a limited obligation payable solely and only from Loan payments and any other moneys pledged under the Funding Loan Agreement as required by the Project Loan Agreement.

(b) The Note shall: mature no later than 50 years from its date of issuance, bear interest at either a fixed rate no greater than 6.00% or a variable rate as determined by an Authorized Officer, be in an aggregate principal amount not to exceed \$7,000,000 and have the other terms and provisions (including provisions with respect to prepayment prior to maturity, if any) as described to the Commission and definitively set forth in the Funding Loan Agreement upon execution and delivery as aforesaid in Section 2 hereof.

(c) The Note shall be executed and delivered substantially in the respective forms set forth in the Funding Loan Agreement, with such additions, omissions and changes as are required or permitted by the Funding Loan Agreement.

(d) The Note shall be executed in the name of the Commission by the manual or facsimile signature of any of the members of the Commission, with the official seal of the Commission (or a facsimile thereof) impressed, imprinted or otherwise reproduced thereon, and attested by the manual or facsimile signature of any Authorized Officer, and their execution shall evidence their approval of the final terms thereof. The Note shall not be valid or obligatory for any purpose until authenticated by the manual signature of an authorized officer of the Fiscal Agent.

Section 4. Approval of Project Loan Agreement. The Project Loan Agreement is hereby approved in the form hereinabove described, and any Authorized Officer is hereby authorized to execute and deliver the Project Loan Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Project Loan Agreement.

Section 5. Approval of Regulatory Agreement. The Regulatory Agreement is hereby approved in the form hereinabove described, and any Authorized Officer is hereby authorized to execute and deliver the Regulatory Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Regulatory Agreement.

Section 6. Ratification of Prior Actions. All action previously taken by any Authorized Officer and any officers, employees, agents, members or staff of the Agency, acting alone or acting with others, within the authority granted herein, with respect to the Funding Loan Agreement, the Project Loan Agreement, the

Regulatory Agreement, the Note and a public hearing with respect to the issuance of the Note is hereby approved, confirmed and ratified.

Section 7. Execution of Tax Documents. Any Authorized Officer is hereby authorized to execute certifications as to the Agency's reasonable expectations regarding the amount and use of the proceeds of the Note, to file related forms with the Internal Revenue Service and to execute appropriate land use restriction agreements to comply with the Internal Revenue Code of 1986, as amended, particularly Sections 142 and 148 thereof.

Section 8. Additional Actions Authorized. Any Authorized Officer and any other officer, employee, agent, members or staff of the Agency, acting alone or acting with others, are each hereby authorized and directed to execute and deliver any or all other documents which may be required under the terms of the Funding Loan Agreement, the Project Loan Agreement, or the Regulatory Agreement and to take such other action as may be required or appropriate for the performance of the duties imposed thereby or to carry out the purposes thereof.

Section 9. Authorization of Authorized Officers. Any Authorized Officer is hereby authorized to deliver an Agency Certificate, or such other document as may be necessary or appropriate, at the time of issuance of the Notes which cures ambiguities, defects or omissions herein, corrects or supplements any provision herein, lessens the obligations of the Agency hereunder, or adds to the rights or options of the Agency, all in furtherance of the purposes and programs of the Agency.

Section 10. Effective Date. This Resolution shall become effective immediately.

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

Mr. Flohr provided a legislative update. SB 2014, the Industrial Commission appropriations bill has been amended to include \$15 million for HIF. All other HIF funding bills have been defeated. The transfer of HOME from Commerce and the BND transfer of servicing have gone smoothly, along with the request for FTEs.

RENEWABLE ENERGY PROGRAM

Ms. Andrea Pfennig, Industrial Commission Deputy Executive Director, presented a request for an assignment regarding R-038-048: Fargo's Smart Energy Ramp. The current contractor is eSmart Systems US, Inc., who is requesting that The Alliance Risk Group LLC be named the contractor in its place.

The project involves on-site solar, battery storage, Electric Vehicle (EV) charging, and intelligent (AI) control at the Roberts Common mixed-use facility (city parking ramp with a private residential and commercial wrap) to optimize the use of renewable energy while minimizing the impact on the utility grid. Meters and submeters will be used to analyze the impact of renewables and EV charging on the grid. The City of Fargo, which owns the parking ramp, has approved of the proposed assignment.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendation of the Industrial Commission Deputy Executive Director and authorizes the Industrial Commission Executive Director and Secretary to amend Contract # R-038-048: Fargo's Smart Energy Ramp, naming The Alliance Risk Group, LLC rather than eSmart Systems US, Inc. as the recipient of the funding. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Pfennig presented a request for a modification to R-045-054: Spiritwood Greenhouse CO2 Supply for consideration. The grant award of \$500,000 was approved with Glass Investments, greenhouse developer and operator, listed as the applicant. Glass Investments is partnering with Midwest AgEnergy (MAG) and Spiritwood Energy Park Association (SEPA) to develop a 27-acre commercial greenhouse. The objective of the project is to complete the design and installation of a CO2 collection and distribution system between Dakota Spirit and Glass Investments.

Glass Investments will be the tenant owner and operator of the greenhouse. SEPA will own and operate the infrastructure and lease it to and provide support to the tenants. Because of this, both Glass Investments and SEPA feel it is more appropriate for SEPA to be the grant recipient/contractor and handle the funds and reporting.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission grants the request of Glass Investment Projects, Inc. and Spiritwood Energy Park Association, and authorizes the Industrial Commission Executive Director and Secretary to enter into a contract with Spiritwood Energy Park Association as the recipient/contractor for the Spiritwood Greenhouse CO2 Supply Renewable Energy Program award in the amount of \$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. Pfennig provided a legislative update on the following bills.

- HB 1088: This bill removes the requirement for the Water Commission to include OHF funds as local match.
 - Status: Passed the House and Senate. Signed by the Governor on 3/17/21.
- HB 1215: This bill, as passed by the House, would develop a revolving loan fund from 10% of the funds deposited into OHF, not to exceed \$25 million. The loan program would be administered by BND.
 - Twelve stakeholder groups submitted joint testimony in opposition at the Senate Energy & Natural Resources Committee (S ENR) hearing.
 - An amendment was introduced that would have had a \$2.5 million/year carve out for 12 years for work done on national grasslands. The amendment failed 2-4.
 - Status: Received a Do Not Pass Recommendation. (S ENR)
- HB 1009: As passed by the House, the Dept. of Agriculture appropriation bill includes a transfer of \$200,000 from OHF for a soil health cover crop grant program.
 - Status: Hearing was held on March 8th (Senate Appropriations.)
- SB 2014: As passed by the Senate, \$7.5 million would be appropriated for OHF each fiscal year, totaling \$15 million for the biennium.
 - Status: Hearing was held on March 8th (House Appropriations – Gov. Ops.)

OIL & GAS RESEARCH PROGRAM (OGRP)

Ms. Fine provided a legislative update. HB 1149, which included funding for an LNG pilot project, was defeated in the House. Currently the funding for the Oil and Gas Research Fund will be impacted by language in Senate Bill 2014. The Governor's Budget proposed a funding level of \$16 million. The Senate concurred with that recommendation and have the funding level at \$16 million. Also included in SB 2014 is funding of \$14 million for a salt caverns study with the funding going through the Oil and Gas Research Fund. The House Appropriations Committee has not acted on SB 2014.

ADMINISTRATION

Ms. Fine presented the January 27 and February 16, 2021 non-confidential meeting minutes for consideration.

It is moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the January 27 and February 16, 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 gave a legislative update on the following bills.

- HB 1159: As originally proposed, the bill would have provided \$100 million for grants to support natural gas infrastructure development (pipelines, fracturing plants, etc.) This bill was amended into a study and passed House Appropriations 20-0-1. It passed on the House floor 84-7. Subsequently was heard in the Senate and passed 44-3. The Governor signed the bill on March 15.
- HB 1452: As originally proposed, this bill would create the Clean Sustainability Energy Authority (CSEA) and the CSEA Fund with \$25 million to come from the General Fund for grants, loans, etc. The first hearing was on January 28. The bill was amended by the policy committee – increased the funding level to \$40 million; added a voting member from the Renewable Energy Council, removed the '25 by '25 initiative and restated the role of the EmPower Commission. The amended bill was passed by the House on a vote of 86-7. The Senate policy committee heard the bill and added amendments which were approved last Friday. These amendments provided additional clarity for the EmPower Commission, changed the non-voting members to non-voting technical advisors, authorized the Authority to develop a loan program or loan guarantee program (note funding to be provided in HB 1431) and includes the Bank in the loan aspects of this Fund. The bill is now headed to Senate Appropriations.
- HB 1380: Creates Legacy Fund Earnings Distributions, of which 4% of future Legacy Fund earnings would be deposited in the CSEA Fund. It was amended in the House and passed the House on a vote of 71-22. Significant changes were made by the Senate based on a recommendation from the Senate Finance and Taxation Committee and the amendment bill is scheduled to be heard by Senate Appropriations on March 31st. The amendments change the level of funding for the CSEA Fund and also includes a role for the Bank of North Dakota President for one of the programs.
- HB 1431: This bill was significantly amended by the House and then passed on a vote of 74-17. As currently amended, there is funding of \$250,000,000 for the proposed loan program within the CSEA Fund and to provide \$74,500,000 for the Western Area Water Supply Authority (WAWSA) to pay their Resources Trust Fund debt. This bill is scheduled to be heard by Senate Appropriations on March 31.
- HB 1491: Development of a Roadmap for the implementation of hydrogen energy by using \$300,000 from the General Fund to be contracted through the Industrial Commission to the Energy and Environmental Research Center. Hearing was held on January 28th. The bill came out of committee 8-4-2. It failed on the floor on a vote of 38-54. However, a variation of this effort is being discussed as an amendment to SB 2014.
- SB 2014: Industrial Commission appropriation bill. SB 2014 as it passed the Senate on a vote of 47 - 0 included these key provisions:
 - Bank of North Dakota:
 - A reduction of 10 FTE rather than the 16 proposed in the Executive Budget;
 - Amendments to the Infrastructure Revolving Loan Fund statute – expands eligible infrastructure projects (similar to what was in the Prairie Dog bill); increases the

- amount of the project awards to \$40,000,000 from \$15,000,000 and sets the loan rate at 2%;
- Appropriation to General Fund remains at \$140 million; appropriation as proposed for the economic development programs - \$40 million; \$3 million for AgPUC (in the Agriculture Department appropriation bill); \$5 million to Skilled Workforce / Dual Credit Program;
- Long Term Care funding through a bonding process with bond payments coming from future Legacy Fund earnings.
- North Dakota Mill: No changes from the Executive Budget (there are no new FTE's) with increased funding for operations.
- Housing Finance Agency:
 - Residential Mortgage Servicing and Origination – duplicating the authority that the Bank has to originate residential loans. Right now, leaving the language in the BND statute as there will need to be a time period to transition all the mortgage origination and servicing to the HFA.
 - 5 new FTE – one more than what was in the Executive Budget.
 - Housing Incentive Fund at \$15 million with some new language that was proposed by Senator Kreun.
- Department of Mineral Resources: Full funding for 7 FTE and underfunded positions (Executive Budget had only funded the 7 FTEs for 1 year – no new FTE positions - \$877,756); funding of capital needs \$100,600)
- Lignite Research Program: Revised amendment for the non-matching funds.
- Oil and Gas Research Program: An additional \$6 million of funding for research projects for one more biennium – base funding is \$10 million, and they are adding \$6 million for one more biennium. This is consistent with the Executive Budget. New funding of \$14 million (General Fund derived from Legacy Fund earnings) for a salt cavern study. Funding from other than state sources at some level will be required.
- State Energy Research Center: Sunset provisions for SERC funding removed. Funding to remain at \$5 million a biennium.

DEPARTMENT OF MINERAL RESOURCES (DMR)

Mr. Lynn Helms, DMR Director, presented a request for extension of the Not Completed Waiver (NCW) Status for consideration. Last year during the pandemic, a NCW was approved. The waiver is set to expire after West Texas Intermediate (WTI) price stays above \$50/barrel for 90 days, which will occur in early April. The feedback from industry is that while the current price is economic, 2021 budgets do not allow for the \$5 million per well capital that would be required for completion. If the NCW status were revoked, it would go into Abandoned Well status. Currently there are 75 wells on NCW status. The recommendation is to extend the waiver to align with the end of 2022 DOT load limits.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission authorizes the Department of Mineral Resources Director to update and revise, as needed, the Not Completed Well Waiver Guidelines, and to grant such waivers until the 2022 Department of Transportation load restrictions are lifted. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Helms provided a legislative update. Of note:

- SB 2014: The Industrial Commission appropriations bill includes a \$14 million amendment for a salt cavern study. The House may cut it back to one well at a cost \$9.5 million. It is possible that

funds will be added for a hydrogen study. The Senate provided full funding of 7 positions where the Executive Budget had recommended funding for 1 year of the biennium, along with funds for capital expenditures in the amount of \$106,206. Mr. Helms would like an amendment addressing higher fees for carbon storage from out of state sources. The consensus of the Commission was to support proposed amendment.

- SB 2065: This bill addresses permitting and amalgamation of pore space for the underground storage of oil and gas. Northwest Landowners Association is encouraging amendments that would bring in language regarding eminent domain and the Surface Damage Act and would send Commission determinations to jury court for all nonconsenting owners. The Commission has authority based on preventing waste and protecting correlative rights. A jury trial should not be part of Industrial Commission administrative process. There is a formula that works with spacing units.
- HB 1395: Involves the appropriation of federal funds related to the pandemic. DMR has submitted a request for \$16.8 million for reclamation.

Mr. Bruce Hicks, Oil and Gas Division Assistant Director, provided a quarterly report. The number of permits are down. The number of wells waiting on completion has decreased by 138 since last quarter. This is attributed to the DUC well program utilizing federal CARES Act funds. The number of producing wells has increased. Production for the fourth quarter increased to 1.2 million barrels/day. Gas production continues to increase, but gas capture remains at 93%. Prices are starting to rebound.

Inspections are down, this is due to wells inspected for plugging and reclamation. The balance of the Abandoned Well Restoration Fund will decrease significantly as it has been utilized for reclamation expenses after CARES Act funds expired.

The gas-oil ratio continues to increase. The Outrigger plant is operational but missing the gas from XTO and likely will not begin production until 2022. The timeline for the Demicks Lake facility is unclear with an anticipated possible start date of 2022 or 2023.

Mr. Hicks provided an update on complaints. Administrative law judge hearings have been scheduled in April and May for many cases. Blue Appaloosa has appealed to district court. A complaint has been served to Scout Energy management.

The number of meters continues to rise as new wells are brought on. Some gas meter calibration tests have not been witnessed due to a lack of personnel. DMR has started cross training staff to fill this need. Regarding well construction, only ~3% of wells need remedial work. This reflects excellent cementing practices of the industry.

Mr. Hicks indicated that it is expected that the number of rigs will increase as road restrictions come off.

Mr. Hicks presented the proposed 2021 Oil and Gas Division Strategic Plan for consideration.

It was moved by Attorney General Stenejem and seconded by Commissioner Goehring to adopt the 2021 Oil and Gas Division Strategic Plan as follows:

MISSION

Encourage and promote the development, production, and utilization of oil and gas in the state in such a manner as will prevent waste, maximize economic recovery, and fully protect the correlative rights of all owners to the end that the landowners, the royalty owners, the producers, and the general public realize the greatest possible good from these vital natural resources.

GOALS

- 1. Give timely hearing, consideration, and processing to all forms and applications.**
- 2. Open communication with the Industrial Commission.**
- 3. Achieve clean audits, high employee morale and professionalism, and efficient use of division employees and assets.**
- 4. Leadership in maintaining good relationships with other state agencies, federal agencies, and the legislature.**
- 5. Service nearly 2,500 website subscribers and the data needs of seven state agencies through our current Risked Base Data Management System (RBDMS), NorthSTAR (Statewide Tracking and Reporting System), and web servers.**

IMPLEMENTATION: 1 YEAR

- 1. Provide regular quarterly reports to Industrial Commission members.**
- 2. Collaborate with State agencies, research organizations, UND and the Unmanned Aerial System startups located in North Dakota, and the oil and gas industry to develop a policy and procedure for identifying state-of-the-art pipeline monitoring systems and utilizing such systems to reduce the frequency and magnitude of pipeline spills.**
- 3. Implement NorthSTAR Project to develop web-based forms and batch systems utilizing contractors and in-house personnel to implement electronic filing of “most used” Oil and Gas Division forms.**
- 4. Provide computer and job skill training for appropriate agency staff, concentrating on virtual training opportunities through Leadership Everywhere.**
- 5. Review and revise Rules and Regulations as appropriate.**
- 6. Review and recommend revisions to Century Code as appropriate.**
- 7. Podcast DMR information to reach a broader audience.**
- 8. Develop tier-subscription services to provide daily, weekly, and monthly data downloads for industry.**
- 9. Coordinate with TOPCORP and TrainND to provide training courses for OGD staff in petroleum geology & engineering, petroleum technology, communication, and environmental management.**
- 10. Coordinate and accelerate programs with Oil and Gas Research Council and research facilities in North Dakota to determine best techniques for remediating salt and other contamination from soil surrounding legacy waste pits.**
- 11. Provide funding for North Dakota Department of Health’s Environmental Quality Restoration Fund through AWPSRF.**
- 12. Defend State’s rights with regard to hydraulic fracturing, chemical disclosure, methane emissions, oil conditioning, and other federal regulatory overreach.**
- 13. Encourage staff and website users to provide recommendations for improving and re-branding DMR website.**
- 14. Upgrade current RBDMS to a web-based platform (NorthSTAR).**
- 15. Continuously evaluate NorthSTAR system to integrate automatic uploads and decommission hand-inputted data entry practices.**
- 16. Encourage beneficial use of surplus gas to reduce surplus gas flaring emissions.**
- 17. Document institutional knowledge of senior employees and share knowledge retention techniques with other state agencies.**
- 18. Work with industry to provide adequate assurance that uneconomic wells will not be abandoned and a liability to the State of North Dakota.**
- 19. Continue to collaborate with Information Technology Division to enhance systems and telecommuting efficiency, while maintaining cybersecurity standards.**

IMPLEMENTATION: 3 YEAR

- 1. Provide regular quarterly reports to Industrial Commission members.**
- 2. Provide additional training and professional development opportunities for entire agency staff.**
- 3. Continue scanning new case and well files.**
- 4. Increase field inspection and support staffing.**
- 5. Review and revise Rules and Regulations as appropriate.**
- 6. Review and recommend revisions to Century Code as appropriate.**

7. **Continue with NorthSTAR Project developing web-based forms and batch systems for electronic filing of remaining Oil and Gas Division forms.**
8. **Upgrade drone system and software to automate drone runs with intelligent cameras and obtain effective data collection beyond visual line of sight.**
9. **Set up procedure for carbon dioxide administration.**
10. **Provide video conferencing and streaming of expert testimony at hearings. Explore live video streaming solutions utilizing credible low-cost commercial vendors.**
11. **Research, plan, and successfully transition appropriate portions of the Oil and Gas Division website to the new Drupal platform.**

IMPLEMENTATION: 5 YEAR

1. **Provide regular quarterly reports to Industrial Commission members.**
2. **Continue scanning new case and well files.**
3. **Provide training and professional development opportunities for entire staff including tuition reimbursement.**
4. **Review and revise Rules and Regulations as appropriate.**
5. **Review and recommend revisions to Century Code as appropriate.**

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

Commissioner Goehring left the meeting at this time.

Mr. Helms presented a draft welcome letter for the Williston Basin Petroleum Conference for consideration. The Commission signed the following letter.

**Twenty-Eighth Williston Basin Petroleum Conference
May 11-13, 2021
Bismarck, North Dakota**

Greetings!

Welcome, everyone to the 28th annual Williston Basin Petroleum Conference! This year marks the return of the Williston Basin Conference after what we have repeatedly called an “unprecedented” year. Through it all, industry has come together to seek creative solutions, focus on core activities, and look forward to the future of the Bakken.

This conference will continue to be one of the most dynamic environments for developing technology and solutions for some of the oil fields biggest challenges. We look forward to empowering open and positive dialogue between US and Canada as we turn the page in more ways than one.

Special thank you for the North Dakota Department of Mineral Resources, Saskatchewan Ministry of Industry and Resources, and the North Dakota Petroleum Council for offering this opportunity to stop, learn, and refocus our efforts.

To all attending, welcome and enjoy the Conference!

**Sincerely,
The North Dakota Industrial Commission**

It was moved by Attorney General Stenehjem and seconded by Governor Burgum that under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2 the Industrial Commission close the meeting to the public and enter executive session for the purpose of attorney

consultation. The purpose of the executive session will be to consult with the Commission's attorney(s) regarding current adversarial proceedings in:

- **Case No. 31-2020-CV-00198 – Northern Oil and Gas, Inc. vs. Continental Resources, Inc., Board of University and School Lands and ND Industrial Commission, et al.**
- **Case No. 08-2021-CV-00026 - Armstrong vs. North Dakota Industrial Commission**
- **Case No. 05-2019-cv-00085/Northwest Landowners Association vs. State of North Dakota, et al.**
- **Case Nos. 27662 & 27439 – NDIC vs. Vast**
- **Case No. 26327 – NDIC vs. Apollo**

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

Governor Burgum reminded the Commission members and those present in the executive sessions that the discussion must be limited to the announced purpose for entering into executive session which was anticipated to last between 30-40 minutes. Commission members, their staff, and DMR staff were asked to join the executive session at this time and the public was asked to leave the room.

The DMR executive session began at 2:05 p.m.

DMR EXECUTIVE SESSION

Members Present:

Governor Doug Burgum

Attorney General Wayne Stenehjem

DMR Personnel Present:

Lynn Helms (Remotely)

Bruce Hicks

Katie Haarsager

Others in Attendance:

Leslie Bakken Oliver Governor's Office

Reice Haase Governor's Office (remotely)

David Phillips Attorney General's Office (remotely)

Matt Sagsveen Attorney General's Office (remotely)

Karlene Fine Industrial Commission Office

Andrea Pfennig Industrial Commission Office

The DMR executive session ended at 2:39 p.m. Governor Burgum noted that during executive session, the Commission consulted with its attorneys regarding adversarial proceedings as listed on the agenda. Commissioner Goehring rejoined the meeting.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the State of North Dakota and the Industrial Commission direct our counsel to forthwith appeal the Judge's Order in Case No. 05-2019-cv-00085/ Northwest Landowners Association vs. State of North Dakota, et al. to the North Dakota Supreme Court as soon as the Judge's Order is entered. On a roll call vote Governor Burgum, Attorney General Stenehjem and Agriculture Commissioner Goehring voted aye. The motion carried unanimously.

BANK OF NORTH DAKOTA (BND)

Mr. Eric Hardmeyer, BND President and CEO, provided a legislative update. Of note:

- SB 2014: Because of proposed operational increases, the Bank would like to request additional FTEs. The proposed net reduction in FTEs would be a decrease of 5.5. Gainsharing was discussed by the House Appropriations Government Operations Division. Mr. Hardmeyer asked for feedback regarding the issue and there was discussion with the Commission. Ultimately, while there was support expressed regarding a gainshare program, there was hesitancy to have it outlined in Century Code.
- HB 1452: This bill creates the Clean Sustainable Energy Authority, and a \$250 million loan program is currently included in the bill.
- HB 1475: This bill currently includes a \$20 million appropriation for the Ag Innovation Fund.
- SB 2245: This bill would establish an Intermodal Assistance Program. Senate passed legislation that has the money to pay off the banks. The House has not acted on it. An amendment has been introduced that would provide \$2.5 million from the Beginning Farmer Fund to finish the rail track. Banks would continue to own the asset. It was noted that interest has been written off, but not the principal amount.
- HB 1425: Proposes an Infrastructure Revolving Loan Fund to be administered by the Bank that would use \$300 million of investments from Legacy Funds. The Bank currently has an Infrastructure Revolving Loan Fund, which has a funding level of \$175 million. SB 2014 currently includes an additional \$50 million which would come from the bonding bill. The Bank has been working to ensure that the Revolving Loan Fund and the Legacy Loan Fund have the same terms. The Bank would go to State Investment Board for Legacy funds as needed. HB 1425 also has funds going to the Match Program.
- Discussion was held regarding HBs 1380, 1431, & 1425 and how all the bills work together. HB 1380 creates streams of funding, including a sinking fund. HB 1430 is the bonding bill and provides funding for the Clean Sustainable Energy Authority and Infrastructure Revolving Loan Fund. It also provides \$100,000,000 for a Long Term Care Loan Fund.

Bills in their current forms have the potential to impact the Bank as follows: capital impact of \$184,000,000, agency loan impact of \$175,000,000, and loan programs of \$2,126,775,000 which will cause changes at a rapid pace. The Bank will continue to monitor bill progression.

Mr. Hardmeyer presented the BND Advisory Board January 21, 2021 nonconfidential meeting minutes.

TRANSMISSION AUTHORITY (TA)

Mr. John Weeda, Transmission Authority Director, provided a legislative update. There are two provisions in SB 2313 that clarify and enhance the responsibilities of the TA. The first proposed amendment would enable the TA to identify and participate in studies of transmission options. In recent months two companies have discussed transmission studies that would enhance the export capability of the North Dakota grid and requested that the TA participate financially in those studies. This would provide the TA the authority to participate in those studies. It is not the intention that the TA initiate studies but be able to participate. Changes have been proposed, so final language is uncertain.

This would also modify TA reporting requirements, adding the status of the resilience of the grid and short- and long-term plans of generation owners, developers or operators as an annual reporting requirement. It seeks voluntary cooperation from all entities with generation assets in excess of an aggregate of 25 megawatts. Information from regulated utilities will be available from the Integrated Resource Plans submitted to the Public Service Commission. Most non-regulated entities have similar plans in place and

are expected to comply with the request on a voluntary basis. SB 2313 is scheduled for at least one more House Energy and Natural Resource subcommittee meeting on March 30th.

It was clarified that the 25X25 initiative is being repealed and has been removed in another bill.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission enter into executive session for the purpose of reviewing a confidentiality request under the authority of North Dakota Century Code 17-05-14 and 44-04-19.2(1). On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum stated that the Commission is meeting in executive session regarding the Transmission Authority to consider a confidentiality request and noted that any formal action by the Commission would occur after it reconvenes in open session. Results would be available by contacting the Industrial Commission Executive Director/Secretary following adjournment of the meeting. Only Commission members, their staff, Transmission Authority staff, and counsel with the Attorney General staff will participate in that executive session.

It was noted that following the Transmission Authority executive session, the Industrial Commission would enter into executive session regarding Bank of North Dakota business pursuant to N.D.C.C. 6-09-35. Only Commission members, their staff, and BND staff participated in the executive session.

Commission members and those present in the executive sessions were reminded that the discussion must be limited to the announced purpose for entering into executive session which was anticipated to last between 10-15 minutes for Transmission authority and 40-50 minutes for BND.

The executive session for Transmission Authority began at 3:33 p.m.

TRANSMISSION AUTHORITY EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

Others in Attendance:

Lt. Governor Brent Sanford
Leslie Bakken Oliver Governor's Office
Reice Haase Governor's Office (remote)
John Schneider Department of Agriculture
David Phillips Attorney General's Office (remote)
John Weeda Transmission Authority (remote)
Todd Steinwand Bank of North Dakota
Karlene Fine Industrial Commission Office
Andrea Pfennig Industrial Commission Office

The Transmission Authority executive session ended at 3:45 p.m.

The BND executive session began at 3:46 p.m. to discuss the following items:

- Consideration of a loan application

- Problem Loans
- Concentration of Credits Report as of 12/31/2020
- Presentation of Bank of North Dakota Advisory Board January 21, 2021 confidential meeting minutes.
- Other Bank of North Dakota confidential (as defined under N.D.C.C. 6-09-35) business

BND EXECUTIVE SESSION

Members Present:

Governor Doug Burgum

Attorney General Wayne Stenehjem

Agriculture Commissioner Doug Goehring

Bank of North Dakota Personnel (Remote):

Eric Hardmeyer

Kirby Evanger

Todd Steinwand

Tim Porter

Others in Attendance:

Leslie Bakken Oliver Governor's Office

Reice Haase Governor's Office

John Schneider Department of Agriculture

Karlene Fine Industrial Commission Office

Andrea Pfennig Industrial Commission Office

The BND executive session ended at 4:18 p.m. and the public was invited to return to the room. Governor Burgum noted that during Executive Session the Commission made a motion regarding a loan request. **On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Transmission Authority Director and pursuant to section 17-05-14, section 44-04-17.1, 44-04-18.4 and 47-25.1-01 grant the confidentiality request and the procedures outlined therein and determine that the request is confidential and the information described in the request is a trade secret and is confidential. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission adopt the following resolution:

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

WHEREAS, the North Dakota Transmission Authority was created in N.D.C.C. §17-05-02 (Transmission Authority) which shall be governed by the Industrial Commission (Commission);

WHEREAS, the Transmission Authority has authority under N.D.C.C. §17-05-08 to issue evidences of indebtedness; and

WHEREAS, the Commission wishes to name Authorized Officers for the Transmission Authority to assist the Transmission Authority in carrying out its responsibilities as it relates to the issuance of evidences of indebtedness;

THEREFORE, BE IT RESOLVED:

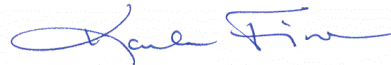
- 1. The Commission hereby appoints DeAnn Ament, Public Finance Authority Executive Director, as a Transmission Authority Authorized Officer to assist the Transmission Authority Director jointly or severally to carry out and perform the duties related to the issuance of evidences of indebtedness.**

Effective and Dated this 30th day of March 2021.

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

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 4:20 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary