

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on January 27, 2021 beginning at 12:00 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 12:00 p.m. and the Commission took up North Dakota Mill business.

**NORTH DAKOTA MILL (Mill)**

Mr. Vance Taylor, Mill President and CEO, provided the Second Quarter Report as follows.

*SUMMARY*

Activities in the 2<sup>nd</sup> Quarter of the year resulted in a profit of \$4,517,701 compared to \$3,303,615 last year. For the six months ending December there is a profit of \$7,800,476 compared to \$6,425,806 last year.

	Quarter		Year-to-Date	
	12/20	12/19	12/20	12/19
Profits	4,517,701	3,303,615	7,800,476	6,425,806
Sales	85,514,730	76,154,998	165,740,998	153,130,185
Cwt. Shipped:				
Spring	3,743,307	3,417,704	7,349,260	6,899,020
% to Total	91.9%	92.8%	92.2%	93.1%
Durum/Blends	<u>330,394</u>	<u>265,926</u>	<u>621,009</u>	<u>510,579</u>
Total	<u>4,073,701</u>	<u>3,683,630</u>	<u>7,970,269</u>	<u>7,409,599</u>
Bulk Shipments	3,399,478	3,041,652	6,611,152	6,097,640
% to Total	83.5%	82.6%	82.9%	82.3%
Bag Shipments	627,642	594,770	1,273,329	1,230,079
% to Total	15.4%	16.1%	16.0%	16.6%
Tote Shipments	46,582	47,208	85,788	81,881
% to Total	1.1%	1.3%	1.1%	1.1%
Family Flour	155,399	93,539	318,437	194,566
% to Total	3.8%	2.5%	4.0%	2.6%
Organic Flour	44,976	38,528	85,650	66,554
% to Total	1.1%	1.0%	1.1%	.9%
Wheat/Durum Bought:				
Spring/Winter	7,926,755	7,726,725	15,751,530	15,176,185
Durum	<u>752,638</u>	<u>641,894</u>	<u>1,243,615</u>	<u>1,138,832</u>
Total	<u>8,679,393</u>	<u>8,368,619</u>	<u>16,995,145</u>	<u>16,315,017</u>

### SALES

#### 2<sup>nd</sup> Quarter

Sales for the 2<sup>nd</sup> Quarter were \$85,514,730 compared to \$76,154,998 last year. Shipments of 4,073,701 cwts. are 390,071 cwts. above last year. Bag shipments for the 2<sup>nd</sup> Quarter are 627,642 cwts., which is 5.5% above last year's 2<sup>nd</sup> Quarter. Tote shipments for the 2<sup>nd</sup> Quarter are 46,582 cwts., which is 1.3% below last year's 2<sup>nd</sup> Quarter. Family flour shipments of 155,399 cwts. is 66.1% above last year's 2<sup>nd</sup> Quarter. Organic flour shipments were 44,976 cwts., which is 16.7% above last year's 2<sup>nd</sup> Quarter.

#### Year-to-Date

Sales for the six months ended December were \$165,740,998 compared to \$153,130,185 last year, an increase of 8.2%. For the first six months the average settled price of grain is \$.35 per bushel more than last year. Shipments of 7,970,269 cwts. are 560,670 cwts. above last year, an increase of 7.6%. Year-to-date bag shipments are 1,273,329 cwts., an increase of 43,251 cwts. from last year. Tote shipments are 85,788 cwts., an increase of 3,907 cwts. from last year. Family flour shipments for the six months ending are 318,437 cwts., an increase of 63.7%. Organic flour shipments of 85,650 cwts. is an increase of 28.7% from last year.

### OPERATING COSTS

#### 2<sup>nd</sup> Quarter

Operating costs for the 2<sup>nd</sup> Quarter were \$ 9,233,011 compared to \$9,205,274 last year, an increase of .30%. Operating cost per cwt. of production was \$2.27 compared to \$2.47 last year, a decrease of \$.20 per cwt.

#### Year-to-Date

Year-to-date operating costs are \$18,547,621 compared to \$17,983,718 last year, an increase of 3.1%. Operating cost per cwt. of production for six months ending is \$ 2.33 compared to \$2.43 last year, a decrease of \$.10 per cwt. Flour production increased 7.2% to 7,948,263 cwts.

### PROFITS

#### 2<sup>nd</sup> Quarter

Operating activity for the 2<sup>nd</sup> Quarter led to a profit of \$4,517,701 compared to a profit of \$3,305,615 last year. Gross margins as a percent of gross sales for the Quarter were 16.4% compared to 17.0% last year, a decrease of .6%.

#### Year-to-Date

Operating activity for six months ending December led to a profit of \$7,800,476 compared to a profit of \$6,425,806 last year. Gross margins as a percent of gross sales for the year are 16.3% compared to 16.5% last year, a decrease of .2%.

### RISK MANAGEMENT POSITION

The table below shows our hedge ratio by futures month going forward. While the Mill does monitor and maintain the spring wheat hedges, it does remain at risk for fluctuations in the basis.

#### Position Report 31-Dec-20

Period	Hedge Ratio
Mar-21	1.0
May-21	.9
Jul-21	1.1
Sep-21	1.0
Dec-21	.7
Net Position	1.0

In discussion, Mr. Taylor stated that spring wheat/durum compared to other years is tracking similar. This will continue to be monitored as spring approaches. Family flour is up; this is a nationwide trend attributed to Covid. The industry hopes that it will continue after the pandemic. It was noted that operating costs have decreased, which was attributed to volume. In response to a question, Mr. Taylor stated that fixed costs and variable costs are tracked internally. If the increased volume continues, lower costs overall can be expected. Governor Burgum indicated that looking at fixed vs. variable costs can help support investments. Utilities year over year aren't higher. This is because the new capacity is more efficient.

A question arose regarding the December 21 risk management position, which appears low. Ms. Cathy Dub, Mill CFO, clarified that the December position is extremely small for that period and so the ratio gets lopsided. Governor Burgum indicated that it would be helpful to include volume by period. Since this would reveal sales and grain purchased for a specific period, this information will need to be provided in closed session.

Early USDA planting projections show a decline in wheat acres. This will be monitored; it is anticipated the projection will increase closer to spring.

Mr. Taylor informed the Commission that the Mill continues to take precautions regarding Covid and currently there are not any employees out because of Covid.

Ms. Andrea Pfennig, Industrial Commission Deputy Executive Director, provided a legislative update. HB 1169 would provide an avenue for individuals affected by competition with a state agency or institution to petition the PSC. If the PSC determined that competition was taking place, they would have the authority to direct termination of the activity. The Mill, BND, and WAWS were all referred to as possibly competing with the private sector. House IB&L had a hearing on Tuesday, January 26th. The bill received a Do Not Pass recommendation, 13-0-1. Mr. Taylor noted that SB 2014, the Industrial Commission appropriations bill, is going well.

### **HOUSING FINANCE AGENCY (HFA)**

Mr. Dave Flohr, HFA Executive Director, presented a recommendation for appointment of a public hearing officer for the 2021 National Housing Trust Fund and the 2022 Low Income Housing Tax Credit Qualified Allocation Plans for consideration.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Dave Flohr, Housing Finance Agency Executive Director, be named as the Industrial Commission's public hearing officer for the 2021 National Housing Trust Fund Allocation Plan public hearing scheduled for April 1, 2021 at 11:00 a.m. and the 2022 Low Income Housing Tax Credit Qualified Allocation Plans public hearing scheduled for April 1, 2021 at 10:00 a.m. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Flohr presented a recommendation for appointment of a public hearing officer for the TEFRA hearing to be held on February 9, 2021 regarding the proposed issuance of Housing Finance Program Bonds, Home Mortgage Finance Program for consideration.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Dave Flohr, Housing Finance Agency Executive Director, be named as the Industrial Commission's public hearing officer for the TEFRA hearing scheduled for February 9, 2021 for the issuance of Housing**

**Finance Program Bonds, Home Mortgage Finance Program and approve the publication of the Notice of Public Hearing on January 28, 2021. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Flohr presented a resolution regarding Ginnie Mae Certificate of Authorized Signatures for consideration.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission adopt the following Resolution for the Government National Mortgage Association (Ginnie Mae) and authorize the Commission's Executive Director and Secretary to certify the signatures of the Housing Finance Agency staff named in the Resolution:**

**Resolution of Board of Directors  
And Certificate of Authorized Signatures**

**Resolved First, that David A. Flohr, Executive Director, Patrick Nagel, Chief Financial Officer, Franklin J. Kraft, System Admin, Mark Weninger, System Admin, Brandon J. Dettlaff, Director Financial Programs, Terri Mollman, Loan Servicing Coordinator, Randall S. Nelson, Account Budget Specialist of this corporation, or any one or more of them, be and each of them is hereby authorized and empowered in the name of and on behalf of this corporation and under its corporate seal, from time to time while these resolutions are in effect, to execute and deliver to the Government National Mortgage Association, in the form prescribed by said Association, with respect to the issue(s) by this corporation, under Section 306(g) of the National Housing Act and the Regulations pertaining thereto, of mortgage-backed securities to be guaranteed by the Association, any documents required to: (a) make applications to Ginnie Mae in the name of and on behalf of this corporation for approval to become an issuer and for Ginnie Mae commitments to guarantee such mortgage-backed securities issued by this corporation; (b) enter into contracts with Ginnie Mae for the latter's guaranty of mortgage-backed securities issued in accordance with the terms and conditions of commitments to guarantee, issued by the Association to this corporation; (c) merge mortgage notes, deeds of trust and bonds now owned or hereafter acquired by this corporation into pools or loan packages, against which this corporation may issue mortgage-backed securities; (d) enter into any agreements, execute any documents or papers, and furnish any information required or deemed necessary or proper by the Association in connection with any of the foregoing, and (e) abide by all the terms and conditions set forth in the Ginnie Mae Mortgage-Backed Securities Guide.**

**Resolved Second, that the above named officers, be and they are hereby authorized and empowered in their discretion and as occasion may arise to receive and endorse the name of this corporation on any checks or drafts representing the proceeds from collections made by servicers of mortgages pertaining to pools or loan packages, and to issue and sign any checks or drafts issued to pay to the security holders their pro rata shares in these proceeds, and to do and perform any and all acts and to execute any and all additional instruments or agreements, from time to time, in the name of and on behalf of this corporation under the corporate seal or otherwise, deemed necessary or proper by the Association in connection with the formation of mortgage pools or loan packages, the issuance of mortgage-backed securities, the guaranty of mortgage-backed securities by the Association and the discharge of the duties and obligations of this corporation, as issuer, until the proceeds of the last maturing mortgage in any pool or loan package is remitted to registered security holders.**

**Resolved Third, that any contracts or agreements heretofore made with said Association on behalf of this corporation, and all acts of officers or agents of this corporation in connection with any contracts to be entered into for the guaranty by the Association of mortgage-backed securities to be issued by this corporation are hereby ratified and confirmed.**

**Resolved Fourth, that Ginnie Mae is authorized to rely upon the aforesaid resolution until receipt by it of written notice thirty days in advance of any proposed change therein.**

**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 Commissions appropriations bill. A subcommittee hearing was held this morning. Discussion included FTEs, Housing Incentive Fund (HIF), and the transition of HOME and Bank of North Dakota (BND) mortgage servicing.
- SB 2040: This would provide an authorization for the Public Finance Authority to bond for \$250 million for HIF.
- SB 2127: Revolving loan from BND with a \$50 million appropriation for HIF for the 21-23 biennium. Received a 6-0 Do Pass recommendation. The appropriations hearing is scheduled for Friday morning.
- HB 1380: This would transfer 3% of legacy fund earnings to HIF on odd-numbered years. It would be \$15 million for biennium.

Mr. Flohr indicated that he would like to testify in favor for all three HIF related bills. A question was raised as to whether HFA would be able to use \$250 million. Mr. Flohr responded that he believes the funds would be there until expiration with no timeframe. Annually, \$7-8 million has been used in the past.

The Commission offered guidance that Mr. Flohr should note that the Commission has supported HIF funding for several years, and provide information noting that it is understood that there are multiple bills on the issue. Some individuals may not understand HIF and what it achieves. Mr. Flohr should provide an education component when testifying before the Legislature.

Governor Burgum clarified that HB 1380 as introduced would provide 3% of a subset of Legacy Fund earnings to be used for HIF.

Governor Burgum requested that Mr. Flohr promote the history of bonding at HFA as an educational component of his testimony noting the difference in HFA bonding from other bonding proposals.

#### **WESTERN AREA WATER SUPPLY AUTHORITY (WAWS)**

Ms. Karlene Fine, Industrial Commission Executive Director, presented the WAWS 2020 fourth quarter and annual financial and debt reduction report. No debt service payments were made for the month of September and the quarter ending December 2020 on the BND loan. The Bank has deferred P&I payments for nine months, April through December. P&I payments have also been deferred for the Water Commission loans. During September – December, there were no capital improvement expenditures and the net income on a monthly basis, exclusive of capital expenditures and no P&I payments, was \$207,128.20; \$100,896.76; \$359,144.45; and \$139,457.00.

The 2020 overall Debt Service spreadsheet shows a breakeven sales monthly number of \$1,131,811. WAWS sales did not reach that level during September through December.

Ms. Tami Madsen, WAWS Executive Director, presented the Fourth Quarter and End of Year Sales Activities Report, noting that revenue fell short of the budget and break-even number. Loan payments were deferred. Water demand typically declines during this timeframe. However, the domestic water demand was unusually low. This is attributed to a decline in hotel and apartment occupancy, which coincides with the dip in oil and gas production.

Ms. Madsen reported on forecasts with revenues falling short of the budgeted breakeven amount. Two frackings were projected in February. The Department of Interior issued an order affecting federal land, which has made producers nervous. Uncertainty reduces capital. There is a 60-day ban on frackings, but tribes got relief and expects relief on the moratorium. Straddle wells may be included in that relief. One-third of the wells have a federal nexus. Ms. Madsen noted that in 2014, water sold for \$.84/barrel. That is no longer maintainable. WAWS needs to sell twice as much water to make the revenues of 2014. WAWS second largest customers are independent water providers, which account for 10% of the sales.

Ms. Madsen provided a legislative update.

- SB 2306: This would add recognized tribes and entities authorized by a recognized tribe to enter into contracts with WAWS.
- HB 1431: This would utilize bond revenues to pay off Resource Trust Fund loans issued to WAWS. A variety of scenarios were provided regarding paying off different types of debt WAWS currently holds. BND and WAWS are meeting regularly.

A discussion was held regarding baseline sales and whether a renegotiation would be feasible. Ms. Madsen indicated that she would need to speak with the WAWS Board. It was noted that we are in a very different situation from 10 years ago and there are concerns about longevity and sustainability. The WAWS members agreed not to accrue these payments as debt while baseline sales were not being paid.

Ms. Madsen noted WAWS is celebrating it's 10-year anniversary. WAWS serves over 60,000 residents in five counties, including: Burke, Divide, McKenzie, Mountrail, and Williams. To date, over \$91.5 million has been repaid on loans.

Ms. Fine provided proposed 2021 Industrial Rates for consideration.

**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 approve the Western Area Water Supply Authority Board's recommended 2021 base reimbursement rates as follows:**

<b>NWRWD*/BDW**</b>	<b>\$3.68 to \$3.79</b>	<b>.11 increase</b>
<b>R&amp;T Water District</b>	<b>\$3.68 to \$3.79</b>	<b>.11 increase</b>
<b>Williston</b>	<b>\$2.01 to \$2.03</b>	<b>.02 increase</b>
<b>MCWRD</b>	<b>\$4.07 to \$4.07</b>	<b>.00 increase</b>

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

Ms. Madsen noted that the price per barrel in the beginning of the year was lower but included fracking income. The price at the end of the year is higher, but the volume lower. A higher price can indicate a problem and isn't always a good thing.

Governor Burgum noted that the breakeven costs are down year over year. Ms. Madsen reported that there used to be 16-17 employees, which has been decreased to 7-8. The existing staff has taken on more responsibility.

#### **BANK OF NORTH DAKOTA (BND)**

Mr. Eric Hardmeyer, BND President and CEO, and staff presented the fourth quarter 2020 performance highlights as follows:

- Total deposits of \$5.8 billion exceeded the budget due to \$1.25 billion of Federal CARES Act dollars. In addition, Federal funds purchased were \$425 million greater than budgeted because of higher correspondent bank deposits related to PPP loans and government issued COVID-19 relief payments.
- Commercial loans were budgeted to remain relatively stable from 2019; however, the variance in the portfolio of \$199 million is primarily related to the COVID-19 relief programs established during 2020.
- Ag loans exceeded the budget by \$75 million, primarily due to Farm Disaster Relief originations.
- Overall, the net income of \$141.2 million is \$13.0 million under budget. Larger than anticipated deposit accounts drove up interest expense by 17% or nearly \$6 million over budget. Year over year, net interest income is down \$6.5 million as net interest margins have compressed due to Federal funds rate cuts in response to the pandemic.
- Provision for credit losses of \$16.8 million is \$12.0 million higher than budgeted as the Bank continues to evaluate the need for additional allowance due to COVID-19.
- Non-interest expense is \$5.9 million under budget and consists of several operating component variances largely due to timing of incurrence, specifically with IT projects, marketing, and conferences and related travel, some of which has been placed on hold due to the pandemic.

Mr. Hardmeyer stated that 2020 was the best year BND has had in terms of meeting its mission.

In response to a question, it was noted that student loan deferments did not impact the income statement. However, a 1% decrease to the interest rate in the fixed rate student loan portfolio did have an impact. This had a cost of \$2-2.5 million and is anticipated to have an impact of \$7-\$7.5 million in 2021.

- BND's current internal leverage ratio benchmark is 10%. However, based on risk trends specifically related to the pandemic, the Bank would like to move this benchmark to 12%. As of December 31, 2020, the Bank's leverage ratio is 11.92%.
- Net loans to earning assets ratio is at 62.05%, down from 66.01% at the end of 2019. This decrease is primarily due to Federal CARES Act and correspondent bank deposits which attributed to the increase in earning asset size by 11%. Net loans increased by \$208 million or 4.7%.
- The loan to deposit ratio as of December 31, 2020 is 82.07%, a decrease from the high in November 2017 of 108.56%.

It was noted that there was tremendous volume in loans in 2020 with an increase of \$721 million over the previous year in origination activity.

- The commercial loan portfolio increased by \$194 million during 2020 with BND funding and renewing \$1.5 billion of loans. The largest area of activity was commercial participations with BND funding and renewing \$879 million. The commercial portfolio increased by 9.35% due to increased activity in bank participations and pandemic recovery programs.
- The farm loan portfolio increased by \$116 million during 2020 with BND funding and renewing \$351 million in loans. Farm disaster loans led the way with \$134 million, followed by farm and ranch which funded \$118 million in loans.
- The student loan portfolio increased by \$2 million during 2020. BND has disbursed \$127 million in DEAL programs so far this year.
- The residential loan portfolio decreased by \$93 million during 2020 with BND funding \$50 million of home loans, while the rapid drop in interest rates led to a spike in origination activity. The size of the portfolio will continue to decline with paydowns and refinancing as BND has shifted its mission focus on the rural mortgage purchase and origination programs to fill a niche need in North Dakota until later in the year.

Regarding COVID-19 activity, it was stated that:

- With nearly \$30 million and 886 loans originated, SELF has assisted over 230 industries as of December 31, 2020. Over 66% of SELF loan amounts are secured. The average loan amount is \$34,000.
- COVID-19 PACE Recovery Program (CPRP) has used over \$20 million of buydown with over \$210 million and 265 loans originated. There are still 8 loans for \$9 million yet to be funded as of December 31, 2020. The average loan size is \$848,000.
- BND also disbursed over \$35 million in Cares Act Funds for the CPR II grant program that assisted over 810 businesses in 228 industries.
- Farm Disaster Loan Program has 272 loans totaling over \$134 million. There are still 17 loans for \$8 million yet to be funded as of December 31, 2020. More than 55% of loan amounts are secured by real estate. The average loan size is \$489,000.

It was pointed out that BND's total loan allowance as a percentage of total loans is 2.23%, or \$106 million. This has remained flat in the fourth quarter. The unallocated percentage has decreased which indicates that even though the provisions have increased there is a need for additional allowance due to COVID-19. Bank management continues to evaluate what that level should be. The percent of non-performing loans is 0.81%, which is a decrease from last quarter primarily due to a \$9 million reduction in farm loans past due more than 90 days. It is lower than the most recently posted North Dakota average of 1.06%. Adversely Classified loans as a percentage of total loans decreased to 2.36% since last quarter but is still higher than the most recent North Dakota average of 2.38%.

Regarding loan delinquencies:

- Commercial delinquencies were 1.62% of which 0.57% were delinquent over 90 days. BND has provided payment modifications to 243 borrowers totaling \$468 million as a response to the economic impact of COVID-19.
- Farm delinquencies were 1.68% of which 1.05% were delinquent over 90 days.
- Both commercial and farm delinquencies are higher than the previous year.
- The overall student loan portfolio has a delinquency rate of 8.17% with 0.23% of the loans being over 90 days. At its peak, BND had 8,899 borrowers in COVID-19 deferment totaling \$252 million. As of December 31, 2020, 1,032 borrowers totaling nearly \$35 million were taking advantage of the COVID-19 Disaster Forbearances.

College Save deposits totaled \$615 million, of which \$253 million is set aside by North Dakota residents. The Bank receives 10 basis points, which generates a significant income.

Mr. Hardmeyer and Mr. Kirby Evanger, BND, presented amendments to the General Loan Policy for consideration. (*A redlined version is available in Commission files.*) The changes involve three areas:

1. Approval requirements are clarified.
2. Feedlots would utilize the North Dakota Pollutant Discharge Elimination System (NDPDES) Inspection Report that is used by the Department of Environmental Quality.
3. The Match Program agreement is renegotiated every year with the State Investment Board each year dependent on interest rates.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission amend the Bank of North Dakota General Loan Policy as follows:**

**INVESTMENT COMMITTEE**



Watchlist loans between \$2,500,001 and up to \$7,500,000 and non-watchlist loans between \$5,000,001 and up to \$15,000,000 require approval from the Investment Committee. The Investment Committee of the Bank shall consist of seven members appointed by the President with no more than three members from Business Development or Credit Administration. It is the responsibility of an absent voter to find a substitute to vote in their place. A minimum of six voting members or delegates must be present for a quorum with a simple majority ruling.

For a credit relationship which exceeds \$15,000,000, the Investment Committee may renew the loan without further action by the Industrial Commission or Advisory Board provided: 1) the loan has a risk rating code of 4 or better; 2) the quality of the loan has not deteriorated; and 3) the Advisory Board and Industrial Commission have previously approved the loan. New monies for an existing credit relationship require the highest approval level up to and including Advisory Board and Industrial Commission unless the new monies are within discretionary lending thresholds established in this policy. All other loan modifications, pricing changes, maturity extensions, and restructures on previously approved existing exposure requires a maximum of Investments Committee approval regardless of exposure level.

For COVID-19 PACE Recovery (CPR) loans only, normal aggregation of exposure will be required to determine appropriate approval level for CPR requests (Business Banker, Sole, Dual, Investments Committee); however, the highest approval level be limited to Investments Committee, even if aggregate exposure exceeds \$15 million non-watchlist (\$7.5 million watchlist).

Unless otherwise stated in Century Code, Investment Committee will have full authority to set pricing, rates, and fees for all loans including loan program.

#### **DISCRETIONARY LENDING AUTHORITY FOR SOLE AUTHORITY AND INVESTMENT COMMITTEE**

For a non-watchlist relationship which has the approval of the Investment Committee, Advisory Board, or Industrial Commission, it will be within Sole Authority to approve an increase in the Bank's exposure up to the Sole lending authority maximum without further action by the Investment Committee, Advisory Board, or Industrial Commission. For a credit relationship which has prior approval only at the Investment Committee level, this discretionary authority is subject to a cap of \$15,000,000 for overall exposure. This discretionary authority is not subject to a cap for overall exposure if it has the prior approval of Advisory Board or Industrial Commission. This discretionary lending authority is valid for one year after approval at the highest level. An approved annual review also qualifies for another year of discretionary lending authority as outlined above. Dual authority does not have any discretionary authority.

For a non-watchlist credit relationship which has the prior approval of the Advisory Board or Industrial Commission, it will be within the authority of the Investment Committee to approve an increase in the Bank's exposure not to exceed \$5,000,000 without further action by either the Advisory Board or Industrial Commission. The Investment Committee minutes will specifically note action taken under this rule.

For a credit relationship which has not previously required the approval of the Advisory Board or the Industrial Commission, it will be within the authority of the Investment Committee to approve an increase or renewal in the Bank's exposure not to exceed \$1,000,000 without further action by either the Advisory Board or Industrial Commission despite the fact that the additional exposure may exceed the \$15,000,000 loan approval level granted to Investment Committee. The Investment Committee minutes will specifically note action taken under this rule.

#### **15% RULE – DISCRETIONARY LENDING AUTHORITY FOR BUSINESS BANKERS**

The 15% rule is intended to give authority to bankers to grant interim loan requests or increased participation share to credits exceeding individual approval authorities. The Rule allows bankers the authority to grant multiple interim loans totaling up to a business banker's individual authority or 15% (whichever is less) of the combined aggregate credit exposure as shown on the most recently approved annual review/new request to any borrower, guarantor, or related entity, without prior approval subject to all of the following conditions:

- Current risk rating is 1, 2, 3, or 4.

- All 15% Rule loans in aggregate granted since the most recently approved annual review/new requests are limited to: a business banker's individual authority or 15% (whichever is less) of combined aggregate exposure as shown on the most recent Annual Review/new request.
- Loans which have seriously deviated from the original repayment plan.
- Loans where the borrowers have suffered material deterioration in their financial positions or earnings.

The business banker responsible for a loan on the Problem Loan Report must prepare and periodically update a workout strategy or plan of action for that loan. A loan within the lending authority of the banker can be recommended for removal from the Problem Loan Report by the responsible business banker and approval of the Financial Institutions Market Manager or the Chief Credit Officer. Any loan which exceeds Sole lending authority for watchlist credits may be removed from the Problem Loan Report by action of the Investment Committee.

A plan of action which involves restructuring a loan may include one or more of the following alternatives:

- The deferral of principal and/or interest payments.
- The re-amortization of principal and/or interest payments at a reduced interest rate.
- The forgiveness of a portion of principal and/or interest. ("Debt Settlement" is not encouraged by the Bank and should be considered only in limited circumstances, such as an anticipated loan liquidation.)

A plan of action which includes the restructuring of a loan without new monies may be approved based upon the same lending authority levels outlined in this policy with the maximum approval level as Investments Committee. In special circumstances, the Chief Credit Officer may approve a restructuring plan of action without new monies that exceeds Sole and Dual lending authority. The approval must be reported at the next meeting of the Investment Committee. In the event that a restructure is proposed with new monies, the approval is based on the lending authorities outlined in this policy up to and including Advisory Board and Industrial Commission.

The Special Assets Manager, or delegate along with either the Financial Institutions Market Manager or Chief Credit Officer may accept debt settlement offers on loans as long as the final loss to the Bank does not exceed \$100,000. The approval must be reported at the next meeting of the Investment Committee.

The Bank's Investment Committee will have the ability to modify, amend, adjust, waive, release, exchange and agree to settlement offers on all problem loans regardless of exposure level. These actions would relate to all loan conditions, documents, guarantees and collateral.

#### **CHARGE-OFF**

(Charge-off of student loans is controlled under Student Loan attachment)

The business banker is responsible for initiating action on a loan to be charged off. A loan which meets the following criteria must be charged off:

- An unsecured loan that has principal or interest 120 or more days past due.
- A loan secured by other than real estate that has principal or interest 120 or more days past due must be charged down to the fair market value of the collateral net of costs of liquidation.
- A loan secured by a commercial real estate mortgage, farm real estate mortgage or Convention Residential Real Estate mortgage that is 120 or more days past due must be charged down to the fair market value of the real estate.
- A loan classified as a "loss" by the Department of Financial Institutions.
- A loan where there is a recognized loss in conjunction with the acquisition of real estate by the Bank must be charged down to the fair market value of the real estate.
- A loan where the Bank deems itself insecure due to the financial condition of the borrower.
- A loan or a portion of a loan which has been forgiven.

A recommendation to charge-off a loan of any amount must be presented by the Special Assets Manager to the Investment Committee for their approval and an annual listing of charge-offs must be presented by the Special

**Assets Manager to the Advisory Board and Industrial Commission for approval. A recommendation for an exception to charge-off must be supported by reasoning evidenced by a loan file comment initialed by the business banker and approved in writing by the Financial Institutions Market Manager or the Chief Credit Officer. A decision to discontinue collection efforts on a charged off loan will be presented to the Problem Loan Committee for their approval.**

Charged-off loans may be deemed to be uncollectible at the time the recommendation to charge off a loan is presented or at any point in the future, charged-off loans may be deemed to be uncollectible. Any farm or commercial loans deemed uncollectible during the calendar year must be reported to the Industrial Commission, typically at the first Industrial Commission meeting following year end at which time the listing is made available to the public. This listing is also reported to Investment Committee and Advisory Board in the form of a memo coming from the Bank of North Dakota CEO and is prepared by Credit Review. Student and residential real estate loans are not reported due to the Gramm Leach Bliley Act. The reporting of uncollectible loans is dictated by subsection 7 of section 6-08.1-02 of the North Dakota Century Code.

### **ENVIRONMENTAL QUESTIONNAIRES**

**Requirements for potential borrowers:**

Potential borrowers are to complete an *Environmental Questionnaire* on any loan request exceeding \$100,000 to be secured by real estate except one- to four-family residential real estate or bare farmland. The questionnaire is also to be completed by a customer if the banker or originating lender detected any potential contamination in the site inspection of a non-real estate secured loan request. The questionnaire is to be completed, dated, and signed by the customer or a party authorized by the customer (the customer may elect to contract with an outside expert to complete the questionnaire) and placed in the customer file. The questionnaire is to be reviewed by the banker prior to committing or funding these credit requests.

If answers on the questionnaire indicate any potential environmental contamination issues, a Transaction Screen Assessment (TSA) or Phase I or Phase II Assessment must be performed by a qualified third party with environmental expertise, at the customer's expense, before proceeding with the loan request, or the banker may need to decline the loan request. For CPR loans only, BND will not require any environmental due diligence if the type of real estate is not in BND's Top 20 High Risk Industry List. Real estate taken as collateral that is on the Top 20 High Risk Industry List automatically requires a Phase I Environmental Assessment.

The following table includes High Risk Industries for potential environmental contamination. An environmental questionnaire is not necessary for these high-risk industries, but they do require an automatic Phase I Assessment, with the exception of cattle feedlots. Cattle feedlots will require a copy of the most recent annual North Dakota Department of Environmental Quality NDPDES Inspection Report (NDPDES Inspection Report) in lieu of a Phase I Assessment. In the event the Phase I Assessment or the NDPDES Inspection Report identifies environmental concerns, further due diligence will be required.

### **TOP 20 ENVIRONMENTAL RISK INDUSTRIES**

GASOLINE STATIONS
FUEL DEALERS
REGISTERED OR UNREGISTERED STORAGE TANKS (ABOVE OR BELOW GROUND)
AUTOMOTIVE REPAIR & MAINTENANCE
LAUNDRY & DRY CLEANING SERVICES
WASTE MANAGEMENT & REMEDIATION SERVICES
COMMERCIAL PRINTING FACILITY
PHOTO DEVELOPING LABS
CATTLE FEEDLOTS
JUNKYARD OR LANDFILL
INDUSTRIAL OR COMMERCIAL HYDRAULIC EQUIPMENT WITH POLYCHLORINATED BIPHENYLS (PCB's)
PIPELINE TRANSPORTATION
SALT WATER DISPOSAL WELLS
OIL & GAS EXTRACTION
MINING (EXCEPT OIL & GAS)
PETROLEUM & COAL PRODUCTS MANUFACTURING
CHEMICAL MANUFACTURING OR STORAGE
RECYCLABLE MATERIAL MERCHANT WHOLESALER
CHEMICAL & ALLIED PRODUCTS MERCHANT WHOLESALERS
PETROLEUM & PETROLEUM PRODUCT MERCHANT WHOLESALERS

**Requirements for existing borrowers upon renewal:**

**Existing borrowers on the High-Risk Industry List will also be required to complete the Environmental Questionnaire at the time of renewal, following the same steps as a potential borrower. If the banker or anyone in the approval hierarchy deems appropriate, a new questionnaire may be obtained more frequently. Cattle Feedlots will require a copy of the annual NDPDES Inspection Report at the time of a renewal, in lieu of an environmental questionnaire. Upon completion of the Environmental Questionnaire or NDPDES Inspection Report, any change noted in the use of the property or environmental concerns not identified in the original TSA, Phase I, or Phase II, or NDPDES Inspection Report will require further environmental due diligence by a third-party environmental expert. If there has been no change with the use of the property and if the Environmental Questionnaire or NDPDES Inspection Report reveals no concerns, then no further action is required.**

**MATCH**

**The Bank has established a specially funded loan program intended to encourage and attract financially strong companies to North Dakota.**

**The primary candidates for this program will be businesses that create new wealth for the state and provide new jobs or retain existing primary sector jobs outside of the retail sector. Companies interested in this program must provide evidence of considerable financial strength and adequate factors that demonstrate security of the principal and interest payments. The company must also demonstrate that they have a long-term investment grade rating from a nationally recognized rating agency.**

**If the company does not have a long-term investment grade rating, or chooses not to obtain such a rating, the following credit enhancements may be substituted:**

- Letter of credit enhancement by a financial institution.
- Guarantee from a federal guaranty agency.
- Guarantee from a company other than the borrower which has a long-term investment grade rating from a nationally recognized rating agency.
- Pledging of a certificate of deposit or marketable securities of a quality and level satisfactory to the Bank.

**The enhancement alternatives must provide 100 percent coverage for the Bank's portion of the loan. The financial institution may provide a letter of credit acceptable to the Bank or pledge Fed Book entry securities (Government, Agencies and Agency sponsored securities).**

**In determining the qualifications for this program, primary consideration will be given to the impact the project will have on the state's economy. Specifically, it will be judged in terms of the number and types of jobs,**

**wage and/or salary scales, tax impact, contribution to other state businesses and its enhancement of the labor force through technical training as well as other factors considered pertinent in each specific case.**

**The primary purposes of the program are for the financing of:**

- 1. Real Estate**
- 2. Equipment**

**The loan will be in participation with a lead lender. The amount of the participation shall be negotiable.**

**Funding of the loan is predicated on the acquisition of the Bank's deposits that will be used to match fund the loan.**

**The interest rate on the Bank of North Dakota's portion of the MATCH loan shall be 25 basis points over the minimum net return requirements defined in the Letter Agreement between the Bank of North and the North Dakota State Investment Board. The interest rate on the Bank of North Dakota's portion of the loan may be repriced during the term of the loan depending upon the condition(s) of the match funding sale.**

**The term of the loan will vary depending on the loan purpose and as allowed under the Letter Agreement between the Bank of North Dakota and the North Dakota State Investment Board.**

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

Mr. Hardmeyer and Mr. Kelvin Hullet, BND, provided a legislative update. There was significant discussion regarding several bonding bills, including HB 1431, HB 1380, and HB 1425. These would all utilize Legacy funds. SB 2040, HB 1275, and the Governor's bonding bill were also discussed and would utilize Legacy funds. BND, along with PFA, is taking a role as technical providers of information rather than taking a position on policy.

Other bills of note include:

- SB 2014: The Industrial Commission budget bill which is in subcommittee.
- SB 2058: This would expand the Biofuels PACE program. It has passed the Senate.
- HB 1050: This would exempt PACE programs from Incentive Reporting. It has passed the House.
- HB 1187: This would create the Rebuilders Permanent Loan Fund by providing \$65 million in permanent revolving loan funds. It has been re-referred to Appropriations.
- HB 2230: This would increase the Value-Added Ag & Energy Guarantee Fund. A hearing is scheduled for 1/28/21.
- HB 1267: This would include a BND Study of Cryptocurrency Exchange. It received a do not pass recommendation. However, the study can be done without legislation and BND will reach out to the Securities Department, Department of Financial Institutions, Attorney General's office, and ITD.
- SB 2317: This would create a Coal Mining Performance Bonding Program.
- SB 2245: This would provide Intermodal Transportation Assistance. A hearing was held on 1/26/21.
- HB 1358: This would create an opportunity to implement a hedging strategy to offset reduced state oil and gas tax revenues. The Bank previously did a study that found there would have been net return of \$80 million during the timeframe of September 2019 – September 2020.

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

Pursuant to N.D.C.C. 6-09-35 the Industrial Commission entered into executive session. Governor Burgum reminded Commission members and those present in the executive session that the discussion must be limited to those items listed on the agenda which was anticipated to last between 25 and 35 minutes. Governor Burgum noted that any formal action by the Commission on the loan application would occur after reconvening in open session.

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

The BND executive session began at 2:07 p.m. to discuss the following items:

- Consideration of loan applications
- Presentation of the following quarterly reports:
  - Non-Accrual Loans Quarterly Recap/Detail
  - Off-Balance Sheet Risk Quarterly Recap
  - Problem Loans-Adversely Classified Quarterly Recap
- Determination of the Loan Chargeoffs and Recoveries for the year ending December 31, 2020 with 10-Year Summary
- Determination of Uncollectable Loans
- Concentration of Credits
- Presentation of Bank of North Dakota Advisory Board November 19, 2020 confidential meeting minutes.
- Other Bank of North Dakota confidential (as defined under N.D.C.C. 6-09-35) business

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**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  
Gus Staahl  
Tom Ternes

**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

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The BND executive session ended at 3:02 p.m. and the public was invited to return to the room. Governor Burgum noted that during Executive Session the Commission made two motions regarding two loan requests.

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

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

Governor Burgum also noted that during Executive Session the Commission also made the following motions regarding charge-offs and recoveries and determination of uncollectible loans.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Bank of North Dakota Advisory Board and approves the Loan Charge-Offs totaling \$6,267,973.60 and Recoveries totaling \$81,335.30 for the period January 1, 2020 through December 31, 2020. (The \$6,267,973.60 includes the 2020 loan charge-offs that are deemed uncollectible.) 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 accepts the recommendation of the Bank of North Dakota Advisory Board and makes the determination that the following loans charged off in the year 2020 totaling \$437,280.42 are determined uncollectible:**

<u>Name of Borrower</u>	<u>UNCOLLECTIBLE AMOUNT</u>
JLLG Enterprises, Inc.	\$ 21,330.49
Morrison Avenue Land, LLP	\$ 49,999.93
Edwinton Brewing Corp.	<u>\$365,950.00</u>
	\$437,280.42

**And that the following previous loan charge-offs are deemed uncollectible:**

<u>Name of Borrower</u>	<u>Year</u>	<u>UNCOLLECTIBLE AMOUNT</u>
Syncorp	2019	\$ 133,662.47
Ruth Meiers Hospitality House, Inc.	2018/2019	\$2,114,902.19
Shri, LLC	2019	\$1,147,195.11
Crockett Meats, Inc.	2016	\$ 62,157.86
Tublicks, LLC	2012	\$ 40,854.36
Frostfire Media Corporation	2010	<u>\$ 52,023.94</u>
		\$3,550,795.93

**And also determines as uncollectible in 2020 are \$44,140.06 of student and residential loans which are not reportable under GLB. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

**PUBLIC FINANCE AUTHORITY (PFA)**

Ms. DeAnn Ament, PFA Executive Director, presented the following SRF Drinking Water loan application.

*North Prairie Regional Water District - \$3,825,000*

This project will construct 18 miles of transmission line, a new booster station with storage, rehabilitation of the existing booster station and approximately 160 miles of water main line serving approximately 140

new users. The State Water Commission is providing a \$6,516,000 grant. The total project cost is \$10,341,000. The requested loan term is 30 years. The District will issue revenue bonds payable with user fees. Accordingly, the annual payment to the Public Finance Authority will average approximately \$162,000. The reserve requirement will be \$172,550 and the 120% coverage requirement will be \$194,400.

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

**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, North Prairie Regional Water District (the "Political Subdivision") has requested a loan in the amount of \$3,825,000 from the Program to add 18 miles of transmission line, a new booster station, rehabilitation of an existing booster station, and 160 miles of water main line; 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 State Revolving Fund loans approved by the PFA Advisory Committee to the following entities.

*City of Stanley - \$165,000 (Clean Water) \$400,000 (Drinking Water)*

These loans will refinance a 2010 USDA-RD bond issued for water and sewer main replacement and water service line replacement to the curb stops. The requested term is 11 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 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.

*City of Lakota - \$313,000 (Drinking Water)*

This loan will provide \$313,000 towards a \$1,241,000 project. A Community Development Block Grant (CDBG) will provide a \$310,000 grant and the State Water Commission will provide a \$618,000 grant. The DWSRF project will install a replacement 10" transmission line to restore sufficient domestic water flow rate to the City's distribution and storage system after a sudden failure in 2020. The requested loan term is 30 years. The City will issue revenue bonds payable with water user fees.

*City of Riverdale - \$200,000 increase, net loan total \$690,242 (Drinking Water)*

This will provide a \$200,000 increase to the previously approved \$1,961,000 loan which is eligible for \$1,470,758 loan forgiveness; net loan would be \$690,242. The loan increase will be used to install a water main for the campground. The original project was for installation of new water tower, removing the existing water tower, improvements to the SCADA system, variable frequency drive controls on the water treatment plant pumps, removal and replacement of the transite water main and looping of the water main in the southwest portion of the city. The requested loan term is 30 years. The City will issue revenue bonds payable with water user fees.

In response to a question, Ms. Ament clarified that the USDA interest rate was approximately 3%.

Ms. Ament provided a legislative update on 14 bills that are being tracked. Of note:

- HB 1485: Repeals the ND Building Authority (NDBA) and does not allow the PFA to issue bonds for the NDBA. House Political Subdivision Committee hearing on January 28, 2021.
- HB 1499: Issuance of state bonds would require a 2/3 vote of all qualified electors in the state.

Ms. Fine requested permission to testify in opposition of House Bill 1485.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission Executive Director is authorized to appear in opposition to House Bill 1485. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

Governor Burgum requested that Ms. Ament take advantage of opportunities to provide education to the Legislature regarding bonding.

### **OUTDOOR HERITAGE FUND (OHF)**

Ms. Pfennig provided a legislative update. There are currently two bills that have been introduced regarding the Outdoor Heritage Fund. HB 1088 would remove the requirement for the Water Commission to include OHF funds as local match. A hearing was held January 14<sup>th</sup>. HB 1215 would develop a park district loan fund from 10% of the funds deposited into OHF, not to exceed \$25 million. The loan program would be administered by BND. A hearing has not yet been scheduled. The consensus of the Commission was that the bills should continue to be monitored.

### **ADMINISTRATION**

Ms. Fine presented the December 15, 2020 non-confidential meeting minutes for consideration.

**It was moved by Attorney General Stenehjem and seconded by Governor Burgum that the December 15, 2020 non-confidential meeting minutes be approved. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

Ms. Fine noted that the proposed Industrial Commission 2021 meeting schedule is still being worked on. The consensus of the Commission was that Ms. Fine should file the schedule with the Secretary of State when the dates are finalized.

Ms. Fine provided a legislative update. HB 1159 would provide \$100 million for grants to support natural gas infrastructure development (pipelines, fracturing plants, etc.) The hearing was held on January 26<sup>th</sup> before the House Appropriations Committee.

HB 1452 would provide for the creation of the Clean Sustainability Energy Authority (CSEA) and the CSEA Fund with an appropriation of \$25 million to come from the General Fund. It would allow for grants, loans, etc. and is similar to the Commission's other research programs. Industrial Commission would have final approval of all funding. The first hearing is scheduled for January 28<sup>th</sup>. HB 1380 creates Legacy Fund Earnings Distribution percentages, of which 4% of future Legacy Fund earnings to be deposited in the CSEA Fund. No hearing has been scheduled.

HB 1491 relates to the development of a roadmap for the implementation of hydrogen energy and would appropriate \$300,000 from the General Fund to be contracted through the Industrial Commission to the Energy and Environmental Research Center. No hearing has been scheduled.

#### **LIGNITE RESEARCH, DEVELOPMENT & MARKETING PROGRAM**

Mr. Jason Bohrer, Lignite Energy Council, provided a legislative update. HB 1412 involves an exemption from the coal conversion tax. HB 1452 would provide funds for clean sustainable energy. This is separate from the advanced energy technology fund and a desire was expressed to maintain the advanced energy technology fund. An amendment was discussed regarding SB 2014. Attorney General Stenehjem expressed concerns regarding the wording of the amendment. The Attorney General's office will assist with drafting alternative language.

Ms. Fine presented a request for a special grant round for consideration.

**It was moved by Attorney General Stenehjem and seconded by Governor Burgum that the Industrial Commission accepts the recommendation of the Industrial Commission Executive Director and Secretary and approve an additional grant round for the Lignite Research, Development, & Marketing Program with an application submission deadline of February 10, 2021. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

#### **OIL & GAS RESEARCH PROGRAM (OGRP)**

Ms. Fine provided a financial summary indicating that there is \$390,914 currently available.

Mr. Brent Brannan, OGRP Director, presented the following Oil and Gas Research Council Grant Round 53 recommendations for consideration.

*G-053-01: "Creedence Energy Services EOR Biosurfactant Applications"- Creedence Energy Services/Locus Bio-Energy; Project Duration: 18 Months; Total Project Cost \$622,288; Request for: \$205,750*

The purpose of this project is to recover oil from production assets left behind by current technological capabilities and increase production by appreciable amounts over the expected decline of the wells due to formation conditions. This increased oil recovery method will be done using ‘squeeze’ or batch treatment applications of a nano biosurfactant. This increased oil production can be achieved at costs significantly smaller than those associated with full scale re-stimulations (refracs)—it is a low-pressure injection stimulation job.

The project will utilize novel biosurfactant chemistry, which, due to its incredibly small micelle size will be able to contact reservoir surfaces previously unreachable. The biosurfactant has properties which allow adsorption onto rock surface, allowing for long term chemical effect (> 6 months). Once in contact with formation surface and production fluids, the highly active biosurfactant will waterwet the formation rock (decreasing oil affinity for adhering to rock), reduce the surface tension of fluids (reducing the force needed to lift the fluids to surface), and reduce the interfacial tension of oil and water.

If successful, the project will prove this technology in closed hole, legacy assets, as well as early Bakken production wells with limited perforation surface area. Once the adsorption and mechanism of stimulation is proven, Creedence aims to explore open-hole applications and more recent Bakken production wells with increased perforation space. The use of this technology may help reduce statewide production declines while economic conditions are unfavorable to invest in new wells or full-scale re-fracs. With the return of favorable economic conditions and proof of the biosurfactant suitability, this chemistry may also be applied initially in well stimulations to increase initial production of Bakken wells. Lastly, if enough demand is created, investment in a biosurfactant fermenter may be warranted in the state, which would utilize canola oil and sugar as fuel sources, both of which are abundantly available from North Dakota’s agriculture industry.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Oil and Gas Research Council’s recommendation to fund the grant application “Creedence Energy Services EOR Biosurfactant Applications” and authorizes the Industrial Commission Executive Director and Secretary to execute a contract with Creedence Energy Services in an amount not to exceed \$205,750 with the following contingencies:**

- **Applicant to provide the benchmark specific deliverables for the 18 months and state how they intend to communicate these results within their quarterly reports.**
- **Show receipt of an approved contract with an operator for the pilot project.**

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

*Incremental Budget approval of Plains CO<sub>2</sub> Reduction (PCOR) Partnership – Submitted by the Energy and Environmental Research Center (EERC); Incremental Funding of \$500,000 of the previously approved \$2,000,000 award based on additional scope and receipt of matching funds; Revised Total Project Costs: \$12,504,348*

The EERC, through its Plains CO<sub>2</sub> Reduction (PCOR) Partnership, is requesting the second increment of \$500,000 of the previously approved \$2,000,000 award. When the initial \$500,000 of the \$2,000,000 award was approved, the EERC was directed to come back when the additional match funding and scope of work became available from the Department of Energy (DOE.) The goal of this project is to accelerate and facilitate the buildout of CCUS infrastructure in North Dakota and neighboring states. The PCOR

Partnership includes members of North Dakota's oil and gas industry. The expanded and new tasks under this additional funding include:

- Geological Characterization is expanded to include a geomechanics study of stacked storage.
- Technology Validation is expanded with geomechanical modeling and simulation.
- Risk Management will include the addition of a regulatory-driven risk assessment tool.
- Machine Learning (ML) will be expanded with details about collaboration with DOE ML initiative.
- Risk-Based Area of Review (AOR) is new – will include the development of novel approach to AOR.
- Regional Infrastructure is expanded to include CO<sub>2</sub> capture with the addition of improved capture and transport models, added identification of barriers with advancing CO<sub>2</sub> capture and the addition of regular updates to the existing PCOR Partnership atlas.
- A new item is the development of a series of road maps to commercial development.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Oil and Gas Research Council and approves the scope of work for incremental funding of \$500,000 of the previously approved \$2,000,000 award (Contract G-050-096) for the PCOR Initiative to Accelerate CCUS Development – Submitted by the Energy and Environmental Research Center (EERC); Revised Total Project Costs: \$12,504,348; and noting that the remaining incremental funding of \$1.0 million be contingent upon receipt of additional Department of Energy and industry funding at the initial match rate. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. James Sorenson, EERC, provided a presentation of the “Study to Determine the Feasibility of Developing Salt Caverns for Hydrocarbon Storage in Western North Dakota.” The objectives of the study were to:

- Identify a regional extent within western North Dakota where infrastructure and required resources are co-located with salt formations that may be suitable candidates for construction of hydrocarbon storage caverns.
- Describe the methods used to construct salt caverns and operate them for hydrocarbon storage.
- Estimate the size of caverns that could be constructed in North Dakota salts, and assess stability, given realistic cavern dimensions, by conducting limited geomechanical simulations.
- Develop estimated costs for selected key surface equipment components of a salt cavern storage facility.
- Identify key regulatory considerations that may affect the development of a salt cavern storage project in North Dakota.

Key findings included the following:

- The Dunham, Pine, and Opeche salt beds were identified as candidates for salt cavern development.
- The development of small caverns appears to be achievable in ND salt beds. The use of multiple caverns, including horizontally oriented caverns, was found to be a potentially viable design approach and geomechanically stable.
- Several additional factors may be considered for clarification regarding regulations if Natural Gas Liquids (NGLs) are to be injected into the subsurface for storage, including: Leasing of the salt formation, defining the extent and volume of the solution-mined cavern, defining pore space ownership and storage of NGLs, rules governing the use of surface brine storage ponds as part of salt cavern NGL storage facility operations.
- Cost estimates are very preliminary and further refinement will require site-specific information regarding both the cavern storage facility and the petrochemical plant. Costs of the compressor,

pump, brine pond, site preparation, and engineering estimated to be \$54 million. Labor and maintenance operating costs were estimated to be roughly \$1 million/year. Utilities for salt cavern operation could exceed \$5 million/year, depending on petrochemical plant uptime.

Proposed next steps include: site-specific detailed geologic characterization and modeling; detailed investigations regarding the potential for creating and operating multiple long, horizontal caverns, additional understanding of the natural gas volume availability for salt cavern development; and detailed engineering studies matching ethane source and petrochemical facility needs to refine cost estimates.

Ms. Fine provided a legislative update. HB 1149 involves liquefied natural gas pilot project grants. SB 2014 includes funding for OGRC. There appears to be support to keep the funding level at \$16 million.

### DEPARTMENT OF MINERAL RESOURCES (DMR)

Mr. Lynn Helms, DMR Director, presented the following orders for consideration.

*Case 27827, Order 31208 – Administrative Relief for violation of the N.D. Administrative Code by Blue Appaloosa, Inc.*

Blue Appaloosa claimed they were just leveling land to find out what could be built at the site. However, the administrative law judge determined that Blue Appaloosa constructed the site to exactly match the treating plant application, meaning that there was construction on the plant without a permit or bond.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that effective January 27, 2021, the Industrial Commission approve Order No. 31208 issued in Case No. 27827 finding Blue Appaloosa, Inc. in violation of NDAC §§ 43-02-03-51, 43-02-03-15(6) and 43-02-03-51.3 and assessing penalties and costs of \$134,927.35. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

*Case 28192, Order 31209 – Request for administrative relief by Gallatin Oil, LLC*

Lime Rock has filed an application to impose a risk penalty. Gallatin tried to file an application to oppose the risk penalty. Gallatin will need to go through the Lime Rock case. The case will still be heard, it just needs to go through the proper channels.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that effective January 27, 2021, the Industrial Commission approve Order No. 31209 issued in Case No. 28192 denying the request from Gallatin Oil, LLC for an evidentiary hearing, granting the summary judgment in favor of Lime Rock Resources III-A, L.P., and dismissing the Gallatin Oil, LLC complaint. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Helms reported on the Bakken Restart Plugging and Reclamation project. To date, 280 wells have been plugged at a cost of \$37,226,612 resulting in 157,719 man-hours and 1,380 FT jobs. There have been 176 sites consisting of 880 acres reclaimed at a cost of \$25,631,472 resulting in 45,872 man-hours and 1,925 FT jobs. Fifteen DUC wells have been completed at a cost of \$2,884,900 resulting in 400 FT jobs and generating \$1,465,000 in sales tax.

Discussion was held regarding the availability of additional funds. Mr. Helms stated that DMR has indicated to the Legislature and OMB that DMR would like to be considered for turned back funds or future funds and indicated they would be able to use \$26 million+. Commissioner Goehring encouraged DMR to ask

for additional funds. It was noted that the Biden administration has interest in spending federal funds for this type of work and DMR is working with IOGCC on a proposal.

Attorney General Stenehjem requested a map of where federal land is located within units. Mr. Helms stated that 14% of future undrilled well slots (3,400 of 40,000) might not get drilled as a result of the recent federal action. This could cost North Dakota \$570 million over 20 years.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the waiver of the drilling permit renewal fee effective January 1, 2021 until the WTI oil price exceeds \$55 per barrel for 90 days. 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. DMR is monitoring 67 bills and actively involved in 12 bills. Of note:

- HB 1054: Relating to single well bonds, received a do not pass recommendation.
- HB 1055: Relating to service of signed commission orders, received a do pass recommendation.
- HB 1056: Relating to the collection of global positioning system data; and to repeal section 54-17.4-12 of the North Dakota Century Code. It received a do pass recommendation.
- SB 2064: This would add responsible corporate officer to the definition of a person. It was defeated.
- SB 2065: Relating to pore space, is currently in subcommittee. Amendments are being drafted.
- SB 2066: Relating to use of funds from the fossil excavation and restoration fund. It passed the Senate.
- HB 1270: Raises concerns about the ability to use drones.
- SB 2319: Relates to a change in the definition of wells within Ft. Berthold to any well with a lateral. This would change the tax structure.

Mr. Helms reported that the State waived a response to the petition on Supreme Court Case No. 20190203/Case No. 09-2018-cv-00089/Sorum, et al vs. State of North Dakota, et al. The Supreme Court will decide if they are going to take the case up and briefs will be prepared based on that. There has been no change in Civil 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. No hearing or briefing schedule has been issued. The EPA methane rule is back in play. Outside counsel filed a response brief in the DC circuit. The Trump methane rule is under review. Litigation was filed to block it.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring 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:**

- **Standing Rock Sioux Tribe, et. al. vs U.S. Army Corps of Engineers - DAPL**
- **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 No. 27662 – NDIC vs. Vast**
- **Case No. 27439 – NDIC vs. Vast**
- **Case No. 26327 – NDIC vs. Apollo**

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

Governor Burgum reminded the Commission members and those present in the executive session that the discussion must be limited to the announced purpose for entering into executive session which was anticipated to last between 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 4:25 p.m.

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### DMR EXECUTIVE SESSION

**Members Present:**

Governor Doug Burgum  
Attorney General Wayne Stenehjem  
Commissioner Doug Goehring

**DMR Personnel Present:**

Lynn Helms  
Bruce Hicks (Remotely)  
Katie Haarsager

**Others in Attendance:**

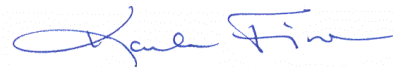
Leslie Bakken Oliver	Governor's Office
John Schneider	Department of Agriculture
Matt Sagsveen	Attorney General's Office (remotely)
David Phillips	Attorney General's Office (remotely)
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

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The DMR executive session ended at 4:51 p.m. Governor Burgum noted that during executive session, the Commission consulted with its attorneys regarding adversarial proceedings as listed on the agenda.

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 4:51 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary