

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on February 22, 2022 beginning at 9:00 a.m.
Governor's Conference Room - State Capitol

Present: Governor Doug Burgum, Chairman
Attorney General Drew H. Wrigley
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 9:15 a.m. and the Commission took up Industrial Commission administrative business.

ADMINISTRATION

Governor Burgum welcomed Attorney General Wrigley to the Commission and on behalf of the Commission noted they wished this was occurring under different circumstances. The Commission then took up consideration of the following resolution:

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the following Memorial Resolution be approved:

**A Memorial Resolution extending the sympathy and condolences
of the North Dakota Industrial Commission
to the family of Wayne Stenehjem**

- Whereas, Wayne Stenehjem served the State of North Dakota for more than 45 years as a legislator and as Attorney General, and he was the second-longest serving member in the history of the North Dakota Industrial Commission as Attorney General for 21 years; and**
- Whereas, Wayne's expertise and interest in each agency under the Industrial Commission helped those agencies thrive in their missions and better serve North Dakota citizens; and**
- Whereas, Wayne was passionate about finding ways to improve the lives of all North Dakotans, from providing loans -for higher education - something near and dear to his family heritage – to preserving North Dakota's landscape along with the development of its valuable natural resources, to assuring affordable housing for everyone; and**
- Whereas, Wayne's enthusiasm for Commission-funded research on lignite coal, oil, gas and renewable energy exemplified his focus on creating a bright and prosperous future for current and future generations of North Dakotans; and**
- Whereas, Wayne consistently and vigorously defended states' rights in the face of federal overreach that threatened to harm North Dakota and its citizens; and**
- Whereas, the Commission will miss Wayne's tremendous insight and intellect, his sage legal advice and institutional knowledge, and his entertaining stories about his adventurous travels with his wife, Beth, and son, Andrew.**

Now, therefore, the North Dakota Industrial Commission honors Wayne Stenehjem for his more than 45 years of outstanding service to the State of North Dakota and offers its sympathy and deepest condolences to Beth, Andrew and the entire Stenehjem family on behalf of all the Commission agencies.

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

The Commission members expressed how much they are missing their fellow Commission member and friend, Wayne Stenehjem.

NORTH DAKOTA MILL (Mill)

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

SUMMARY

Activities in the 2nd Quarter of the year resulted in a profit of \$3,036,257 compared to \$4,517,701 last year. For the six months ending December there is a profit of \$6,392,145 compared to \$7,800,476 last year.

SALES

2nd Quarter

Sales for the 2nd quarter were \$110,856,272 compared to \$85,514,730 last year. Shipments of 3,749,216 cwts. are 324,485 cwts, below last year. Bag shipments for the 2nd quarter are 621,418 cwts., which is 1.0% below last year's 2nd quarter. Tote shipments for the 2nd Quarter are 47,544 cwts., which is 2.1% above last year's 2nd quarter. Family flour shipments of 78,740 cwts. Is 49.3% below last year's 2nd quarter. Organic flour shipment were 28,264 cwts., which is 37.2 % below last year's 2nd quarter.

Year-to-Date

Sales for the six months ended December were \$212,316,545 compared to \$165,740,998 last year, an increase of 28.1%. For the first six months the average settled price of grain is \$366 per bushel more than last year. Shipments of 7,663,928 cwts. are 306,341 cwts, below last year, a decrease of 3.8%. Year-to-date bag shipments are 1,178,328 cwts., a decrease of 95,001 cwts. from last year. Tote shipments are 88,052 cwts., an increase of 2,264 cwts. from last year. Family flour shipments for the six months ending are 153,473 cwts., a decrease of 51.8%. Organic flour shipments of 61,743 cwts. is a decrease of 27.9% from last year.

OPERATING COSTS

2nd Quarter

Operating costs for the 2nd Quarter were \$9,887,236 compared to \$9,233,011 last year, an increase of 7.1%. Operating cost per cwt. Of production was \$2.63 compared to \$2.27 last year, an increase of \$.36 per cwt.

Year-to-Date

Year-to-date operating costs are \$20,261,657 compared to \$18,547,621 last year, an increase of 9.2%. Operating cost per cwt. Of production for six months ending is \$2.62 compared to \$2.33 last year, an increase of \$.29 per cwt. Flour production decreased 2.9% to 7,720,765 cwts.

PROFITS

2nd Quarter

Operating activity for the 2nd Quarter led to a profit of \$3,036,257 compared to a profit of \$4,517,701 last year. Gross margins as a percent of gross sales for the Quarter were 12.1% compared to 16.4% last year, a decrease of 4.3%.

Year-to-Date

Operating activity for six months ending December led to a profit of \$6,392,145 compared to a profit of \$7,800,476. Gross margins as a percent of gross sales for the year are 12.9% compared to 16.3% last year, a decrease of 3.4%.

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-21**

Period	Hedge Ratio
Mar-22	1.0
May-22	1.1
Jul-22	1.0
Sep-22	1.1
Dec-22	1.1
Net Position	1.0

In response to questions regarding sales and profits, Mr. Taylor discussed the challenges in the current market, higher grain prices, increase in the sales prices, decreased margins as a percentage of the gross sales, low winter wheat spreads, competition, demand in the market, and large inventories held by the grocery stores.

Mr. Taylor reported on the negotiations with the union. After four meetings an agreement was reached, and it was ratified by the union on January 23. It was a four-year agreement that runs from July 1, 2021 through June 30, 2025. It includes wage increases of 3% in the first and second year and 3.25% in the third and fourth years which are contingent upon the Legislature's appropriation of funds. The agreement also included some increases in the shift differentials and broader language on training certificates.

Mr. Taylor provided pictures of the work that is being done on the H Mill ongoing capital project on the various floors.

Ms. Fine presented a Resolution of Appreciation for consideration.

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

Resolution of Appreciation

Whereas, Chris Lemoine began his career at the North Dakota Mill in 1991 as an Assistant Manager, Production Operations, then as Manager of Production Operations and then ultimately promoted in 2018 to Vice President, Production Operations; and

Whereas, Chris has, over these three decades, seen the Mill expand in size as well as continually update and improve its operations; and

Whereas, Chris has been instrumental in the many expansion projects that have taken place at the Mill and been a key team member in working with the contractors that have been doing the construction; and

Whereas, Chris has used his extensive knowledge of the Mill's operations to identify better ways to increase the Mill's production; and

Whereas, Chris has now decided that it is time to retire and spend more time with his wife, Gayle, enjoy time with his grandkids, and enjoy the outdoors on the golf course and trap shooting.

Now, therefore, the Industrial Commission hereby expresses deep gratitude to Chris Lemoine for his nearly 31 years of service to the North Dakota Mill and the citizens of North Dakota and wishes him the very best in his retirement.

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

HOUSING FINANCE AGENCY (HFA) or (Agency)

Mr. Dave Flohr, HFA Executive Director, presented the North Dakota Housing Finance Agency Housing Finance Program Bonds, Home Mortgage Finance Program, 2022 General Authorization Resolution for consideration.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley to approve the 2022 General Authorization Resolution as follows:

**STATE OF NORTH DAKOTA
NORTH DAKOTA HOUSING FINANCE AGENCY
HOUSING FINANCE PROGRAM BONDS
HOME MORTGAGE FINANCE PROGRAM
2022 GENERAL AUTHORIZATION RESOLUTION**

WHEREAS, the Industrial Commission of North Dakota (the "Commission") acting in its capacity as a state housing finance agency, i.e., 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 establish, and has established, a home mortgage finance program to contract to purchase from lenders mortgage loans made to persons or families of low or moderate income to finance the purchase or substantial rehabilitation of owner-occupied, single-family residential dwelling units; and

WHEREAS, the Commission adopted the Housing Finance Program General Bond Resolution of 1994, on July 21, 1994, as amended (the "1994 General Resolution"), and the General Bond Resolution of 2009, on November 25, 2009 (the "2009 General Bond Resolution," and together with the 1994 General Resolution, the "General Resolutions"), wherein Wilmington Trust National Association, Minneapolis, Minnesota, was appointed successor trustee (the "Trustee") under each of the General Resolutions, and which General Resolutions were each accepted by the Trustee, and which General Resolutions are hereby ratified and confirmed; and

WHEREAS, the Agency has previously issued certain bonds pursuant to each of the General Resolutions, both of which allow for the issuance of additional bonds thereunder and the refunding of certain bonds currently outstanding thereunder; and

WHEREAS, with respect to the proceeds of the bonds issued pursuant to the General Resolutions (collectively, the “Bonds”), such proceeds will be applied in accordance with the Act and the respective General Resolution to provide funding for the programs of the Agency to finance decent, safe and sanitary housing for persons and families of low and moderate income (the “Program”); and

WHEREAS, it is in the best interests of the Commission acting as the Agency to appoint as its agents the Executive Director, the Director of Homeownership Programs and the Chief Financial Officer of the Agency (the “Authorized Officers”) for the negotiation of the terms of sale of the Bonds, in one or more series, with fixed or floating interest rates, and with or without bondholder tender rights, and to sign such agreements on behalf of the Commission after such terms of sale have been negotiated, and such certificates and other documents as are necessary and customary to complete the sale of the Bonds, and to enter into agreements for their sale by the Agency and purchase by the Underwriters described below, private entities or the U.S. Treasury and/or instrumentalities thereof, subject to the limitations herein established with regard to the Bonds:

- (a) a maximum principal amount of long-term bonds of \$450,000,000;**
- (b) a maximum principal amount of short-term bonds of \$100,000,000;**
- (c) a final maturity of not later than forty-four years from the date of issuance;**
- (d) a maximum average annual interest rate of 7.00% for fixed rate bonds, and for variable rate bonds an initial rate of 7.00% with a maximum rate of 15% per annum, determined at the time of Bond pricing; and**

WHEREAS, in furtherance of the above-stated objectives, the Commission, the Agency, and RBC Capital Markets, LLC, Piper Sandler & Co., Raymond James & Associates, Inc. and Wells Fargo Bank, National Association., or successors thereto, affiliates thereof, or other investment banking institutions (the “Underwriters”) or purchasers approved by an Authorized Officer, will cause to be prepared and executed, such bond issuance documents as are necessary for issuance of the Bonds herein authorized; and

WHEREAS, Section 1.150-2 of the Internal Revenue Code regulations (the “Tax Regulations”) provides, if the Agency intends to finance mortgage loans with its own funds or warehouse funds, and then reimburse itself with Bond proceeds, that the Agency declare its intention to do so prior to so financing such mortgage loans.

NOW BE IT HEREWITH RESOLVED:

1. The sale of the Bonds to the Underwriters, private entities or governmental entities in accordance with the limitations herein established is hereby authorized and the officers, agents and employees of the Commission and the Agency are hereby authorized, empowered and directed to take any actions required to effect such sale and related transactions and to execute any instruments and take any actions required to effect the issuance of the Bonds and to apply the monies received by the Commission from the bond proceeds in such manner as is necessary to give effect to the Program.

2. The terms of any sale of Bonds shall be reported to the Commission at its next succeeding meeting, and any acts of the officers, agents and employees of the Commission and the Agency which are in conformity with the purpose and intent of this General Authorization Resolution and in furtherance of the sale of the Bonds may be, but need not be, submitted for approval, ratification and confirmation.

3. **The appointment of the Agency's Executive Director, the Director of Homeownership Programs and the Chief Financial Officer of the Agency as Authorized Officers with the authority to accept and execute Mortgage Purchase Agreements with Lenders and Servicing Agreements with Servicers, and the prior execution thereof by any such Authorized Officer, shall be and are in all respects ratified, approved, and confirmed.**

4. **The use and distribution by the Underwriters of initial offering documents in the form of Official Statement(s), substantially in the form previously used by the Agency in the sale of its Bonds, as contemplated and in conformity with the provisions of sale of the Bonds is hereby authorized and the use thereof prior to the date of ratification and confirmation as of the date first circulated is also authorized.**

5. **The Bonds shall be executed by the manual or facsimile signatures of the Governor, the Attorney General, the Agriculture Commissioner and an Authorized Officer, and with the manual or a facsimile of the Official Seal of the Commission impressed, imprinted or otherwise reproduced thereon.**

6. **The Authorized Officers are authorized and empowered to enter into interest rate hedging agreements with respect to any Bonds with a variable interest rate, including replacement of expiring hedging agreements, but only for the purposes and in accordance with the Commission's Swap Management and Execution Policy as then in effect, and in no case may the notional amount of any such agreement exceed the principal amount of variable interest rate Bonds whose interest rate is being hedged.**

7. **The Authorized Officers are authorized and empowered to enter into liquidity agreements, such as standby bond purchase agreements, including extension or replacement of expiring liquidity agreements, with financial institutions whereby such institutions are primarily obligated to purchase any Bonds whose owners have the right to tender their Bonds.**

8. **The Authorized Officers are authorized and empowered to modify or replace existing liquidity agreements, such as standby bond purchase agreements, and to modify any other agreement or obligation (including hedging agreements and notes or bonds of the Agency) to substitute a comparable interest rate index for the London Inter Bank Offered Rate ("LIBOR") if LIBOR is discontinued.**

9. **Moneys held by the Trustee pursuant to the General Resolutions may be invested in any investments permitted by the respective General Resolution, and in accordance with North Dakota laws.**

10. **Program Directive No. 83, adopted by the Commission on June 23, 2004, authorizing the changing of Mortgage Loan purchase price, fees and points and interest rate is still in effect and is hereby ratified and confirmed.**

11. **The Master Reimbursement Resolution, adopted October 3, 1997, is hereby ratified and confirmed, and proceeds from the sale of the Bonds may be used to reimburse the Agency for its purchase of any Mortgage Loans in anticipation of the availability of the proceeds from the sale of the Bonds; in particular, the Agency hereby declares its intention, within the meaning of the Tax Code Regulations, to facilitate continuous funding of its home mortgage finance program (as described above) by, from time to time, financing Mortgage Loans and then issuing Bonds in one or more series**

within 18 months thereof to reimburse itself for such financing, all in an amount presently expected to not exceed the amount of long-term Bonds authorized by Section 1 hereof, and hereby confirms that any Authorized Officer is authorized to also so declare the intention of the Agency within the meaning of said Tax Regulations, provided that any such declaration does not authorize or obligate the Agency to issue any such Bonds.

IN WITNESS WHEREOF, this General Authorization Resolution has been adopted and signed on February 22, 2022 and shall remain in full force and effect through March 31, 2023.

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

Mr. Flohr presented the Housing Finance Agency's 2021 Annual Report and highlighted the following points: (A copy of the Annual Report is posted on the HFA website and is available in the Commission files.)

- During the 2021 session, legislators gave NDHFA the ability to offer residential mortgages at the same capacity as Bank of North Dakota, and the federal HOME Program was transferred from the Department of Commerce to the Agency. These new responsibilities expand the breadth of both single and multifamily services provided by the Agency. The pipeline of residential mortgages has increased more than anticipated from the Bank of North Dakota exiting from this activity. This has resulted in the staff being very busy.
- The statistics related to the First-Home program (first-time homebuyers) during the year: Average Age – 32; Average Income - \$60,730; Average Purchase Price - \$189,363. The graphics showed that in 2011 the average homebuyer was paying approximately 2.5 times their annual income where in 2021 they are paying over 3 times their income. Although that has been offset by the lower interest rate environment now with rates rising and the inventory shortage of single-family housing in the lower price ranges there may be a drop in volume going forward. The incomes have not kept pace with inflation and home prices over the past decade.
- The Multifamily Housing Projects that were awarded funding. He noted that these were all infill or rehabilitation projects that should be starting up this spring. He also provided a listing of multifamily projects that were completed in 2021.
- The Program Administration projects that are funded with HFA profits – Rehab Accessibility Program; Helping Housing Across North Dakota (Helping HAND); and Opening Doors Landlord Risk Mitigation Fund (Opening Doors).
- An overview of the HFA's financials by Divisions: Homeownership; Property Management; Planning and Housing Development; and ND Homeless Continuum of Care.
- Employee activities in helping meeting community needs.

In response to a question, Mr. Flohr discussed the coordinated work that HFA does with the Department of Human Services on the federal funding that is being provided to the State to meet housing needs.

Attorney General Wrigley complimented the Agency staff on the annual report and the information that was included—it was especially helpful in his understanding of all the work the Agency does.

LIGNITE RESEARCH, DEVELOPMENT & MARKETING PROGRAM

Ms. Karlene Fine, Industrial Commission Executive Director, provided a financial report. There is currently \$4.8 million available for projects in the small research/education/demonstration category and approximately \$15 million for advanced energy technology projects. She noted that the application the Commission is considering today would come from the advanced energy technology category.

Mr. Mike Holmes, Lignite Research Program Director, presented the Lignite Research Council recommendation regarding the Special Grant Round 99 application for consideration.

99A: Project Tundra “CREST” Study; submitted by Minnkota Power Cooperative; Recommended Funding: \$5,415,000; Total Project Costs: \$10,830,000 The proposed project focuses on production of construction ready engineering, scheduling, and pricing terms (CREST) for a commercial carbon capture system retrofitted to a power plant fueled by North Dakota Lignite. The ongoing work in Project Tundra is to complete a front-end engineering design (FEED) study for a commercial carbon capture system retrofitted onto a power plant fueled by North Dakota lignite. Work would include steam turbine modelling, steam system integration design, engineering for other impacts of the steam supply strategy, design integration of optimization opportunities to reduce costs, and detailed emissions analysis and icing studies. All efforts are focused on supporting possible start of construction for Project Tundra by the end of 2022. The goal of Project Tundra is to demonstrate post combustion carbon capture (PCCC) and storage in North Dakota, preserving the use of lignite and the associated jobs, ensuring enough reliable and dispatchable power is on the grid, and moving North Dakota closer to its carbon neutral goal.

Mr. Holmes noted that all three Technical Reviewers recommended Fund and the Lignite Research Council recommended Fund on a 16 – 0 vote.

Representatives from Minnkota Power Cooperative and Mr. Jason Bohrer, Chairman of the Lignite Research Council, joined the meeting.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accepts the recommendation of the Lignite Research Council to fund the Industrial Commission February 18, 2022 grant application “Project Tundra “CREST” Study” and authorizes the Industrial Commission Executive Director/Secretary to execute a contract with Minnkota Power Cooperative to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$5,415,000 with the following contingencies:

- **Technical Advisor participates in review meetings.**
- **Technical Advisor reviews the project management plan with the project manager, including:**
 - Commitments and agreements with contractors**
 - Budget and work scope details**
 - Standards of success**

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

The Commission members commended Minnkota for their work on this project and for their providing the match for this project on a 50/50 basis.

Mr. Jason Bohrer stated they would be participating in discussions on the Regional Haze issue and will be providing updates to the Commission at future meetings.

DEPARTMENT OF MINERAL RESOURCES (DMR)

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

Case 25686, Order 30970 – request for termination of South Antler Creek-Madison Unit
Case 28950, Order 31501 – risk penalty
Case 29142, Order 31709 – review of temporary abandonment status of well

Case 25686, Order 30970

Mr. Helms stated that Case 25686 deals with the termination of the South Antler Creek-Madison Unit in Bottineau County, operated by Continental Resources, Inc. This has been a five-year process to plug all the wells, reclaim all the well sites, and file at the County Recorder's Office the requisite paperwork to terminate the unit.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that Order No. 30970 issued in Case No. 25686 terminating the South Antler Creek-Madison Unit be approved and effective February 22, 2022. On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Case 28950, Order 31501

Mr. Helms stated that Case 28950 is a risk penalty case where Slawson Exploration Co. wants to impose a risk penalty on a non-operator mineral owner for six wells in a spacing unit. Mr. Helms reviewed the information that is stated in the proposed Order 31501 regarding the non-operator mineral owner interests and the communications that had taken place between Slawson Exploration Co and Blue Steel Oil and Gas, LLC. He stated that the proposed order will allow Slawson Exploration to assess a risk penalty of 50% on Blue Steel's unleased mineral owner working interest share of reasonable actual costs of drilling and operation of four wells plus a reasonable charge for supervision.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that Order No. 31501 issued in Case 28950 denying the application of Blue Steel Oil and Gas, LLC be approved this 22nd day of February, 2022. On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Case 29142, Order 31709

Mr. Helms stated Case 29142 involves the review of the temporarily abandoned status of the White /Rock Oil & Gas, LLC #2 Beckedahl B well. The surface/mineral owner has requested that the well be plugged and reclaimed. The operator of the well, White Rock, has had this well since 2015 and has not done anything with the well. The well has not produced for 17 years.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that Order No. 31709 issued in Case No. 29142 revoking the Temporary Abandonment status of the White Rock Oil & Gas, LLC #2 Beckedahl B (File No. 12571) well located in the NE/4 SE/4 of Section 34, T.164N., R.85W., Sherwood Field, Renville County, North Dakota and requiring the well to be returned to production in paying quantities or properly plugged and abandoned by October 1, 2022, be approved and effective this 22nd day of February, 2022. On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Ed Murphy, State Geologist, presented the Geological Survey Quarterly Report. His report included information regarding the following topics:

- Wilson M. Laird Core and Sample Library
- Core Wrap Up
- Core Photography
- Three Forks Formation Report
- Tracy Mountain Critical Minerals Report
- Regulatory Programs
- Publications this Quarter
- Presentations This Quarter.

Attorney General Wrigley complimented Mr. Murphy on the report. He found it very interesting and informative.

Mr. Murphy presented the following 2021 Strategic Plan Review which highlighted the work that had been accomplished during the year.

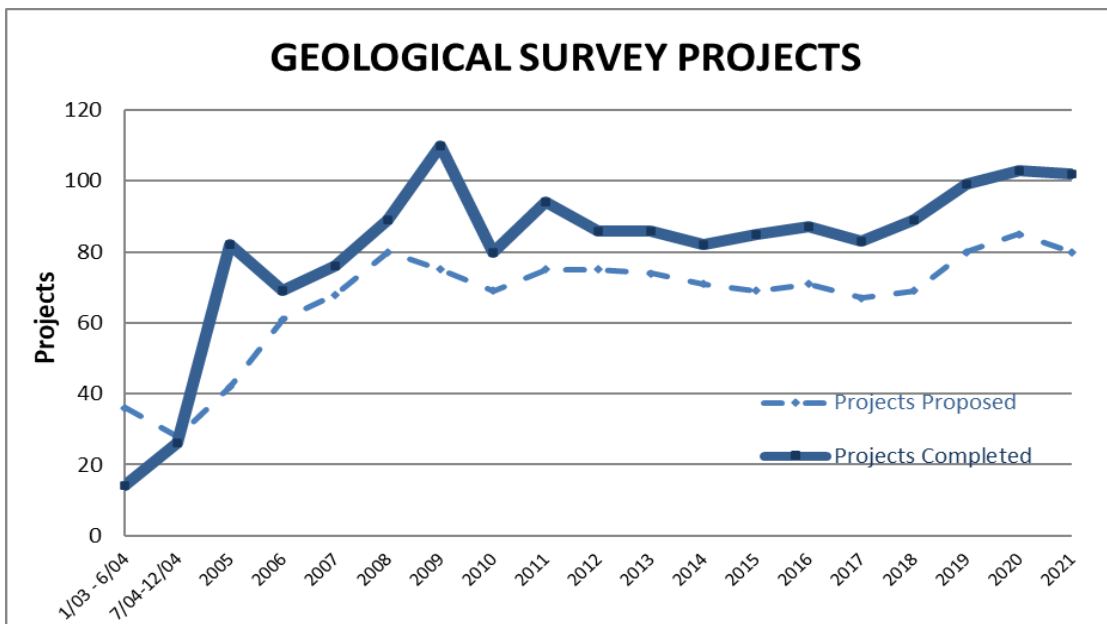
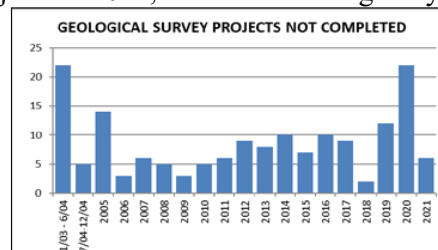
Department of Mineral Resources
 NORTH DAKOTA GEOLOGICAL SURVEY
 2021 STRATEGIC PLAN YEAREND REVIEW

OVERVIEW

The 2021 Geological Survey Strategic Plan contained 80 one-year goals, 74 of which were completed as planned. Three of the six incomplete projects resulted from changing priorities due to an acceleration of our landslide mapping program, our decision to put on a core workshop, and the retirement of our newsletter co-editor. The other three incomplete projects resulted from event changes or cancellations related to COVID-19.

In addition to completing 74 of the original projects, we also completed 28 new projects. Examples of projects added and completed in 2021 include: a core workshop, presentations at the American Association of Petroleum Geologists Annual Meeting in Denver, publication of a windblown sand report, publication of an additional potash report, publication of 210 additional phase II landslide maps, the initiation of a phase III landslide mapping program, and the paleontological field reconnaissance of ten Trust Land tracts for a potential dinosaur park. As a result, we completed 102 projects in 2021, 22 more than originally proposed

Proposed Projects	=	80
Projects Partially Completed	=	6
Projects Completed	=	74
Projects Added and Completed	=	28
Total Completed Projects	=	102



The proposed and completed projects in Geological Survey Strategic Plans (2003-2021).

SUBSURFACE ASSESSMENTS

One-year Plan:

1. Publish a report on the Madison Group source beds. (GI 255)
2. Complete a report on the Middle Three Forks sedimentology/stratigraphy. (RI 259).
3. Assist the USGS with their hydrocarbon evaluation of the Williston Basin.
4. Present one talk at the Williston Basin Petroleum Conference. (May 11, 2021)
5. Line up geology talks for the WBPC & moderate geology session. (Feb 1, 2021)
6. **Publish report on oil production in the Spearfish Formation.**
7. Evaluate reliability of the small-diameter temperature probe. (Evaluated February 1 – 11, 2021)
8. Publish shallow salt maps for the Stanley 100K sheet. (GI 256, Dunham salt in western ND)
9. Publish a report on the Deadwood Formation. (GI 257)
10. Regional Structure Map including the Williston Basin. (GI 251)
11. Publish Inyan Kara cross section for the Hazen 100k map sheet. (GI 252)

Added Projects:

1. Presented one additional talk at the WBPC. (May 11, 2021)
2. Gave two virtual core workshop presentations at the WBPC. (May 11, 2021)
3. Published a report on Precambrian tectonics in ND and surrounding area. (GI 251)
4. Published a report on the Birdbear Formation. (RI 125)
5. Organized and managed a core workshop in August 2019, included two NDGS staff presentations.
6. Gave two presentations at AAPG Sectional Meeting in Denver. (Sept.)

CORE AND SAMPLE LIBRARY

One-Year Plan:

1. Photograph 14,000 feet of core and add to website.
2. Continue to expand on the phase II comparison of onsite vs offsite cuttings coming into the core library.
3. Accelerate the ongoing core inventory.
4. Photograph thin sections as they become available and post on website.
5. Compile core analyses from core library files and post on website.
6. Continue to assist with janitorial duties at building.

Added Projects:

1. Tracked down 32,384 feet of core (primarily curator sets) in 32,384 feet shipped to the core library.
2. Photographed 18,515 feet of core, 4,515 ft. over target.
3. Photographed 9,805 feet of core with a tripod, none was planned for.
4. Compared analytical equipment and purchased a portable xrf machine.

GEOHERMAL ASSESSMENTS

One-year Plan:

1. Temperature log two temporarily abandoned wells. (Temperature logged January 4-7, 2021)

Added Projects:

1. Temperature logged two additional TA'd wells on January 6 and 7.

LIGNITE ASSESSMENTS

One-Year Plan:

1. Interpret lithologies from 200 oil and gas gamma logs and place into coal database.
2. Convert additional data in DOS based program into PETRA coal database.

GEOLOGIC MAPPING

Detailed Surface or Subsurface Mapping One-Year Plan:

1. Publish the surface geology of 10 quads in the Fargo area. (completed Mapleton quad)
2. Publish the surface geology of two quadrangles in the Bismarck area (Clear Lake and Driscoll quads).
3. Update quadrangles as new LiDAR flights become available.

Mineral Resource Mapping One-Year Plan:

1. Publish a phase III report on critical mineral concentrations in western North Dakota lignites. (RI 128).
2. Publish potash maps for the Williston 100K sheet. (GI 254)
3. Publish potash maps for the Parshall 100K sheet. (GI 253, Kenmare sheet)
4. Complete a report on the windblown deposits in eastern North Dakota. (RI 127)

Added Projects:

1. Published a report on the proppant potential for windblown sands in south-central ND. (RI 126)
2. Published K₂O grades of the Prairie Fm. for the Minot 100k map sheet. (GI 258)

Geologic Hazards Mapping One-Year Plan:

1. Publish 40 landslide maps (1:24,000) in south-central North Dakota.
2. Publish 40 landslide maps (1:24,000) in central North Dakota.
3. Publish 40 landslide maps (1:24,000) in northeastern North Dakota.
4. Publish 40 landslide maps (1:24,000) in southeastern North Dakota.
5. Utilize drone for landslide mapping as needed and provide assistance to other agencies.

Added Projects:

1. Published 40 additional landslide maps (1:24,000) in south-central North Dakota.
2. Published 40 additional landslide maps (1:24,000) in eastern North Dakota.
3. Published 40 landslide maps (1:24,000) in southeastern North Dakota.
4. Published 40 additional landslide maps (1:24,000) in south-central North Dakota.
5. Published 50 additional landslide maps (1:24,000) in eastern North Dakota. (370 quads total)
6. Published Landslide Areas in Morton County. (County Series: Morton – L)
7. Published Landslide Phase III maps for Olga NW and Vang quadrangles.

PALEONTOLOGICAL ACTIVITIES

One-Year Plan:

1. Install the new Dakota exhibit in the Heritage Center.
2. Organize the Dakota grand opening event(s).
3. Explore educational opportunities for the Stumpf site with Parks & Rec & Historical Society.(7/19, 12/10)
4. Administer Bismarck Public Fossil Dig.
5. Administer Medora Public Fossil Dig.
6. Administer the Pembina Gorge Dig.
7. **Revamp the Barnes County Museum Exhibit.**
8. Evaluate a fossil exhibit outside of Bismarck to determine if it needs updating. (Watford City exhibit center).
9. Evaluate the feasibility of a North Dakota Dinosaur Park. (Planning document completed 2/3)
10. Conduct 12 tours of the Corridor of Time Exhibit or the Paleo Lab at the Heritage Center.
11. Finish preparation and copying of two Thescelosaurus dinosaur skeletons.
12. Spend one week excavating dinosaur fossils at Fort Rice site.
13. Assess land tracts for development for potential impact on paleo resources for the Land Department.
14. Interact with federal agencies to assure effective management of ND paleontological resources.
15. Present lectures on prehistoric life in North Dakota to public and academic groups.
16. Assist the Theodore Roosevelt National Park on the first year of their paleontological inventory.

Added Projects:

1. Field reconnaissance of 10 Trust Lands tracts searching for a suitable site for a Dinosaur Park.

2. Cataloged the Hoganson reprint library (over 5,000 papers).
3. Cataloged the Erickson reprint library (over 1,000 papers).

STATE FOSSIL COLLECTION

One-Year Plan:

1. Collect, prepare, and curate fossil specimens from public digs and agency digs into the collection.
2. Correct specimen numbers on 800 specimens in the Specify database. (823)
3. Enter 2,000 specimens into the Specify database program. (900)
4. Organize and catalog the US Forest Service collection from Paleocene rocks in North Dakota.

Added Projects:

1. Recradling Ash Coulee turtle specimens.

STATE ROCK AND MINERAL COLLECTION

One-Year Plan:

1. Collect, prepare, and curate rocks and minerals collected by NDGS staff or from donations.

REGULATORY ACTIVITIES

One-Year Plan:

1. Evaluate bond amounts for the coal exploration program.
2. Transfer nonconfidential geophysical coal logs from confidential file to public file.
3. Issue permits for coal exploration in a timely manner.
4. Issue permits for subsurface minerals in a timely manner.
5. Issue permits for geothermal facilities in a timely manner.
6. Issue permits for fossil collecting on State administered lands in a timely manner.
7. Complete environmental reviews of landfill permit applications, coal mine permit applications, wind farms, as well as highway, pipeline, and transmission line corridors in a timely manner.
8. Answer inquiries from industry and the public regarding program rules and regulations.

OUTREACH ACTIVITIES

Public Outreach One-Year Plan:

1. Continue providing educational content to users on Facebook, Twitter, and Instagram.
2. Assist with the 2021 ND Petroleum Council Teacher Seminar.
3. Publish eight geology articles in the DMR newsletter.
4. Prepare a program for the 2021 Kids Reading Day at the Heritage Center. (virtual presentation)
5. Prepare a program for the 2021 Earth Day Festival. (both daytime and evening event)
6. Prepare a program for the 2021 Central Dakota Gem and Mineral Society Annual Rock Show.
7. Assist with the 2021 Science Olympiad. (online)
8. Assist with the 2021 State or Regional Science Fairs.
9. Provide lecture/tour to geoscience classes at Bismarck State College and Dickinson State University.
10. Provide public presentations pertaining to a variety of geologic topics in ND.
11. Expand on the newly implemented live streaming paleo outreach program. (added additional content in the spring)
12. Publish DMR newsletter in a timely manner.
13. Continue to maintain a wide variety of map products related to North Dakota.

Added Projects:

1. Published 5 additional articles in July 2021 newsletter.
2. Jeff Person participated in the Lignite Energy Council's Teacher Seminar this summer.
3. Clint Boyd participated in the Society of Vertebrate Paleontology's "Ask Me Anything" outreach event on Reddit in November.

Survey Web Page One-Year Plan:

1. Investigate moving the Survey webpage to a new website platform.
2. Investigate state survey web pages to determine format that functions best on a cell phone.

Added Projects:

1. Paleontology program moved to the new website platform and all pages updated.

Computerized Geologic Database One-Year Plan:

1. Identify geologic data to be scanned and placed into a Survey database.

Information Dissemination One-Year Plan:

1. Publish completed studies as NDGS publications, peer reviewed journal articles, or in industry publications.
2. Place digital copies of maps and reports on Survey website.
3. Place shape files of coal, uranium, landslides maps, etc. on the website for download.

Mr. Murphy presented the 2022 Strategic Plan for consideration.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the North Dakota Department of Mineral Resources Geological Survey 2022 Strategic Plan as follows:

**Department of Mineral Resources
NORTH DAKOTA GEOLOGICAL SURVEY
2022 STRATEGIC PLAN**

MISSION

To serve as the primary source of geologic information in the state by: 1) interpreting the states geologic setting; 2) conducting geological investigations that emphasize the state's economic products, geological hazards, and energy resources; 3) establishing a scientific framework from which to base regulatory programs; and 4) operating and maintaining a public repository for fossils, rock specimens, rock cores, well cuttings, and associated geologic data.

OVERVIEW

The 2022 Geological Survey Strategic Plan contains 79 one-year goals and 58 long-term goals. This is a flexible document and as priorities change over the course of the year, we will add new projects and likely have to postpone some of the projects listed here.

SUBSURFACE ASSESSMENTS

One-year Plan:

1. **Publish a report on the Madison Group stratigraphy.**
2. **Complete a report on the Precambrian of North Dakota.**
3. **Publish a report on Deadwood Formation cores.**
4. **Publish a map on the extent and thickness of the Pine salt.**
5. **Publish a map on the extent and thickness of the Charles A salt.**
6. **Publish report on oil production in the Spearfish Formation.**
7. **Complete three formations for the digital stratigraphic column of North Dakota.**
8. **Complete report on the Tyler Formation.**
9. **Prepare and host a core workshop.**

Long-Term Plan:

1. **Add a subsurface geologist to expedite core studies.**

2. **Provide stratigraphic and structural information to industry on major oil and gas plays in ND.**
3. **Generate information on current and future oil and gas plays useful to industry and the citizens of ND.**
4. **Complete digital stratigraphic column of North Dakota for website.**
5. **Determine the framework geology (stratigraphy & structure) of the Williston Basin in three dimensions.**
6. **Continue involvement in the annual Williston Basin Petroleum Conference.**

CORE AND SAMPLE LIBRARY

One-Year Plan:

1. **Photograph 14,000 feet of core and add to website.**
2. **Continue to expand on the phase II comparison of onsite vs offsite cuttings coming into the core library.**
3. **Accelerate the ongoing core inventory.**
4. **Photograph thin sections as they become available and post on website.**
5. **Compile core analyses from core library files and post on website.**
6. **Continue to assist with janitorial duties at building.**

Long-Term Plan:

1. **Post all core analyses on website.**
2. **Evaluate alternatives to accelerate the core photography project.**
3. **Photograph all 485,000 feet of core in the core library (prioritize based upon industry interest).**
4. **Identify whole core holdings and determine what should remain whole and what should be slabbed.**
5. **Take a large view photograph of each thin section and add it to subscription site.**
6. **Evaluate cross-training of technicians on an annual basis.**

GEOHERMAL ASSESSMENTS

One-year Plan:

1. **Temperature log temporarily abandoned wells if a good candidate is found.**

Long-Term Plan:

1. **Publish geothermal maps constructed from actual data for all forty-four 100k map sheets.**
2. **Enhance ability to respond quickly to requests for geothermal data from industry.**
3. **Periodically evaluate methods of reporting geothermal data.**

LIGNITE ASSESSMENTS

One-Year Plan:

1. **Interpret lithologies from 200 oil and gas gamma logs and place into coal database.**
2. **Convert additional data in DOS based program into PETRA coal database.**

Long-Term Plan:

1. **Evaluate feasibility and usability of a 1:250K series of coal map sheets.**
2. **Enhance ability to respond quickly to requests for lignite data.**
3. **Evaluate feasibility of scanning all public coal logs into a web-based system.**

GEOLOGIC MAPPING

Detailed Surface or Subsurface Mapping

One-Year Plan:

1. **Publish the surface geology of five quadrangles in the Fargo area.**
2. **Publish the surface geology of one quadrangle in the Bismarck area.**
3. **Update quadrangles as new LiDAR flights become available.**

Long-Term Plan:

1. **Add a surface geologist/minerals person to assist with both programs – utilize**

federal funds.

2. **Complete 24K and 100K LiDAR maps for all of North Dakota.**
3. **Publish isopachs and contour maps of all the subsurface fms. and mappable intervals in North Dakota.**
4. **Expand investigative resources through the use of contract drilling.**
5. **Complete geotechnical cross-sections of all urban areas in ND.**

Mineral Resource Mapping

One-Year Plan:

1. **Publish a critical minerals report on western North Dakota lignites.**
2. **Publish a critical minerals report on rocks in southwestern North Dakota.**
3. **Publish potash maps for the Parshall 100K sheet.**
4. **Publish potash maps for the Garrison 100K sheet.**
5. **Complete a report on the proppant potential of the Fox Hills Formation.**

Long-Term Plan:

1. **Add a minerals geologist to work fulltime on critical elements in ND rocks.**
2. **Complete mapping of all known nonhydrocarbon mineral deposits in ND at a scale of 1:24,000.**
3. **Update existing maps, such as uranium, as information becomes available.**
4. **Digitize all uranium logs in our well files.**

Geologic Hazards Mapping

One-Year Plan:

1. **Publish 40 Phase II landslide maps (1:24,000) in south-central North Dakota.**
2. **Publish 40 Phase II landslide maps (1:24,000) in western North Dakota.**
3. **Publish 20 Phase III landslide maps (1:24,000) in the Red River Valley.**
4. **Publish 20 Phase III landslide maps (1:24,000) in northeastern North Dakota.**
5. **Utilize drone for landslide mapping as needed and provide assistance to other agencies.**

Long-Term Plan:

1. **Map landslides at a scale of 1:24,000 across all of North Dakota.**
2. **Obtain 1938 stereo pair aerial photos of ND.**
3. **Obtain a recent set of stereo pair aerial photos of ND to map current landslides.**
4. **Convert photos to digital database and map landslides on computer.**

PALEONTOLOGICAL ACTIVITIES

One-Year Plan:

1. **Administer Medora Public Fossil Dig.**
2. **Administer Bismarck Public Fossil Dig.**
3. **Administer the Pembina Gorge Dig.**
4. **Move Dakota body block into lab and begin the next round of preparation work.**
5. **Complete evaluation of Trust Land's tracts for the feasibility of a North Dakota Dinosaur Park.**
6. **Revamp the Barnes County Museum Exhibit.**
7. **Complete a new MOA with the US Forest Service.**
8. **Evaluate a public fossil exhibit outside of the Bismarck area to determine if it needs updating.**
9. **Create a post on the web three informational videos about Dakota the Dinomummy.**
10. **Conduct 12 tours of the Corridor of Time Exhibit or the Paleo Lab at the Heritage Center.**
11. **Complete preparation of the Pembina Gorge mosasaur.**
12. **Install the new Dakota bite mark exhibit.**

13. **Assess land tracts for development for potential impact on paleo resources for the Land Dept.**
14. **Interact with federal agencies to assure effective management of ND paleontological resources.**
15. **Present lectures on prehistoric life in North Dakota to public and academic groups.**

Long-Term Plan:

1. **Add a paleontology technician to assist with the digs and the backlog of fossil field jackets.**
2. **Continue to expand the public fossil dig program.**
3. **Investigate twelve cities in North Dakota for additional paleontology exhibit opportunities.**
4. **Update the paleontology website with a focus on the Fossil ID, Publications, and Outreach pages.**
5. **Develop a procedure and associated database for 3D scanned fossils from North Dakota.**
6. **Continue outreach, including tours of the lab and fossil exhibits, public lectures, field trips, identification of fossils for the public, participation in science Olympiads and science fairs, etc.**
7. **Continue to conduct research to learn more about North Dakota's prehistoric life.**
8. **Continue publishing technical and non-technical articles about the prehistoric life of North Dakota.**
9. **Scan and organize all of the historical 35 mm slides in the paleontology archives.**
10. **Partner with the State Library to compile a searchable inventory of the paleontology research library.**
11. **Design a mobile fossil preparation lab trailer to use with the Public Fossil Digs and outreach events.**

STATE FOSSIL COLLECTION

One-Year Plan:

1. **Collect, prepare, and curate fossil specimens from public digs and agency digs into the collection.**
2. **Finish cataloging 320 specimens from the Concordia collection.**
3. **Enter 2,000 specimens into the Specify database program.**
4. **Organize and catalog the US Forest Service collection from Paleocene rocks in North Dakota.**

Long-Term Plan:

1. **Continue collection and curation of North Dakota fossil specimens.**
2. **Prepare fossil specimens for scientific study, public display, and educational use.**
3. **Catalog all vertebrate specimens from the Hell Creek Formation into the Specify database.**

STATE ROCK AND MINERAL COLLECTION

One-Year Plan:

1. **Collect, prepare, and curate rocks and minerals collected by NDGS staff or from donations.**

Long-Term Plan:

1. **Continue collection and curation of North Dakota rock and mineral specimens.**
2. **Prepare rock and mineral specimens for scientific study, public display, and educational use.**

REGULATORY ACTIVITIES

One-Year Plan:

1. **Expand evaluation of bond amounts for the coal exploration program to additional states.**
2. **Transfer nonconfidential geophysical coal logs from confidential file to public file.**
3. **Issue permits for coal exploration in a timely manner.**
4. **Issue permits for subsurface minerals in a timely manner.**
5. **Issue permits for geothermal facilities in a timely manner.**
6. **Issue permits for fossil collecting on State administered lands in a timely manner.**
7. **Complete environmental reviews of landfill permit applications, coal mine permit applications, wind farms, as well as highway, pipeline, and transmission line corridors in a timely manner.**
8. **Answer inquiries from industry and the public regarding program rules and regulations.**

Long-Term Plan:

1. Propose the needed statute and rule changes to keep the regulatory programs functioning efficiently.

OUTREACH ACTIVITIES

Public Outreach One-Year Plan:

1. Continue providing educational content to users on Facebook, Twitter, and Instagram.
2. Assist with the 2022 ND Petroleum Council Teacher Seminar.
3. Assist with the 2022 ND Lignite Energy Council Teacher Seminar.
4. Publish eight geology articles in the DMR newsletter.
5. Prepare a program for the 2022 Kids Reading Day at the Heritage Center.
6. Prepare a program for the 2022 Earth Day Festival.
7. Prepare a program for the 2022 Central Dakota Gem and Mineral Society Annual Rock Show.
8. Assist with the 2022 Science Olympiad.
9. Assist with the 2022 State or Regional Science Fairs.
10. Provide lecture/tour to geoscience classes at Bismarck State College and Dickinson State University.
11. Provide public presentations pertaining to a variety of geologic topics in ND.
12. Expand on the recently implemented live streaming paleo outreach program.
13. Publish DMR newsletter in a timely manner.
14. Continue to maintain a wide variety of map products related to North Dakota.

Long-Term Plan:

1. Prepare guidebooks for general public fieldtrips in areas of interest in North Dakota.
2. Meet with industry and state and federal agencies to assess study topics, on an as-needed-basis.
3. Hire a full-time outreach person.
4. Develop a six-volume educational series on the paleontology of North Dakota.
5. Produce a series of children's books on fossils including coloring books.

Survey Web Page

One-Year Plan:

1. Investigate methods of transferring the Survey webpage to a Drupal Webform.
2. Investigate state survey web pages to determine format that functions best on a cell phone.

Long-Term Plan:

1. Continue to place relevant geologic information and related technical material on the website.
2. Scan all of the electric and geologic logs from coal and uranium exploration holes.

Computerized Geologic Database

One-Year Plan:

1. Identify geologic data to be scanned and placed into a Survey database.

Long-Term Plan:

1. Complete digitization of existing databases and maintain files.

Information Dissemination

One-Year Plan:

1. Publish study results as NDGS publications, peer reviewed journal articles, or industry pubs.
2. Place digital copies of maps and reports on Survey website.
3. Place shape files of coal, uranium, landslides maps, etc. on the website for download.

Long-Term Plan:

1. Create digital files for all of the Geological Survey's historic documents.
2. Study the feasibility of scanning all stereopair aerial photographs in the Survey collection and, unless prohibited by agreement, provide to the general public.
3. Scan electric and geologic logs from coal and subsurface mineral files and place on website.

In response to a question, Mr. Murphy provided additional information about the Geologic Hazards Mapping proposed as part of the long-term plan as it relates to the 1938 stereo pair aerial photos of ND.

There was discussion about whether the Geological Survey has sufficient staffing and resources to assist with obtaining information about the critical minerals that are found in North Dakota. It was indicated that this is a topic the staff will be discussing with the Office of Management and Budget for the upcoming biennium's budget.

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

The Commission and Mr. Helms commended the Geological Survey on the great work they are doing.

Mr. Helms explained something innovative that the industry is doing to maximize the completion interval and enhance the production of Bakken and Three Forks horizontal wells and has titled it Drill Back Wells. Over the past year there have been 14 "ghost" holes which has resulted in challenges in protecting correlative rights. Mr. Helms provided photos of this activity. He proposed that the Commission hold a public hearing to allow North Dakota operators to talk about why the operators are doing this, the benefits and risks of doing this, and the costs of failures like the "ghost" holes, and then come to the Commission with an order similar to what the Commission has done in the past in establishing statewide orders. There is a need to gather information from the operators on this practice and how it can be done without sacrificing substantial amounts of completion interval but still protect correlative rights. Mr. Helms believes that this format will allow the specialists that do this work to provide important information that will be helpful to the Commission in establishing a policy.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission hold a public hearing on Statewide Drill Back Well Policy. On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Helms provided an update on the following ongoing litigation:

- Case No. 31-2020-CV-0018 - Northern Oil and Gas, Inc. vs. Continental Resources, Inc; Board of University and School Lands and ND Industrial Commission et al – *Currently in extensive discovery*
- Case No. 05-2019-CV-00085 - Northwest Landowners Association vs. State of North Dakota, et al. – *Briefs have been filed and waiting on the Supreme Court*
- Case No. 04-2021-CV-00011 Gallatin Oil, LLC vs. ND Industrial Commission, Attorney General Stenehjem and Lime Rock Resources III-A, L.P. – *waiting on a decision from the Supreme Court*
- Case No. 13-2021-CV-00036 - Blue Appaloosa vs. North Dakota Industrial Commission – *waiting on a decision from the District Court*

Mr. Helms distributed copies of the State of North Dakota Comments that had been submitted on Proposed Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review (2021 NSPS Proposal) that relates to methane. He gave a brief overview of what is contained in the comments. The comments are as follows:

The Honorable Michael Regan Administrator
U.S. Environmental Protection Agency 1200 Pennsylvania
Ave., N.W. Washington, D.C., 20460

Ms. Karen Marsh & Ms. Amy Hambrick Sector
Policies and Programs Divisions
Office of Air Quality Planning and Standards (E143-05)
U.S. Environmental Protection Agency Research
Triangle Park
North Carolina 27711
Washington, DC 20460

Re:

State of North Dakota Comments on Proposed Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review (86 Fed. Reg. 63,110) (November 15, 2021) [EPA-HQ-OAR-2021--0317; FRL-8510--02-0AR]

Dear Administrator Regan, Ms. Marsh, and Ms. Hambrick:

On November 15, 2021 the Environmental Protection Agency (EPA) announced the proposed "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review" (86 Fed. Reg. 63,110) [EPA-HQ-OAR-2021--0317; FRL-8510--02-0AR] (hereinafter the "2021 NSPS Proposal."). The State of North Dakota ("North Dakota" or the "State"), respectfully submits these comments in response to the 2021 NSPS Proposal.

As described below, the 2021 NSPS Proposal has several significant technical and legal flaws and North Dakota submits that EPA cannot proceed with any "methane" rulemaking until these flaws are addressed.¹ North Dakota respectfully urges the EPA to modify the 2021 NSPS Proposal on these grounds, and to return to the proper limits of its regulatory authority as set forth in the Administrative Procedure Act ("APA") and the Clean Air Act ("CAA").

North Dakota also supports the comments submitted by the State of West Virginia et al on the 2021 NSPS Proposal.

I. North Dakota's Interest in the Proposed Rulemaking.

The CAA establishes "a comprehensive national program that ma[kes] the States and the Federal Government partners in the struggle against air pollution." *General Motors Corp. v. United States*, 496 U.S. 530, 532 (1990). In this "experiment in cooperative federalism," (*Michigan v. E.P.A.*, 268 F.3d 1075, 1083(D.C. Cir. 2001)), the CAA establishes that improvement of the nation's air quality will be pursued "through state and federal regulation," with States having the primary responsibility for controlling sources of air pollution (*BCCA Appeal Group v. E.P.A.*, 355 F.3d 817, 821-22 (5th Cir. 2003); *see also* 42 U.S.C. § 7401(a)(3) ("air pollution prevention ... and air pollution control at its source *is the primary responsibility of States and local governments*") (emphasis added); and 42 U.S.C. § 7407(a) ("Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State ... ")).

For decades, North Dakota had the lead role in properly regulating emissions from the oil and natural gas sector and has developed considerable expertise in this area. That is because oil and gas production are central to North Dakota's economy and the welfare of its citizens, responsible for 54% of the value of the State's economy, generating approximately 76% of the State's tax revenue and creating approximately 66,000 good-paying jobs in the State. And, the State of North Dakota is ranked 3rd in the United States among all states in the production of oil and gas. North Dakota produces over 500,000,000 barrels of oil per year and over 900,000,000 million cubic feet of natural gas per year. As such, North Dakota has a vested interest in the subject matter of the 2021 NSPS Proposal.

A. North Dakota's Long Participation in Rulemakings Affecting North Dakota's Regulation of the Oil and Natural Gas Sector.

1. EPA's 2016 Methane New Source Performance Standard Rule.

North Dakota participated in EPA's 2016 rulemaking that culminated in the final rule entitled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources." 81 Fed. Reg. 35,824 (June 3, 2016) ("2016 Rule"). After EPA did not adequately take into account the comments filed by North Dakota and other stakeholders, North Dakota initiated the lead petition for judicial review of the 2016 Rule in *North Dakota v. EPA*, No. 16-1242 (D.C. Cir. filed July 15, 2016), asserting in part that EPA (1) failed to make the necessary endangerment finding with respect to the oil and natural gas source category in order to establish standards of performance for methane; (2) that the 2016 Rule was arbitrary and capricious and not in accordance with law for several reasons, including failing to be supported by the administrative record and relying on insufficient justifications for increased regulation; and (3) that the 2016 Rule violated the Tenth Amendment and principles of cooperative federalism by neglecting North Dakota's role in regulating emissions from the oil and natural gas source category and thus commandeering North Dakota's state-delegated programs under the CAA. *See North Dakota v. EPA*, No. 16-1242.

Before North Dakota's challenges to the 2016 Rule were briefed on the merits, the D.C. Circuit held the case in abeyance so that EPA could reconsider the 2016 Rule. Eventually, EPA promulgated a new rule in September of 2020, entitled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review," 85 Fed. Reg. 57,018 (Sept. 14, 2020) (the "2020 Rule"). The 2020 Rule corrected many of the errors of the 2016 rule, including removing its broad and unjustified endangerment finding in the 2016 Rule, and returning to a statutorily appropriate view of endangerment. The 2020 Rule was later disapproved by a resolution of Congress under the Congressional Review Act, which was signed by President Biden on June 30, 2021.

2. The Bureau of Land Management's 2016 Venting and Flaring Rule.

North Dakota separately and successfully challenged the Bureau of Land Management's ("BLM") 2016 venting and flaring regulation entitled, Waste Prevention, Production Subject to Royalties and Resource Conservation Rule ("Final Rule"), 81 Fed. Reg. 83,008 (Nov. 18, 2016) ("2016 Venting and Flaring Rules). North Dakota successfully argued that the 2016 Venting and Flaring Rule usurped the sovereign authority of North Dakota to regulate oil and gas operations on non-federal lands in the state, upended the cooperative federalism required by the CAA and Mineral Leasing Act ("MLA"), and that BLM's decision to justify the benefits of the rule on global "social cost" of methane emissions was arbitrary and capricious. *See Wyoming et al. v. US. DOI et al.*, Case No. 16-cv-00285 (D. Wyo. 2016). The Court agreed with North Dakota and vacated the 2016 Venting and Flaring Rule. *See Order on Petitions for Review of Final Agency Action in Case No. 16-cv-00285 (ECF No. 284, October 8, 2020) (Attachment I).*

3. EPA's Clean Power Plan and Affordable Clean Energy Rules.

North Dakota also challenged how EPA has exercised its authority under Section 111 of the Clean Air Act to set standards of performance for existing sources in litigation over the Clean Power Plan and the subsequently promulgated Affordable Clean Energy Rule, which is now before the Supreme Court of the United States. *See North Dakota v. EPA et al.*, No. 20-1780 (Consolidated in Case No. 20-1530 with Case Nos. 20-153 I and 20-1778). There is a high likelihood that the Supreme Court will rule on the contours of EPA's regulatory authority to set standards of performance for existing sources under Section 111 of the CAA, which could impact the scope of EPA's authority in promulgating the 2021 NSPS Proposal.

B. The 2021 NSPS Proposal is Not Necessary Because North Dakota Extensively Regulates Emissions from the Oil and Natural Gas Sector.

North Dakota already comprehensively regulates GHG emissions from the oil and natural gas sector through the North Dakota Department of Environmental Quality ("NDDEQ") and the North Dakota Industrial Commission ("NDIC").

1. The North Dakota Department of Environmental Quality.

The NDDEQ is the primary delegated implementation and enforcement authority for the CAA in North Dakota. The NDDEQ has adopted air pollution control rules which state that it is the purpose of those rules and regulations "to state such requirements as shall be required to achieve and maintain the best air quality possible, consistent with the best available control technology, to protect human health, welfare, and property; to prevent injury to plant and animal life; to promote the economic and social development of this state; to foster the comfort and convenience for the people; and to facilitate the enjoyment of the natural attractions of this state." N.D. Admin Code ("NDAC") § 33.1-15-01-01.

The NDDEQ Division of Air Quality regulates the oil and gas industry under the North Dakota Air Pollution Control Rules which include (1) Ambient Air Quality Standards (§ 33.1-15-02); (2) Restriction of Visible Air Contaminants (Ch. 33.1-15-03); (3) Control of Organic Compounds Emissions (§. 33.1-15-07); (4) Standards of Performance for New Stationary Sources which adopts by reference 40 CFR part 60 Subpart 0000 and 0000a (§ 33.1-07-12-02); (5) Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (§ 33.1-15-14); (6) Restriction of Odorous Air Contaminants (H₂S) (§ 33.1-15-16); (7) Restriction of Fugitive Emissions (Ch. 33.1-15-17); and (8) Control of Emissions from Oil and Gas Well Production Facilities (Oil well registrations) (§ 33.1-15-20).

2. The North Dakota Industrial Commission.

The NDIC, Department of Mineral Resources, Oil and Gas Division has jurisdiction to administer North Dakota's comprehensive oil and gas regulations found at NDAC, Chapter 43-02-03. These regulations include regulation of the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and chemical treatment of wells, including hydraulic fracturing; the spacing of wells; operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the ND UIC Program; and all other operations for the production of oil or gas.

The NDIC has already been implementing programs to reduce methane emissions from the oil and natural gas sector, which efforts will be undermined by the 2021 NSPS Proposal. While NDIC is not the "SIP" agency for purposes of CAA regulation, the NDIC is committed to reducing waste from oil and gas production activities and has imposed stringent waste reduction requirements on oil and gas operators.

For example, the NDIC made significant changes to its Gas Capture Policy on September 22, 2020 that already address many of the actions in the 2021 NSPS Proposal to reduce emissions of greenhouse gases ("GHGs") and other pollutants from the Crude Oil and Natural Gas Source category, including:

1. Changed the definition of stranded gas to spacing units with no drilling activity in the previous 5 years and limited flaring allowance to the first 12 months for new wells in the spacing unit.
2. Clarified the standard method for how gas capture percentage is to be calculated.
3. Required a sundry notice with documentation to qualify for the 14 day flowback flaring variance.
4. Required a sundry notice with documentation to qualify for the initial production test flaring variance and reduced the maximum time period from 46 to 31 days.
5. Required a sundry notice with documentation to qualify for the *force majeure* flaring variance.
6. Required a sundry notice with documentation to qualify for the system maintenance and upgrade flaring variance.
7. Required a sundry notice with documentation to qualify for the old well flaring variance if newly completed wells exceed system capacity.
8. Required a sundry notice with documentation to qualify for the right of way delay flaring variance and limited private ROW variance to 180 days and federal ROW variance to 365 days.
9. Required notice and hearing to qualify for the safety, reservoir damage, or gathering system curtailment flaring variance.
10. Required a sundry notice with documentation to qualify for the temporary storage flaring variance.

11. Required a sundry notice with documentation to accumulate gas capture credits and limited credits (expire after 12 months).

For the 14 months preceding the NDIC's changes gas capture from all producing oil and gas wells averaged 87% and average flared volume was 399,842,000 cubic feet per day. At the EPA Flare Efficiency Study values of 98%-99% destruction efficiency for flares, this resulted in an estimated 5,998,000 cubic feet per day of methane-butane emissions. For the 14 months since the NDIC's changes, gas capture has averaged 93% and average flared volume was 222,637,000 cubic feet per day, which resulted in an estimated 3,340,000 cubic feet per day of methane-butane emissions, a reduction of 2,658,000 cubic feet per day. Thus, just in the last year North Dakota reduced emissions associated with flaring by 56% or a total of 970,170,000 cubic feet.

North Dakota, through the NDDEQ and NDIC, is already working diligently to reduce emissions from the Crude Oil and Natural Gas source category, without the need for costly or duplicative regulations from EPA in the 2021 NSPS Proposal. Additional federal regulations overlaid on the NDDEQ's and NDIC's existing regulations has the practical effect of duplicating or displacing these regulations that are already effectively controlling methane emissions in the State. For example, North Dakota already completely prohibits venting under NDDEQ and NDIC Rules (*See e.g.* NDAC Chapter 7, § 33.1-15-07-02(I) (prohibiting venting unless controlled by flares or other approved control device). Yet, in the 2021 NSPS Proposal, EPA notes instances where venting may be allowed under the NSPS OOOOb discussion (*see* 86 Fed. Reg. at 63,179-80), which would lessen North Dakota's more stringent regulations and cause uncertainty for operators. And, this is not the only area for potential confusion. The 2021 NSPS Proposal indicates significant new OOOOa regulations which will overlap with North Dakota's existing Chapter 7 regulations. Without seeing the text of those regulations, the effects are impossible to predict. However, North Dakota believes it is likely the 2021 NSPS Proposal would create duplicative reporting, which reporting burdens would have a net effect of decreasing environmental protections through additional confusion and reporting burdens placed on operators. *See* Section VI.E, *supra* (discussing the OOOOa regulations and potential duplicative reporting requirements in more detail).

II. The 2021 NSPS Proposal Lacks Any Regulatory Text and Violates the Notice and Comment Requirements of the Administrative Procedure Act.

The 2021 NSPS Proposal entirely lacks *any* regulatory text, and thus the technical support documents and regulatory impact analyses are incomplete and lack the information necessary for North Dakota (or any member of the public) to have full notice of and have the opportunity to constructively comment because no actual rule text has been proposed. *See* 86 Fed. Reg. at 63,115 (noting EPA plans to issue a "supplemental RIA," meaning that the current RIA is incomplete and cannot be fully evaluated). Conceding that it has not proposed any regulatory text, EPA expresses an intent to issue a "supplemental proposal and supplemental RIA for the supplemental proposal to provide regulatory text for the proposed NSPS OOOOb and EG OOOOc." 86 Fed. Reg. at 63,115/3.

As a result, the 2021 NSPS Proposal does not comply with the APA's minimum requirement EPA's proposed rules must provide "either the terms or substance of the proposed rule or a description of the subjects and issues involved" as required by 5 U.S.C. § 553(b)(3), such that would afford North Dakota a reasonable and meaningful "opportunity to participate in the rulemaking" under 5 U.S.C. § 553(c). This is particularly important in the case of complex technical regulations such as those at issue here, where very slight differences in phrasing, terminology and cross referencing can have a material impact on the legal, technical and economic consequences of the rule. This concern is even higher for States such as North Dakota, which will have the obligation to interpret, implement and enforce any final rule.

Thus, because the November 15, 2021 Federal Register notice of the 2021 NSPS Proposal is in the form of an "advanced notice of proposed rulemaking" since it does not propose the text of a specific rule, if and when EPA chooses to propose any specific regulatory text associated with the 2021 NSPS Proposal, EPA is obligated under the APA to provide North Dakota, and the public, notice of and an opportunity to comment on the proposed rule. Any action by EPA to simply publish new regulatory text for the first time as a final rule based on the notice published in the Federal Register on November 15, 2021 will be a clear violation of the notice and comment provisions of the APA.

Further, public notice and an opportunity for comment must be provided for any revisions to the 2021 NSPS Proposal that EPA might make. Given that EPA in this proceeding is soliciting comments "on *all aspects* of the proposal to enable the EPA to develop a final rule," 86 Fed. Reg. at 63,115/3, any future related proposals and public comment periods should likewise include all aspects of any proposed rule and not split the process into multiple proceedings or rulemakings.

III. EPA Lacks Authority to Establish Standards of Performance for New Sources Under Section 111(b) Until it Makes an Endangerment Finding for the Oil and Natural Gas Source Categories for Transportation and Storage and Well Liquid Unloading Operations.

The 2021 NSPS Proposal seeks to establish Section 111(b) regulations for new sources in the oil and natural gas source category not just for production, but also for transportation and storage and well liquid unloading operations by relying on prior endangerment findings for GHGs. *See* 86 Fed. Reg. at 63,124 (citing to the 2009 Endangerment and Cause or Contribute Findings for GHGs Under Section 202(a) of the CAA (74 Fed. Reg. 66,496, December 15, 2009)) and related 2016 Endangerment and Cause or Contribute Findings for GHG emissions from aircraft under section 231(a)(2)(A) of the CAA (81 Fed. Reg. 54,422, August 15, 2016).

EPA asserts that these prior endangerment findings are sufficient to include the oil and natural gas source categories for transportation and storage and well liquid unloading operations by relying on the 2016 Rule because that rule "affirmatively expanded the source category to include the transmission and storage segment." 86 Fed. Reg. at 63,135 (citing 81 Fed. Reg. at 35,832). However, the 2016 Rule was challenged by many parties including North Dakota in the D.C. Circuit. One of the key challenges to the 2016 Rule was whether the endangerment finding was properly expanded to include the oil and natural gas source category for transportation and storage and well liquid unloading operations, rather than production operations. Thus, the 2016 Rule did not resolve the disputed endangerment finding on which EPA relies again for this rulemaking.

To establish new source emission limits for specific categories of stationary sources, EPA must first list the category of stationary sources that "cause [], or contribute[] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 741 J(b)(1)(A). In doing so, EPA must make two separate findings: (1) that a given form of air pollution "may reasonably be anticipated to endanger public health or welfare"; and (2) that a given category of stationary sources "causes or contributes significantly to" that air pollution. EPA has not made either finding in the 2021 NSPS Proposal for the specific category of oil and natural gas for the transportation and storage and well liquid unloading operations. Further, for all of the reasons set forth in the rulemaking and litigation record related to the 2016 Rule, EPA cannot rely on that disputed and inadequate endangerment finding to support this rulemaking. Therefore, without the necessary and adequate endangerment finding, EPA's proposed requirements under Section 111(b) for the transportation, storage and well liquid operations are unlawful.

IV. EPA Lacks Authority to Establish Standards of Performance for Existing Sources Under Section 111(d).

In the 2021 NSPS Proposal, EPA also proposes to impose nationwide emissions requirements for limiting methane emissions from existing designated sources under Section 111(d) of the CAA. EPA is proposing to set a best system of emission reduction ("BSER") for *existing sources* that is identical to that for *new sources*, requiring a fixed 95 percent reduction of VOC emissions from those sources. *See* 86 Fed. Reg. at 63,179.

However, existing sources under Section 111(d) are regulated much differently from new sources under Section 111(b). Whereas EPA can directly impose standards of performance on *new sources* under Section 111(a) and (b), EPA can only establish BSER for *existing sources* under Section 111(d) as a *guideline*, and the States then has the authority to set the actual standards of performance by applying the BSER. Thus, EPA has the authority to impose standards of performance on new sources, while States, applying EPA guidance, have that authority for existing sources. The 2021 NSPS Proposal would subvert that statutory framework, with EPA assuming the authority to impose national standards of performance on existing sources, eliminating any meaningful distinction between new and existing sources, and effectively displacing the States from their central role in the Clean Air Act in establishing standards of performance for existing sources.

The text of Section 11 l(a) and 11 l(d), when read together, set forth a four-step process by which EPA establishes a BSER guideline, States create plans establishing standards of performance for existing sources based on the States' application of the guidelines in the BSER, which plans are then submitted to EPA for review and approval.

First, in accordance with the definition of "standard of performance" under Section 111(a)(1), EPA determines the BSER that is "adequately demonstrated," taking into consideration certain enumerated statutory criteria: cost, any nonair quality health and environmental impacts, and energy requirements. 42 U.S.C. § 7411(a)(1). The BSER established by EPA is not a "standard of performance." A standard of performance is a "standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application" of BSER. *Id.* EPA's BSER is not itself the emissions standard or emissions limitation, but rather is a guideline to be "applied" by the States in the process of the States setting "emission limitations" that are "achievable." *Id.*

Second, for existing sources, EPA "shall prescribe regulations" under which *States shall* establish "standards of performance for any existing source for any air pollutant." *Id.* at (d)(1). Since the States "establish" the standards of performance, that means it is the States that determine, for existing sources, what "emissions limitations" are "achievable," applying EPA's BSER guidelines. In promulgating its Section 111(d) procedures, EPA "shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies." *Id.* This language in Section 111(d)(1) explicitly lays out the cooperative federalism framework of the CAA for the regulation of existing sources, mandating that the States have the primary role in setting standards of performance and emission limitations, and mandating that States have the authority to make source-specific determinations in setting those standards of performance "for any existing source." *Id.*

Third, under subsection (d)(1), States create plans establishing "standards of performance" for existing sources and "provide[] for the implementation and enforcement of such standards of performance" (i.e., of the standards established by the State). 42 U.S.C. § 7411(d)(1). It is at this stage that States establish standards of performance for existing sources, applying EPA's BSER to determine what emission limitations are achievable by those existing sources. In so doing, States take into consideration source-specific factors (including but not limited to the remaining useful life of the existing source) in setting standards of performance that are "achievable" (*Id.* at (a)(1)) for "any existing source" (*Id.* at (d)(1)).

Lastly, these State plans are submitted to EPA for its review and approval. *Id.* at (d)(1)-(2).

These provisions, read in concert, mandate that the States have the authority to set the standards of performance and emission limitations, and further mandate that the States have the authority to make source specific determinations in setting those standards of performance "for any existing source." *Id.* at (d)(1). Any BSER *guideline* created by EPA must not infringe on the States' authority to establish emission limitations and determine what emission limitations are "achievable" by existing sources, including the States' authority to take source-specific factors into account in establishing the standards of performance. Otherwise the primary role designated to the States under Section 111(d)(1) is rendered superfluous if EPA has already assumed primacy in Section 111(d)(1). Therefore, under the plain language of Section 111(d), EPA exceeds its authority if it promulgates BSER *guidelines* which instead create mandatory national emission limitations that tie the States' hands in establishing Section 11 l(d) plans by infringing on the States' authority to (1) "establish[] standards of performance for any existing source" and (2) "take into consideration" source specific factors in applying the standards of performance "to any particular source." *Id.*

The 2021 NSPS Proposal violates this statutory separation of authority by proposing a fixed national standard of 95 percent VOC emissions reduction that would apply to both *new* and *existing* sources. *See* 86 Fed. Reg. at 63,179/2 ("the BSER analysis for existing sources supports proposing presumptive standards for reducing methane emissions from existing pneumatic controllers that are the same as those the EPA is proposing for new, modified, or reconstructed sources (for NSPS OOOOb). EPA's proposal to assume for itself the authority to impose fixed national emission standards on existing sources and thus displace the State's authority to establish standards of performance for existing sources violates Section 11 l(d).

Further, EPA's attempt to label this 95 percent VOC emission reduction requirement as a "presumptive standard[]" that States may use in the development of State plans for specific designated facilities" is a misnomer. 86 Fed. Reg. at 63,117. EPA admits that it "is proposing to translate the degree of emission limitation achievable through application of the BSER (i.e., level of stringency) into presumptive standards." *Id.* In effect, this action, if finalized, would displace North Dakota's sovereign authority to apply the BSER guidelines to determine the degree of emission limitation that is achievable, because EPA has already precisely made that determination.

This very issue is currently before the Supreme Court in *North Dakota v. EPA et. al.*, No. 20-1780 (Consolidated in Case No. 20-1530 with Case Nos. 20-1531 and 20-1778), where certiorari has been granted and oral argument is set to proceed on February 28, 2021. One of the key issues the Supreme Court will soon rule on is the extent of EPA's authority under Section 11 l(d) to impose emissions standards on existing sources. EPA should refrain from proposing and finalizing any regulatory provisions regarding existing sources in this rulemaking until the Supreme Court issues its decision.

V. Executive Order 13990, Climate Change, and the Social Cost of Carbon Cannot Justify the 2021 NSPS Proposal.

The 2021 NSPS Proposal is also unlawful because it relies on Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," issued on January 20, 2021, and the stated need to "address the far-reaching harmful consequences and real economic costs of climate change" (86 Fed. Reg. at 63,113/3), including calculating the social cost of carbon, methane, and nitrous oxide as justifications for promulgating the rule (*Id.* at 63,258/3). EPA also relies on Executive Order 12866, "Regulatory Planning and Review," issued September 30, 1993, which requires that agencies EPA projected the emissions reductions, costs, and benefits that may result from a proposed regulatory action as further justifying their quantification of the "social cost of carbon."

EPA's authority to promulgate NSPS regulations must be based on its statutory authority under the Clean Air Act as authorized by Congress, which cannot be expanded or amended by a President's Executive Orders. In particular, EPA cannot justify costs the costs that will be imposed on American citizens and businesses if the 2021 NSPS Proposal was finalized by trying to balance those costs against speculative global benefits that might be reaped outside of the United States using the very dubious "social cost of carbon" calculations directed by EO 12866. Federal agency efforts to rely on "global benefits" to justify "national costs" imposed by regulations has already been rejected by the courts. In *Wyoming et al. v. Jewell et al.*, to which North Dakota was a party, the United States District Court for the District of Wyoming struck down the Bureau of Land Management's ("BLM's") 2016, 2017, and 2018 regulations seeking to reduce waste of natural gas from venting, flaring, and leaks during oil and gas production activities, in part based on the BLM's justification for those regulations based on the "social cost of methane." *See* Order on Petitions for Review of Final Agency Action, Case No. 2:16-cv-00285 (D. Wyo., October 8, 2020). The Court found that BLM's statutory authorization under the Mineral Leasing Act to "prevent waste" from *domestic* oil and gas operations could not be justified by using "a *global* emissions metric to quantify the benefits arising from a rule designed to curb domestic waste under the MLA." *Id.* at 47.

In the 2021 NSPS Proposal, EPA relies on the "Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under E.O. 13990 (IWG 2021)" published in February 2021 by the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG). The IWG 2021 support document ignores the admonishment of the Court in *Wyoming et al. v. Jewell et al.*, and attempts to justify the costs on U.S. citizens and companies of the 2021 NSPS Proposal by relying on a "global" calculation of GHG emission reductions because "a global perspective is essential for SC-GHG estimates because climate impacts occurring outside U.S. borders can directly and indirectly affect the welfare of U.S. citizens and residents." IWG 2021, at 4.

At the outset, EPA's "social cost of carbon" calculations are entirely speculative, seeking to attach a global cost to U.S. methane emissions, an effort that is based on countless layers of unproven and untested assumptions regarding environmental, social, political and economic conditions in vast areas where EPA has no jurisdiction or expertise. EPA's references to peer reviews does not transform these assumptions into facts or even good guesses: it is absurd to even pretend to estimate the global social cost of methane emissions 25, 50 or 100 years

into the future and use that as a justification to impose costs on U.S. citizens. Accordingly, the output of EPA's "social cost of carbon" calculation are speculative and it is arbitrary and capricious to rely on them.

Further, as the Court decided in *Wyoming v. Jewell*, EPA cannot rely on purported benefits that might accrue to citizens outside the United States to justify the imposition of burdens on the citizens of the United States. EPA cannot evade that judicial determination with vague and unquantified references to the effect that climate change impacts occurring outside of U.S. borders might affect the welfare of U.S. citizens by affecting tourism or "spillover pathways" such as economic or political destabilization. Indeed, the Regulatory Impact Analysis ("RIA") provided by EPA does not even attempt to calculate the domestic benefits of the 2021 NSPS Proposal, and calculates benefits based solely on alleged global benefits. *See* Regulatory Impact Analysis for the Proposed Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, at 3-1 ("We estimate the climate benefits under the proposal using an interim global measure of the social cost of methane."). Assuming that the social cost of carbon can be estimated with any reasonable degree of accuracy, the global estimates can be over than 20 times higher per ton of carbon emissions than the equivalent domestic estimates. *See, e.g.,* Social Cost of Carbon, Identifying a Federal Entity to Address the National Academies' Recommendations Could Strengthen Regulatory Analysis, GAO 20-245 (June 2020) at p. 16.

And, to the extent that EPA believes that domestic benefits are somehow embedded in its speculative estimate of the global cost of carbon in the RIA for the 2021 NSPS Proposal, it has not quantified them. This is a stark difference from the RIA for the 2020 Rule, which justified the rule based on *domestic* carbon benefits, and separately broke out the estimated global carbon benefits of the rule in an additional section. Regulatory Impact Analysis for the Proposed Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program, at Chapter 7, Section 7.3 (Forgone Global Climate Benefits). In order to adequately justify the 2021 NSPS Proposal, EPA must similarly break out the domestic versus global carbon benefits of the proposal. Until EPA does so, EPA has not supported this proposed rule with a single dollar arising from a specifically identified benefit accruing to U.S. citizens associated with the reduced methane emissions claimed for this proposal. Thus, EPA's reliance on "global benefits" to justify the domestic costs of the 2021 NSPS Proposal is arbitrary and capricious and contrary to law.

VI. The 2021 NSPS Proposal has Several Technical Flaws that Must Be Addressed.

For the several reasons outlined above, the 2021 NSPS Proposal has serious legal flaws that EPA must address before moving forward with proposing and promulgating any final rule. Additionally, the following technical problems with the 2021 NSPS Proposal must also be addressed before moving forward with any proposed or final rule.

A. EPA has not and, in the absence of proposed regulatory text, cannot, evaluate the costs of the 2021 NSPS Proposal.

EPA solicits comment on the costs associated with developing and submitting state plans for emission guidelines ("EG") OOOOc. 86 Fed. Reg. at 63,261. However, it is not reasonable to expect North Dakota to evaluate the cost of implementing a rule when EPA has not even proposed rule text. Without the regulatory text of the rule itself (i.e., what EPA proposes to publish in the Code of Federal Regulations), North Dakota does not know what it will have to do nor what it will cost. When EPA, consistent with its obligations under the APA, publishes a proposed rule for comment, North Dakota will be able evaluate the likely costs of the proposal.

North Dakota similarly does not believe EPA could reasonably make the calculation that the proposed rule "does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate or the private sector in any one year" in accordance with the Unfunded Mandates Reform Act. 86 Fed. Reg. at 63,260. In the RIA cited for that calculation, EPA concedes that for evaluating the regulatory actions "[w]e do not analyze the regulatory impacts of all proposed requirements because we either do not have sufficient data or because it is assumed the provisions would not result in compliance cost or emissions impacts; in these instances, we qualitatively discuss the proposed requirements". *See* Regulatory

Impact Analysis for the Proposed Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, at 1-4. EPA also acknowledges that State programs have varying requirements but then proceeds to select California and Colorado as a baseline to evaluate other State programs. *See id.* at 2-29 (noting that "California and Colorado have requirements at least as stringent as those in the proposed rule for well site and compressor station fugitives; natural gas processing plant leaks; pneumatic controllers; pneumatic pumps in the production, gathering and boosting, and processing segments; pre-OOOO reciprocating and wet-seal centrifugal compressors in the gathering and boosting and processing segments; and storage vessels). This is based in part on EPA's assumption that "California and Colorado have requirements at least as stringent as those in the proposed rule" and that they "contribute significantly to national production levels" for the oil and gas industry. *Id.* at 2-29.

The conclusion that California and Colorado are good and representative models for the costs of the 2021 NSPS Proposal and as the baseline to evaluate other State programs is arbitrary and fails to take into account the actual oil and gas production sector in the United States. As North Dakota noted earlier, it is ranked 3rd in the United States among all states in the production of oil and gas, just behind Texas and New Mexico. Those three states account for over 60% of the oil and gas production nationwide, whereas Colorado and California are ranked 5th and 7th respectively, accounting for just 8% of total production volumes in the United States. *See* U.S. Energy Information Administration, at <https://www.eia.gov/state/rankings/?sid=US#/series/46>. EPA should therefore instead use states such as North Dakota, Texas, and New Mexico as better and more representative baselines for evaluating the 2021 NSPS Proposal.

Further, California's and Colorado's air quality issues have forced those States to implement increasingly stringent air emission requirements that have still failed to put them in attainment with air quality standards. These circumstances, along with their much higher populations, do not make them representative of other States or relevant for determining the costs other States might incur in implementing EPA's proposal. North Dakota believes EPA cannot fairly characterize the costs in the absence of an actual proposed rule, and in any event has underestimated the compliance costs that States will incur in developing the required EG plans for OOOOc. The RIA does not appear to have sufficient data to accurately calculate these costs and the baseline data that is biased. Overall, in both the proposed rule and related RIA, EPA downplays the burden of developing these plans.

In addition, North Dakota believes EPA is missing opportunities to decrease that burden. One example is the first optical gas imaging camera used by North Dakota was obtained with the assistance of an EPA grant. Use of this camera has dramatically changed how North Dakota conducts its inspections of the Oil and Natural Gas Sector. North Dakota encourages EPA to continue to focus on collaborating with the States to invest in cost-effective improvements to emissions control program implementation and enforcement to achieve performance improvements.

B. EPA must provide adequate time to develop the State plan.

EPA does not propose a timeframe for States to develop the required EG plans under the proposed OOOOc rule. However, in the Regulatory Impact Analysis EPA assumes that the process will take three years. North Dakota agrees that developing the EG plans under the proposed OOOOc rule will take substantial resources and time, but without proposing any actual regulatory text North Dakota does not understand how and cannot realistically comment on how EPA reached this conclusion.

EPA also proposes requiring States to "meaningfully engage with members of the public, including overburdened and underserved communities, during the plan development process and prior to adoption and submission of the plan to the EPA". 86 Fed. Reg. at 63,145. North Dakota consists of several federally recognized Indian Nations including the Mandan, Hidatsa, and Arikara Nation which has substantial oil and gas development within its borders. While North Dakota does not have CAA delegation for those areas, it is expected that during the development of the State plan North Dakota will have consultations with affected tribal authorities. These discussions will impose additional time constraints upon North Dakota that must be taken into account in any proposed or final rule.

C. EPA should exclude a "wellhead only well site" from fugitive emissions monitoring as proposed in the rule.

North Dakota agrees with EPA's proposal that "wellhead only" well sites be excluded from fugitive emissions monitoring based on considerable research and rationale already established in the 2016 NSPS OOOOa rulemaking as well as the 2020 Technical Rule. North Dakota also agrees with the proposal to exclude well sites from fugitive emissions monitoring upon those sites becoming wellhead only well sites as provided in the 2020 Technical Rule. North Dakota's own experience supports EPA's conclusion that emissions from these sources are "extremely low". 80 Fed. Reg. at 56,611. North Dakota has only observed a handful of wellhead only well sites with fugitive emissions, and it appears that in those rare cases that the emissions were more a result of operator error. North Dakota believes that the safety risk alone precludes any widespread issue of fugitive emissions from these sites.

D. EPA should not exclude oil wells that produced associated gas from the affected facility definition if they route the gas to a sales line.

EPA offers an alternative proposal for oil wells with associated gas under NSPS OOOOb, where affected facilities are only defined as those oil wells that produce associated gas and do not route the gas to a sales line. 86 Fed. Reg. at 63,238. North Dakota does not believe that removing oil wells where associated gas is routed to a sales line from the definition of an affected facility is necessary, and that if adopted this alternative proposal will only complicate the reporting process and unduly burden both owners and operators in addition to the delegated entities in charge of ensuring compliance with the rule.

Since there is no draft regulatory text, the alternative proposal does not explain what documentation would be required for instances where access to the sales line is disrupted. In such a case, would those oil wells become an affected facility only for as long as the sales line was disrupted? Would the reporting party only report for that specific time period, and would there be an additional notification requirement for those oil wells if they would thus become an affected facility every time the sales line is unavailable? North Dakota is concerned that for oil wells that produce associated gas and where sales line access is not a guarantee (as is common in North Dakota) they will be constantly changing their "affected facility" status.

It is also important to note that along with disruptions to the sales lines themselves, associated gas production can fluctuate significantly from larger oil well sites consisting of multiple oil wells, where predictable decreases in production over time is interrupted by dramatic spikes in production as new oil wells are drilled and brought into production, potentially displacing capacity in the sales lines for gas from older, lower producing wells. This is in addition to the older wells themselves going through associated gas production fluctuations via workovers and recompletions. In such pipeline capacity situations, access to a sales line may not be feasible even if there are no issues with the sales line itself. North Dakota requires that control devices (such as flares) be operational even if all associated gas is routed to a sales line in case of such issues, as they are expected to occur. The original proposed requirement in the 2021 NSPS Proposal states for oil wells routing all associated gas to a sales line "the only requirement would be to certify that this is occurring." 86 Fed. Reg. at 63,238. North Dakota believes this is appropriate as it should already be known or easily available due to the royalty requirements on the sold gas. The proposed requirement also allows a continuous record for all destinations of associated gas through either its sale, beneficial use, or control. In addition, North Dakota believes it will serve as a reminder that when access to a sales line is not available the only appropriate alternatives for associated gas are beneficial use or control, not venting.

North Dakota believes EPA should adopt the original proposal of the 2021 NSPS Proposal OOOOb where every oil well that produces associated gas would be an "affected facility", and should not adopt the alternative interpretation offered in the 2021 NSPS Proposal of defining the affected facility as each oil well that produces associated gas and does not route the gas to a sales line.

E. EPA should allow any required documentation to be first sent to the States delegated by EPA with the implementation and enforcement authority for the 2021 NSPS Proposal.

EPA proposes requiring electronic reporting of performance test reports, annual reports, and semiannual reports through the Compliance and Emissions Data Reporting Interface (CEDRI). 86 Fed. Reg. at 63,185. For States that have been delegated authority by the EPA to oversee the implementation and enforcement of NSPS

0000 and 0000a, it is currently burdensome to require owners and operators to solely submit documents through CEDRI. States with delegated authority have no control over CEDRI, and cannot implement State automation, tracking, and other processes for these reports without first either retrieving the data from CEDRI themselves and then uploading the data into their own systems, or by requiring the owner or operators to resubmit the data directly to the State.

Nonetheless, North Dakota supports the use of electronic reporting and agrees with EPA "that the electronic submittal of these reports in the proposed NSPS 0000b will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability, will further assist in the protection of public health and the environment, and will ultimately result in less burden on the regulated community." 86 Fed. Reg. at 63,185. North Dakota also agrees that "(e)lectronic reporting can also eliminate paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public." However, requiring those reports to be controlled solely through CEDRI undermines many of those goals, requiring States that are supposed to be helped by electronic reporting to instead be burdened by a system over which they have no control of or input into. North Dakota agrees with the intent of CEDRI, but disagrees with its implementation.

CEDRI allows owners and operators to meet their annual NSPS 0000a reporting obligations by uploading a single report containing all their affected facilities in the United States rather than breaking up the report by state, county, etc. This creates challenges for North Dakota, which includes several federally recognized Indian Nations, including the Mandan, Hidatsa, and Arikara Nations, which have substantial oil and gas development. Since North Dakota does not have CAA delegation for those areas, there is no current way in CEDRI to differentiate locations within tribal boundaries without manually locating each facility suspected to be within those boundaries. In addition, the public cannot generally access reports within CEDRI and instead must wait until such reports have been sent to EPA's WebFIRE repository which is available to the public. WebFIRE itself has a general disclaimer that "These records and any related attachments may or may not have been reviewed by the state, local, or tribal air pollution agency or delegated authority." As CEDRI reports do not require North Dakota's review before being sent to WebFIRE, the public may not be certain over the accuracy of the data or if North Dakota has even had the chance to review the data beforehand.

Lastly, EPA acknowledges that CEDRI or even EPA's Central Data Exchange itself may suffer outages. 86 Fed. Reg. at 63,185. While most outages are expected to be short-lived, those related to a shutdown of the federal government may be considerably longer based on the recent historical record. If CEDRI access was cutoff during a prolonged shutdown, this would severely disrupt the work of a delegated State such as North Dakota. WebFIRE (if still online) would be a sufficient backup for past data, however as a shutdown progresses, the more out of date it becomes. This is especially concerning for CAA compliance work, as air pollution does not stay at a site and allow itself to be cleaned up later.

North Dakota suggests that the proposed rule be simplified to require owners and operators to submit their reports "to the Administrator", as is the general requirement in many other regulations (e.g. NSPS Subpart Kb), and for CEDRI to be the initial point of submission where EPA, not the State, is implementing the program. Should EPA insist on explicitly requiring CEDRI, North Dakota suggests that language referencing or based on § 60.4(a) (*All requests, reports, applications, submittals, and other communications to the Administrator pursuant to this part shall be submitted in duplicate to the appropriate Regional Office of the US. Environmental Protection Agency...*) be included instead, to include wording requiring the duplicate be submitted through CEDRI. In this manner, the delegated State can immediately receive the required report independent of CEDRI's status, and EPA will receive the duplicate for their own use. This flexibility is vital in allowing North Dakota and other delegated entities to continue the implementation and enforcement work that is required and expected, both by EPA and the public.

F. North Dakota Does Not Support a Separate Program Authorizing Community or Citizen Group Emission Detection.

EPA solicits comment on whether or how to take advantage of Methane Detection Technologies to help identify and remediate large emission events, including potentially to implement a program whereby communities and others could be enlisted to identify large emission events.

As described earlier, North Dakota regulates oil and gas sources in the State in a robust manner via the existing regulatory programs administered by the NDDEQ and NDIC, respectively. North Dakota, through these agencies, also already relies in part on citizen input in identifying emissions events. However, North Dakota does not support a separate program by which communities or citizen groups would be separately empowered to separately identify and detect emissions events, particularly if the information so gathered would be presumptively considered "credible evidence" for enforcement purposes. Such a program has serious pitfalls, including safety concerns, access rights (North Dakota's regulators have proper legal access to safely inspect production operations), and the technical validity of any data collected by citizens using sophisticated monitoring equipment that is designed for use by trained professionals. Further, the need for such a discrete new program is not clear, given that the Clean Air Act already provides broad authority for citizen suits and North Dakota is unaware of systemic or material barriers that prevent citizens from exercising that right.

For these reasons, North Dakota does not support a separate program empowering communities or citizen groups to conduct separate emission inspections outside of those programs already robustly established in the State.

VII. Conclusion.

For the reasons set forth in these comments, EPA must drastically rework the 2021 NSPS Proposal to return to the limits of its authority in the CAA, and should not proceed with the rulemaking proposal until the serious flaws identified are addressed.

Sincerely,

Is James L. Semerad

James L. Semerad

Director, Division of Air Quality

North Dakota Department of Environmental Quality

Is Lynn D. Helms

Lynn D. Helms

Director, Department of Mineral Resources North Dakota Industrial Commission

It was moved by Attorney General Wrigley and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 54-17.5-06, 44-04-19.1 and 44-04-19.2 the Industrial Commission enter into executive session for the purpose of discussing negotiating strategy or provide negotiating instructions to its attorney or other negotiator regarding pending Department of Mineral Resources adversarial administrative proceedings on the cases listed on the agenda and to consider a Lignite Research Program confidentiality request.

The executive session for Department of Mineral Resources began at 10:45 a.m.

DEPARTMENT OF MINERAL RESOURCES EXECUTIVE SESSION

Members Present:

Governor Doug Burgum

Attorney General Drew Wrigley

Commissioner Doug Goehring

Others in Attendance:

Reice Haase Governor's Office

Leslie Bakken Oliver Governor's Office

Dutch Bialke	Department of Agriculture
Lynn Helms	Department of Mineral Resources
Bruce Hicks	Department of Mineral Resources
Steve Nelson	Attorney General's Office (remote)
Karlene Fine	Industrial Commission Office
Katie Haarsager	Industrial Commission Office

The Department of Mineral Resources executive session ended at 11:10 a.m. and the Commission continued in executive session and took up Lignite Research program confidentiality request of Appendix C of the Lignite Research Grant Application LRC-99-A.

LIGNITE RESEARCH PROGRAM EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Drew Wrigley
Commissioner Doug Goehring

Others in Attendance:

Reice Haase	Governor's Office
Leslie Bakken Oliver	Governor's Office
Dutch Bialke	Department of Agriculture
Karlene Fine	Industrial Commission Office
Katie Haarsager	Industrial Commission Office

The Lignite Research Program executive session ended at 11:15 a.m. and the Commission continued in executive session pursuant to N.D.C.C. 6-09-35 and considered the following items listed on the agenda under BND confidential business:

- Consideration of a loan application
- Presentation of the Concentrations of Credits as of 12/31/21 Report
- Presentation of Bank of North Dakota Advisory Board December 16, 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 Drew Wrigley
Agriculture Commissioner Doug Goehring

Bank of North Dakota Personnel:

Todd Steinwand
Kirby Evanger
Craig Hanson
Nicole Koons

Others in Attendance:

Reice Haase	Governor's Office
Leslie Oliver Bakken	Governor's Office
Dutch Bialke	Department of Agriculture
Karlene Fine	Industrial Commission Office

The BND executive session ended at 11:55 a.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 Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

Governor Burgum stated that during the DMR executive session, guidance was provided to the Commission's counsel and DMR staff regarding the complaint matters listed on the agenda.

Governor Burgum asked what action the Commission wished to take on the Lignite Research Program confidentiality request that was discussed during executive session.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director and grant the Minnkota Power Cooperative's confidentiality request and determine that the information from Fluor outlined in Appendix C of the Lignite Research Program Grant Application LRC – 99-A "Project Tundra "CREST" Study" is confidential. On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

BANK OF NORTH DAKOTA (BND)

Mr. Todd Steinwand, BND President, and Mr. Kirby Evanger, BND, presented amendments to the Bank of North Dakota General Loan Policy. Mr. Evanger reviewed each amendment and discussed why the amendment was being proposed. (A copy of the amendments is available in the Commission files.) The amendments included changes to the following sections of the policy:

- Interest rates
- Concentrations of Credit
- Discretionary Lending Authority for Sole Authority and Investment Committee
- Sunset Clause for Loan Commitments
- Loan Maturity Extensions
- High LTV Monitoring and Reporting
- Marijuana Related Businesses (MRBs)
- Appraisals
- BND Real Estate Evaluations
- Collateral Valuation Evaluators and reviewers
- Clean Sustainable Energy Fund

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the proposed amendments to the Bank of North Dakota General Loan Policy as presented contingent upon the Bank of North Dakota Advisory Board's approval. On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Steinwand provided the Bank of North Dakota Advisory Board December 16, 2021 nonconfidential meeting minutes.

Ms. Tami Madsen, Western Area Water Supply Authority Executive Director, presented the Western Area Water Supply Authority Fourth Quarter and End of Year Sales Activities Report. The Report included the following charts:

1. WAWSA Cumulative 2021 Actual and Budgeted Industrial Revenue – Through December 2021
2. 2021 WAWSA Industrial Water Sales YTD
3. 2021 WAWSA Monthly Budgeted and Actual Industrial Gross Revenue
4. WAWSA 2019 through 2021 Domestic Water Demands.
5. WAWSA 2019 through 2021 Industrial Water Demands
6. WAWSA 2019 Through 2021 Total Water Demand

Copies of the reports are available in the Commission files.

Ms. Madsen presented the WAWS Industrial Sales Proposed 2022 Budget that reflected a net income of (\$1,743,900). She noted that it reflects a realistic, conservative budget and was prepared in late 2021. In the past the Commission had been given budgets that were more optimistic and then WAWS was never able to achieve those numbers. She did indicate that after that budget was prepared WAWS has been working with customers about upcoming frac operations and she provided a WAWSA 2022 Frac Schedule. Ms. Madsen described the process of receiving payments for frac sales 45 days after the sale but the payments that go out to the member entities immediately after the water sale. This results in the WAWS' cash balances being very low after making their loan payments. She is in discussions with the Bank regarding this matter.

Ms. Madsen stated she will provide updates on the budget as the year progresses.

Ms. Madsen also commented on the number of economic development projects that are being proposed in western North Dakota. These projects would be on the domestic side of the WAWS operations and would exceed the amount of water that is available from the water plant for domestic operations. She stated that as these projects go forward there will need to be an expansion of the water plant and the WAWS board is discussing ways to fund the needed expansion of the water plant. In response to a question, she stated that she is having conversations with local legislators and with the Department of Water Resources. She noted there are timing considerations as it will take two years to get an expansion project completed. Design work is currently being done. She will keep the Commission updated as financing options are being discussed.

INDUSTRIAL COMMISSION ADMINISTRATIVE BUSINESS

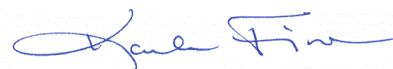
Ms. Fine provided the January 24, 2022 Industrial Commission meeting minutes.

It was moved by Commissioner Goehring and seconded by Governor Burgum that the January 24, 2022 meeting minutes be approved as presented. On a roll call vote Governor Burgum and Commissioner Goehring voted aye and Attorney General Wrigley abstained. The motion carried.

Ms. Fine reported that the Deputy Executive Director position had been posted with an application deadline of February 27. The Commission encouraged Ms. Fine to fill the other vacant position that is in the administrative office.

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 12:43 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary

