

Minutes of a Meeting of the Industrial Commission of North Dakota

Held on May 25, 2023 beginning at 12:30 p.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.

Agency representatives joined various portions of the meeting.

Governor Burgum called the meeting of the Industrial Commission to order at approximately 12:39 p.m.

OFFICE OF THE INDUSTRIAL COMMISSION

Ms. Karen Tyler presented for consideration of approval the Industrial Commission meeting minutes for the April 25, 2023, Industrial Commission meeting.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the Industrial Commission meeting minutes for the April 25, 2023, meeting.

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

Ms. Tyler gave an agency transition update. The Office of the Industrial Commission (OIC) will be an independent business unit (#405). The budget, payroll, agency financials, grant program payments, human resource management, and technology systems and support will move from DMR to the OIC and support to the OIC will transition to OMB and NDIT. There will also be an addition of two new FTEs for the OIC. OIC's data will be transitioning off DMR's server, desktop support services such as asset inventory, equipment upgrades, and establishing replacement cycles will take place, and the new grant management system funding was approved for the 23-25 budget. The Office is also procuring and beginning a historical records scanning project, a GovDelivery communications system, and a meeting management system.

Mr. Reice Haase gave a final Industrial Commission 68th Legislative Session Report. All red-tape reduction items were approved. The updated FTE count for all Industrial Commission Agencies totals 528.75. The Office of the Industrial Commission received \$1.24 million for new grant management software, \$75,000 for records digitization, \$80,000 for DMR server transition to ITD cloud service, and \$804,278 for BND IT projects. There was \$3 million General Fund appropriation for lignite litigation expenses with an emergency clause and a \$3 million General Fund appropriation for oil and gas litigation expenses with an emergency clause. CSEA received \$30 million for grants, \$250 million for loans (\$30 million LOC paid off, extended another \$140 million, \$80 million decommitted from Bakken Energy CSEA project), and the new co-chairs will be one member from the House and one from the Senate. The CSEA funding bucket was removed from legacy streams and was directed to develop a new fertilizer

development incentive program.

Lignite, Oil and Gas, and Renewable Energy Funds were all directed to provide up to \$100,000 each towards Carbon Capture education and the councils are to provide recommendations to the Industrial Commission for carbon capture and utilization education and marketing. The Transmission Authority will have \$300,000 from General Fund for contract employee(s) and \$7.5 million from a federal IJIA Grid Resilience Grant, with a \$1.1 million General Fund match. The SERC's expiration was extended to 2027, there was an increased biennial appropriation from \$5 million to \$7.5 million, the Salt Cavern Study is receiving \$6 million from the Strategic Investments and Improvements Fund (SIIF), and \$5.3 million from decommitted Bakken project funds, and the Rare Earth study is receiving \$1.5 million from SIIF. The Pipeline Authority has a \$60 million/year SIIF guarantee through BND's PACE program for pipeline capacity purchases. The Oil and Gas Research Fund (OGRF) cap was raised by \$3 million to \$17.5 million for DMR/Oil and Gas and SB 2089 converted a natural gas capture tax credit into a grant program. iPipe was appropriated \$3 million from SIIF, there is a new well status for wells with future EOR potential, and there is a tax credit to incent re-stimulation of wells.

Lignite was appropriated \$500,000 for Lignite Plant of the Future, and HB 1511 will use tax exemption for rare earth or critical mineral processing. BND was appropriated 14 new FTEs for bank growth and valuation program, and 93% of the Bank's profits were transferred by the Legislature this budget cycle. Governor Burgum stated that the appropriation of BND funds should have been zero because there will be record balances in all the buckets at biennium end, and those funds would be better used to grow the Bank's capital and deploy it for higher return rates. Commissioner Goehring added that taking money from the Bank, when it is not necessary, cripples the state because it negatively effects economic development and not being able to support more communities or be involved in more lending activities. A homeless grant program was transferred to the Housing Finance Agency from Commerce, and single-family housing is now eligible under the Housing Incentive Fund (HIF). The Mill was appropriated 14 new FTEs for adding a 4th milling shift, 2nd grain mixing shift, and Midds operations, and 50% of the profits were transferred to the General Fund this budget cycle. The oversight of WAWS was transferred from the Industrial Commission to the Water Commission.

Under other business, Mr. Haase gave an update on the legislative management studies. There are 9 studies that the OIC is currently tracking, related to records management, infrastructure, public and private partnerships, siting electric facilities, using autonomous systems for workforce solutions, and natural gas accessibility and stable energy practices.

Under other business, Mr. Haase gave an update on the upcoming grant round meetings this summer. Lignite Research Council met earlier in May so there are 7 applications, totaling \$11.4 million, requesting action at today's meeting. CSEA received 9 applications, there is \$30 million available for grants, with the grant requests this round totaling \$27.7 million, and an over-subscription of \$427 million in requests for loans in the first round. Renewable Energy currently has 3 applications totaling \$1.3 million, and Outdoor Heritage Fund currently has 5 applications totaling \$4.2 million.

BANK OF NORTH DAKOTA

Mr. Jared Mack gave a presentation of the Beginning Farmer Revolving Loan Fund – December 31, 2022. BND received an unmodified opinion on the financial statements with no findings in terms of internal controls.

Mr. Mack gave a presentation of the North Dakota Guaranteed Student Loan Program – December 31, 2022. BND received an unmodified opinion on financial statements with no findings in terms of internal controls.

Mr. Mack gave a presentation of Independent Auditor's Report and Financial Statement – December 31, 2022. The Bank received an unmodified opinion on the financial accounting standards board based audit, and an adverse opinion on the US Generally Accepted Accounting Principles based audit. The reason for this is because the Bank is a state agency, required to report under government accounting standards, so under generally accepting auditing standards, Eide Bailley cannot give a clean opinion over a government that does not report on government accounting. If it was FASB only, it would be an unmodified opinion, but because it is not, an adverse opinion had to be given. On the FASB side, no internal controls deficiencies were found. There were no findings, deficiencies, or noncompliance found in the GASB report.

Mr. Todd Steinwand gave a presentation of the 2022 BND Annual Report. The Bank reported total record assets of \$10.2 billion at year-end in 2022 and had record profits of \$191 million. The growth enabled the Bank to increase its loan portfolio to a record \$5.4 billion in loans to the state's farmers and ranchers, business owners and students in North Dakota. The return on investment to North Dakota was 19% and BND administers nearly \$1 billion in legislative-directed loan programs, including school construction, state infrastructure, water projects and disaster recovery. The bank originated or renewed \$2.8 billion in loans in 2022, and Mr. Steinwand said that it is the partnership with all the other banks that drives these numbers.

Ms. Lori Leingang and Mr. Steinwand presented for consideration of approval the 2022-2024 BND Strategic Plan. The strategic plan was previously approved with five strategies, each with various initiatives, but there were four initiatives that were added since the initial approval of the plan. The four initiatives that were added are as follows:

1. Strategy #3: Evaluate loan programs to ensure they meet today's needs by reviewing out-of-state lending strategies.
2. Strategy #3: Evaluate loan programs to ensure they meet today's needs by participating in the statewide cash management study.
3. Strategy #3: Determine the role of BND related to ESG (environmental, social and corporate governance) in ND by leading the statewide initiative to study ESG and make recommendations to the 2025 legislative session.
4. Strategy #5: Effectively communicate the bank's financial performance to key stakeholder's by working with the Industrial Commission, and studying the feasibility and desirability of creating an employee recruitment and retention incentive program.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the 2022-2024 Bank of North Dakota Strategic Plan.

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

Mr. Steinwand presented the March 15, 2023, Non-confidential Finance and Credit Committee Minutes.

Mr. Steinwand presented the March 16, 2023, Non-confidential Advisory Board Minutes.

Under other Bank of North Dakota business, Ms. Leingang presented a memo regarding a BND Advisory Board request for an equity increase for the President of Bank of North Dakota, Todd Steinwand, as part of the Bank's equity pool distribution plan. The recommendation is based on an analysis at the 50th percentile for CEO compensation, and does not include incentive compensation. The requested adjustments include a 6% increase effective 6-1-2023 from the Legislative equity pool and a 6% Legislative increase effective 7-1-2023. This would result in an 85% compa-ratio, and Mr. Steinwand has not had a salary increase since he took the role in July 2021. This proposal was discussed and approved by the Advisory Board at their meeting on April 20, 2023.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Commission approve the equity increase for the BND President position as stated in the memo presented.

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

It was moved by Attorney General Wrigley and seconded by Governor Burgum that under the authority of North Dakota Century Code Sections 6-09-35, 44-04-18.4, 44-04-19.1, 44-04-19.2, the Industrial Commission enter into executive session for the purposes Bank of North Dakota confidential business, for attorney consultation related to the North Dakota Mill and Elevator, and for Department of Mineral Resources negotiation strategy regarding Abandoned Well Plugging and Site Restoration Fund reimbursements.

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

The Commission is meeting in executive session regarding Bank of North Dakota business pursuant to N.D.C.C. 6-09-35 to consider those items listed on the agenda under Bank of North Dakota confidential business. Only Commission members, their staff, Commission staff, and BND staff will participate in that executive session.

After the Bank of North Dakota executive session, the Commission will meet in executive session for attorney consultation related to the North Dakota Mill and Elevator. Only Commission members, their staff, Commission staff, and North Dakota Mill and Elevator staff will participate in that executive session.

After the Mill and Elevator executive session, the Commission will meet in executive session regarding Department of Mineral Resources negotiation strategy regarding Abandoned Well Plugging and Site Restoration Fund reimbursements. Only Commission members, their staff, Commission staff, and DMR staff will participate in that executive session.

Any formal action taken by the Commission will occur after it reconvenes in open session.

Governor Burgum reminded the Commission members and those present in the executive sessions that the discussion must be limited to the announced purposes which is anticipated to last approximately 1 hour and 15 minutes.

The executive session began at 1:55 p.m.

The Meeting Closed to the Public for Executive Session Pursuant to NDCC 6-09-35, 44-04-18.4, 44-04-19.1, 44-04-19.2.

BANK OF NORTH DAKOTA EXECUTIVE SESSION

Industrial Commission Members Present

Governor Doug Burgum
Attorney General Drew H. Wrigley
Agriculture Commissioner Doug Goehring

Bank of North Dakota Members Present

Todd Steinwand, BND
Rob Pfennig, BND
Kirby Evanger, BND
Lori Leingang, BND

Others in attendance

Ryan Norrell	Governor's Office
John Reiten	Governor's Office
Jace Beehler	Governor's Office
Dutch Bialke	Dept. of Agriculture
Karen Tyler	Industrial Commission Office
Reice Haase	Industrial Commission Office
Brenna Jessen	Industrial Commission Office

NORTH DAKOTA MILL AND ELEVATOR EXECUTIVE SESSION

Industrial Commission Members Present

Governor Doug Burgum
Attorney General Drew H. Wrigley
Agriculture Commissioner Doug Goehring

ND Mill and Elevator Members Present

Vance Taylor, ND Mill
Cathy Dub, ND Mill

Others in attendance

Ryan Norrell	Governor's Office
John Reiten	Governor's Office
Dutch Bialke	Dept. of Agriculture
Steve Nelson	Attorney General's Office
Karen Tyler	Industrial Commission Office
Reice Haase	Industrial Commission Office
Brenna Jessen	Industrial Commission Office

DEPARTMENT OF MINERAL RESOURCES EXECUTIVE SESSION

Industrial Commission Members Present

Governor Doug Burgum

Attorney General Drew H. Wrigley

Agriculture Commissioner Doug Goehring

DMR Members Present

Lynn Helms, DMR

Mark Bohrer, DMR

Others in attendance

Ryan Norrell	Governor's Office
John Reiten	Governor's Office
Dutch Bialke	Dept. of Agriculture
Steve Nelson	Attorney General's Office
Karen Tyler	Industrial Commission Office
Reice Haase	Industrial Commission Office
Brenna Jessen	Industrial Commission Office

The executive session ended at 3:36 p.m. and the Commission reconvened in open session.

During the Bank of North Dakota executive session, the Commission discussed the Bank of North Dakota confidential items listed on the agenda.

During the Mill and Elevator executive session, the Commission consulted with its attorney.

During the Department of Mineral Resources executive session, the Commission discussed negotiation strategy related to Abandoned Well Plugging and Site Restoration Fund reimbursements.

No formal action was taken by the Commission in any of the three executive sessions.

NORTH DAKOTA MILL AND ELEVATOR

Mr. Vance Taylor presented a Review of Operations, 3rd Quarter Ended March 31, 2023. Profits for the 3rd quarter of the year were \$4,809,663 compared to \$3,268,737 last year. Operating activity for the nine months ending March 2023 resulted in a profit of \$11,315,019 compared to \$9,660,882 last year, which is an increase of 17.1%. 3rd quarter sales were \$128,057,893 compared to \$121,287,778 last year, and sales for the nine months ended March 2023 were \$406,765,188 compared to \$333,604,323 last year, which is an increase of 21.9%

Under other business, Mr. Taylor gave an update on the Midds handling and storage facility that is currently under construction.

NORTH DAKOTA DEPARTMENT OF MINERAL RESOURCES

Dr. Lynn Helms presented for approval the following cases:

- i. **Case No. 29888, Order No. 32474:** Application of Blue Flint Sequester Company, LLC requesting consideration for the geologic storage of carbon dioxide in the Broom Creek Formation from the Blue Flint Ethanol Facility in the storage facility located in Sections 11, 12, 13, 14, and 24, Township 145 North, Range 83 West and Sections 6, 7, 8, 17, 18, and 19, Township 145 North, Range 82 West, McLean County, North Dakota pursuant to North Dakota Administrative Code Section 43-05-01.
- ii. **Case No. 29889, Order No. 32475:** A motion of the Commission to consider the amalgamation of the storage reservoir pore space, in which the Commission may require that the pore space owned by nonconsenting owners be included in the geologic storage facility and subject to geologic storage, as required to operate the Blue Flint Sequester Company, LLC storage facility located in Sections 11, 12, 13, 14, and 24, Township 145 North, Range 83 West and Sections 6, 7, 8, 17, 18, and 19, Township 145 North, Range 82 West, McLean County, North Dakota, in the Broom Creek Formation, pursuant to North Dakota Century Code Section 38-22-10.
- iii. **Case No. 29890, Order No. 32476:** A motion of the Commission to determine the amount of financial responsibility for the geologic storage of carbon dioxide from the Blue Flint Ethanol Facility in the storage facility located in Sections 11, 12, 13, 14, and 24, Township 145 North, Range 83 West and Sections 6, 7, 8, 17, 18, and 19, Township 145 North, Range 82 West, McLean County, North Dakota, in the Broom Creek Formation, pursuant to North Dakota Administrative Code Section 43-05-01-09.1.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order No. 32474 issued in Case No. 29888 approving the application of Blue Flint Sequester Company, LLC for the geologic storage of carbon dioxide in the Broom Creek Formation in Sections 11, 12, 13, 14 and 24, Township 145 North, Range 83 West and Sections 6, 7, 8, 17, 18 and 19, Township 145 North, Range 82 West, McLean County, North Dakota, pursuant to North Dakota Administrative Code Section 43-05-01, and

that the Industrial Commission approves Order No. 32475 issued in Case No. 29889 approving the amalgamation of the storage reservoir pore space, and including the pore space owned by nonconsenting owners in the geologic storage facility and subject to geologic storage, as required to operate the Blue Flint Sequester Company, LLC storage facility located in Sections 11, 12, 13, 14 and 24, Township 145 North, Range 83 West and Sections 6, 7, 8, 17, 18 and 19, Township 145 North, Range 82 West, McLean County, North Dakota, in the Broom Creek Formation, pursuant to North Dakota Century Code Section 38-22-10, and

that the Industrial Commission approves Order No. 32476 issued in Case No. 29890 approving the motion of the Commission to determine the amount of financial responsibility for the geologic storage of carbon dioxide from the Blue Flint Ethanol Facility, LLC storage facility located in Sections 11, 12, 13, 14 and 24, Township 145 North, Range 83 West and Sections 6, 7, 8, 17, 18 and 19, Township 145 North,

Range 82 West, McLean County, North Dakota, in the Broom Creek Formation, pursuant to North Dakota Administrative Code Section 43-05-01-09.1.

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

- iv. **Case No. 29951, Order No. 32559:** In the matter of a hearing called on a motion of the Commission to consider the name change of the Squaw Gap Field and any associated pools, McKenzie County, ND, and for such other and further relief as the Commission deems appropriate.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order No. 32559 issued in Case No. 29951 approving the motion of the Commission to change the name of the Squaw Gap Field and any associated pools, McKenzie County, ND, to Homesteaders Gap Field, and/or such further relief.

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

Mr. Ed Murphy gave a presentation of the Geological Survey Division Quarterly Report. Geologists from two oil companies, two consulting geologists, and scientists from EERC and the Geological Survey, as well as students and professors from the UND Dept. of Geology and Geological Engineering, and Petroleum Engineering studied 6,049 feet of core during the first quarter of 2023. In addition, there was 5,846 feet of core generating 9,492 standard photographs for the subscription site. On April 25th, the eighth critical minerals report in the last six years was released. There were 22 geological sections from the upper part of the Sentinel Butte Formation into the overlying Golden Valley Formation and 122 rock samples were collected for critical mineral analyses.

Lignite in the lower Bear Den Member of the Golden Valley Formation contain the highest concentrations of rare earth elements yet reported from North Dakota, and the elevated concentrations were present in 60-70% of the lower Bear Den Member samples that were collected across a five-county area in west-central North Dakota. Enriched rare earth elements include neodymium, praseodymium, dysprosium, gadolinium, terbium, and scandium. Additionally, enrichment was found in this horizon for a number of other critical minerals including gallium, germanium, vanadium, titanium, antimony, and molybdenum.

Dr. Helms gave an update on Litigation:

- i. 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 – Ordinary High Water Mark challenge
- ii. Blue Appaloosa – appeal of Industrial Commission Order 31208
- iii. Case No. 27-2022-CV-00305 – Blue Steel Oil and Gas, LLC v. North Dakota Industrial Commission, Slawson Exploration Company, Inc and White Butte Oil Operations, LLC – appeal of Industrial Commission Order 31501
- iv. Liberty Resources vs. NDIC et al – appeal of Industrial Commission Order 31792
- v. North Dakota Industrial Commission v. U.S. Department of Interior – quarterly lease sales

- vi. Dominek v Equinor et al – allocation of production from overlapping spacing units
- vii. Spec Tech v NDIC – appeal of Industrial Commission Order 31900 – settled

Dr. Helms gave an update on Bureau of Land Management North Dakota Resource Management Plan revision. The comments were submitted Monday, May 22nd, and Dr. Helms thanked everyone for their hard work on getting those comments submitted.

Dr. Helms gave an update on Dakota Access Pipeline Environmental Impact Statement cooperating agency comments. There was a consultation on May 3rd, 2023 and it has gone silent since then.

Dr. Helms presented for consideration of approval the submittal of agency comments related to the Bureau of Land Management proposed rule to re-define “conservation” in the context of land use – Comments due June 20, 2023.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves the submittal of agency comments related to the Bureau of Land Management proposed rule to re-define “conservation” in the context of land use, and directs the Director of the Department of Mineral Resources to draft and submit comments on behalf of the Commission prior to the public comment deadline.

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

Governor Burgum commented with a quote from Theodore Roosevelt stating, “Conservation means as much development as it does preservation.” He followed it up with stating that they are not talking about conservation here, they are talking about preservation where nobody sets foot, cuts trees, nobody hunts, or drills a well. He stated that there needs to be an objection to the usage of the word conservation in this instance, because it is not what they are doing. Dr. Helms agreed and said they are redefining conservation in a vastly different way than how President Roosevelt defined it, and emphasized that preservation and conservation have very different meanings.

NORTH DAKOTA PUBLIC FINANCE AUTHORITY

Ms. DeAnn Ament presented for consideration of approval an amendment to 2022 Legacy Fund Infrastructure Program Bonds’ Authorizing Resolution.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves the amendment to 2022 Legacy Fund Infrastructure Program Bond’s Authorizing Resolution.

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

A RESOLUTION WAS MADE

WHEREAS, the North Dakota Public Finance Authority (the “Authority”) is duly constituted as an instrumentality of the State of North Dakota exercising public and governmental functions

under the operation, management and control of the Industrial Commission of North Dakota (the "Industrial Commission"), pursuant to Chapter 6-09.4, North Dakota Century Code (the "Act");

WHEREAS, on July 19, 2022, the Authority issued its Legacy Fund Infrastructure Program Bonds, Federally Taxable Series 2022 in the aggregate principal amount of \$320,915,000 (the "2022 Bonds"), pursuant to the Act and the resolution of the Industrial Commission adopted April 29, 2022 (the "2022 Resolution") with respect thereto, the proceeds of which were to be allocated by the Bank of North Dakota to the funding of certain infrastructure projects and programs;

WHEREAS, the 2022 Resolution authorized proceeds of the 2022 Bonds to be used to fund transfers to the Bank of North Dakota for allocation to, among other projects, the Highway Fund in the amount of \$54,000,000; provided that the allocation to the Highway Fund was subject to Section 10 of HB 1431 enacted by the Sixty-seventh Legislative Assembly ("HB 1431") which provided that up to \$35 million of the funds allocated to the Highway Fund not required to match federal funds for highway projects as of October 1, 2022 was to be transferred to the Infrastructure Revolving Loan Fund at the direction of the Office of Management and Budget (such provision of Section 10 of HB 1431 (codified as Section 10 of Chapter 80 of the 2021 Session Laws) is hereinafter referred to as the "Contingent Reallocation Clause");

WHEREAS, the transfer of the proceeds of the 2022 Bonds to the Bank of North Dakota for allocation to the Highway Fund is to be made pursuant to a Project Agreement dated as of July 1, 2022 (the "Project Agreement") between the Authority and the Bank of North Dakota;

WHEREAS, the \$35 million portion of the proceeds of the 2022 Bonds that was subject to the Contingent Reallocation Clause remains on deposit in the Project Fund under the Indenture of Trust (the "Trust Indenture") dated as of July 1, 2022 between the Authority and the Bank of North Dakota, as trustee;

WHEREAS, Section 15 of HB 1012 enacted by the Sixty-eighth Legislative Assembly ("HB 1012") amended Section 10 of HB 1431 (codified as Section 10 of Chapter 80 of the 2021 Session Laws) to, among other things, delete the Contingent Reallocation Clause;

WHEREAS, the Industrial Commission desires to supplement and amend the 2022 Resolution to conform with the provisions of Section 15 of HB 1012 by deleting the Contingent Reallocation Clause from the 2022 Resolution and authorizing any necessary or appropriate supplements and amendments to the Trust Indenture, the Project Agreement and any other documents, agreements or instruments in connection with the 2022 Bonds to conform to the provisions of Section 15 of HB 1012;

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

ARTICLE I

Authority and Definitions

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

Section 1.02. Definitions. All terms defined in Article I of the Trust Indenture, in the 2022 Resolution or in the Act shall have the same meanings, respectively, in this Resolution and with respect to the 2022 Bonds as such terms are given in said Article I of the Trust Indenture, in the 2022 Resolution or in the Act.

ARTICLE II

Amendment of 2022 Resolution

Section 2.01. Change in Use of Proceeds of 2022 Bonds. In conformity with the amendment of Section 10 of HB 1431 (codified as Section 10 of Chapter 80 of the 2021 Session Laws) by Section 15 of HB 1012, the 2022 Resolution is supplemented and amended to delete the Contingent Reallocation Clause, such that the fourth whereas clause of the 2022 Resolution is amended and restated in its entirety as follows:

WHEREAS, the Authority proposes to issue up to \$330,000,000 Legacy Fund Infrastructure Program Bonds in one or more series (the "Bonds") to fund transfers to the Bank of North Dakota for allocation to the Projects in the following estimated amounts:

Fargo Diversion Project	\$216,500,000
Highway Fund	54,000,000
NDSU Agriculture Products Facility	35,000,000

and to fund capitalized interest on the Bonds and provide for the payment of the costs of issuance of the Bonds;

Section 2.02. Effect on 2022 Bonds. Notwithstanding any other provision of this Resolution, nothing in this Resolution is intended to, nor shall anything in this Resolution be construed or interpreted to, adversely affect in any manner the authorization of the 2022 Bonds, the security for the 2022 Bonds or the payment of the 2022 Bonds. Section 2.01 of this Resolution affects only the use of the proceeds of the 2022 Bonds.

Section 2.03. Effect on 2022 Resolution. Except as specifically amended pursuant to Section 2.01 of this Resolution, all provisions of the 2022 Resolution are hereby ratified and shall remain in full force and effect.

ARTICLE III

Amendment of Documents

There is hereby approved and there shall be executed by the Chairman of the Industrial Commission, the Executive Director of the Authority or any Authorized Officer such supplements and amendments to the Trust Indenture, the Project Agreement, the Administrative Agreement or other document, agreement or instrument executed in connection with the issuance of the 2022 Bonds, if any, as may from time to time be deemed necessary or appropriate to conform such documents, agreements or instruments to the amendment of the 2022 Resolution as set forth in Article II of this Resolution, all and in each case as the Chairman of the Industrial Commission, the Executive Director of the Authority or the Authorized Officer may approve, which approval shall be conclusively evidenced by the execution thereof.

ARTICLE IV

Effective Date

This Resolution is effective immediately.

Adopted: May 25, 2023

Ms. Ament presented for consideration of approval the following loan applications:

- i. Grand Forks – Clean Water State Revolving Fund - \$5,607,000.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Commission approve a \$5,607,000 Clean Water State Revolving Fund loan to the city of Grand Forks.

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

A RESOLUTION WAS MADE

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

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

WHEREAS, the City of Grand Forks (the "Political Subdivision") has requested a loan in the amount of \$5,607,000 from the Program to construct a domestic lift station and associated forcemains to serve a newly annexed area and provide additional redundancy for wastewater service to the City and East Grand Forks; and

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

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

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

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

Adopted: May 25, 2023

- ii. Jamestown Regional Airport Authority – Capital Financing Program - \$565,000

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Commission approve a \$565,000 Capital Financing Program loan for the Jamestown Regional Airport Authority.

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

A RESOLUTION WAS MADE

WHEREAS, Jamestown Regional Airport Authority (the "Political Subdivision") has requested a loan in the amount of \$565,000 (the "Loan") from the North Dakota Public Finance Authority (the "NDPFA") to refinance the 2018 passenger parking lot mill and overlay; and

Whereas, the Political Subdivision will issue revenue bonds payable with passenger facility charge revenues as well as City and County mill levy to repay the loan;

Whereas, upon a review of the loan application, the NDPFA's Advisory Committee is recommending approval of the Loan; and

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

1. The Loan is hereby approved.

2. The Executive Director is authorized to fund the Loan as an eligible investment with funds available under the NDPFA's Capital Financing Program General Bond Resolution Operating Account, upon receipt of the Municipal Securities described and authorized to be issued in the Resolution to be adopted by the Political Subdivision's governing body.

Adopted: May 25, 2023

Ms. Ament gave a presentation of State Revolving Fund loans approved by the Advisory Committee:

- i. Milnor – Drinking Water State Revolving Fund - \$119,000. They will also receive a \$98,175 grant from the ND Department of Emergency Services and use \$100,242 of local ARPA funds. The project will update and incorporate the existing supervisory control system for the lift stations into the water control system. The request term is 20 years and the City will issue revenue bonds payable with water user fees. The Public Finance Authority's Advisory Committee approved the loan at their May 16, 2023 meeting.

LIGNITE RESEARCH, DEVELOPMENT AND MARKETING PROGRAM

Mr. Reice Haase gave a presentation of the Lignite Research, Development and Marketing Program Project Management and Financial Report. There are currently 29 active projects, \$53 million that has been awarded, and \$19.2 million outstanding committed dollars.

Mr. Haase presented for consideration of approval the following Lignite Research, Development and Marketing Grant Round 102 applications:

- i. LRC-102A Lignite Energy Council: Education Program, \$450,000
- ii. LRC-102B EERC: Redundancy Study for CO2 Capture at Coal Creek Station, \$837,313
- iii. LRC-102C UND & EERC: Coal Creek Carbon Capture: Geologic CO2 Storage Complex Development, \$6,119,690
- iv. LRC-102D Americarbon Products, LLC: Engineering Design and Feasibility Analysis for Commercial Graphite and Asphalt Manufacturing from Lignite-Derived Carbon Pitch, \$700,000
- v. LRC-102E UND & EERC: Williston Basin CORE-CM Initiative – Continued Assessment, \$1,050,000
- vi. LRC-102F UND: Assessment of Lignite-Based Industrial Residues for Value-Added Product Creation through CO2 Mineralization, \$250,000
- vii. LRC-102G UND: Recovery and Refining of Rare Earth Elements from Lignite Mine Wastes, \$2,000,000

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accepts the recommendation of the Lignite Research Council and approve funding of the following seven projects in the total amount of \$11,407,003 and authorizes the Office of the Industrial Commission to enter into contracts with the applicants as noted below:

- i. **LRC-102A Lignite Energy Council: Education Program, \$450,000**
- ii. **LRC-102B EERC: Redundancy Study for CO2 Capture at Coal Creek Station, \$837,313**
- iii. **LRC-102C UND & EERC: Coal Creek Carbon Capture: Geologic CO2 Storage Complex Development, \$6,119,690**
- iv. **LRC-102D Americarbon Products, LLC: Engineering Design and Feasibility Analysis for Commercial Graphite and Asphalt Manufacturing from Lignite-Derived Carbon Pitch, \$700,000**
- v. **LRC-102E UND & EERC: Williston Basin CORE-CM Initiative – Continued Assessment, \$1,050,000**
- vi. **LRC-102F UND: Assessment of Lignite-Based Industrial Residues for Value-Added Product Creation through CO2 Mineralization, \$250,000**
- vii. **LRC-102G UND: Recovery and Refining of Rare Earth Elements from Lignite Mine Wastes, \$2,000,000**

With no further business, the Industrial Commission meeting adjourned at 5:05 p.m.

North Dakota Industrial Commission

A handwritten signature in black ink, appearing to read 'Karen Tyler', with a long horizontal line extending to the right.

Karen Tyler, Interim Director and Secretary