

Minutes of a Meeting of the Industrial Commission of North Dakota

Held on June 29, 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 12:42 p.m., and made a minor modification to the agenda to place the Public Finance Authority topics at the beginning of the agenda, followed by Housing Finance Agency.

NORTH DAKOTA PUBLIC FINANCE AGENCY

Ms. DeAnn Ament presented for consideration of approval the following 2 loan applications:

- i. Fargo – Clean Water - \$25,000,000 increase to existing previously approved \$126,500,000 loan. The requested loan term is 30 years and the City of Fargo will issue revenue bonds payable with wastewater fees and sales tax revenues. The average annual payment for the revenue bonds will be \$6,605,073.

A motion was made by Commissioner Goehring and seconded by Governor Burgum that the Commission approve a \$25,000,000 Clean Water State Revolving Fund loan increase for the city of Fargo.

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

- ii. Bismarck – Clean Water - \$45,000,000. The requested loan term is 20 years and the City of Bismarck will issue revenue bonds payable with sewer user fees. The average annual payment for the revenue bonds will be \$2,916,012.

A motion was made by Commissioner Goehring and seconded by Governor Burgum that the Commission approve a \$45,000,000 Clean Water State Revolving Fund loan increase for the city of Bismarck.

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

Ms. Ament gave a presentation of the report of State Revolving Fund loans under \$2,000,000 approved by Public Finance Advisory Committee:

- i. Fargo – Clean Water - \$1,000,000 increase to existing previously approved \$20,229,000 loan. The requested loan term is 30 years and the City will issue revenue bonds payable with wastewater user fees and sales tax revenue.

- ii. Bismarck – Drinking Water - \$2,000,000 with \$1,500,000 loan forgiveness. The requested loan term is 20 years and the City will issue revenue bonds payable with water user fees.
- iii. Galesburg – Drinking Water - \$606,000. The requested loan term is 30 years and the City will issue improvement bonds payable with special assessments.

Ms. Karen Tyler presented for consideration of approval the reappointment of Keith Lund to Public Finance Advisory Committee.

The memo states:

“The North Dakota Public Finance Authority Policy P-2A states that the Industrial Commission shall appoint a three-member Advisory Committee to review information and make recommendations to the North Dakota Public Finance Authority Executive Director and the North Dakota Industrial Commission.

The policy states that the individuals appointed to this Committee must have background in municipal finance and/or economic development.

The current makeup of the Advisory Committee is:

Keith Lund, Grand Forks

Linda Svihovec, Bismarck

John Phillips, Beulah

Keith Lund’s term will expire on July 1, 2023, and he is willing to continue his service to the PFA and Advisory Committee. Keith is the President and CEO of the Grand Forks Region Economic Development Corporation and has served on the Committee since 2011. He brings expertise in municipal finance and economic development and has provided valuable input to the Committee and the PFA Executive Director. Keith has been an active participant in the work of the Committee, and currently serves as Chairman. DeAnn has stated that his knowledge of the needs of urban communities and the complexities they face in funding infrastructure and his understanding of the role of the PFA is important to the work of the Authority. **Therefore, it is my recommendation that Keith Lund be reappointed for a three-year term effective immediately and extending to July 1, 2026.**

Respectfully submitted,

Karen Tyler”

It was moved by Commissioner Goehring and seconded by Governor Burgum that the Industrial Commission accept the recommendation of the Interim Executive Director and approve the reappointment of Keith Lund for a three-year term to the Public Finance Authority Advisory Committee effective immediately and extending to July 1, 2026.

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

NORTH DAKOTA HOUSING FINANCE AGENCY

Mr. Brandon Detlaff presented for consideration of approval increases to annual income limits for FirstHome and Down Payment Closing Cost Assistance (DCA) programs.

The Department of Housing and Urban Development (HUD) published new median income numbers on May 15, 2023. These numbers are used to establish the Annual Income limits for the FirstHome,

FirstHome Start, FirstHome DCA, and HomeAccess Programs. The new statewide median income for North Dakota increased \$3,600 (3.72%) to \$100,400 for 2023. This compares to the national median income increase of \$6,200 (6.89%) to \$96,200. The proposed 2023 limits range from \$100,400 to \$127,420 depending on family size and county. The NDHFA Advisory Board recommends the approval of the new Income limits effective for loan reservations dated on or after July 1, 2023.

It was moved by Commissioner Goehring and seconded by Governor Burgum that the Industrial Commission approve the form of Program Directive NO 121 per Exhibit 1 partially set forth below, new Annual Income limits effective for loan reservations under the FirstHome (Standard/Start/HomeAccess) programs dated on or after July 1, 2023, and to approve changes to the DCA Program Limits per Exhibit 2, partially set forth below, effective for loan reservations dated on or after July 1, 2023.

Maximum Annual Income

FirstHome/Start/HomeAccess

County	Family Size Less than 3	Family Size 3 or more
Mercer/Williams	\$110,800	\$127,420
Stark	\$109,600	\$126,040
Burleigh/Morton/Oliver	\$108,600	\$124,890
Cass	\$104,100	\$119,715
McKenzie	\$102,700	\$118,105
All Other Counties	\$100,400	\$115,460

**DCA INCOME LIMITS
07/01/2023**

COUNTY	FAMILY SIZE*							
	1	2	3	4	5	6	7	8
Mercer/Williams	62,100	70,950	79,800	88,650	95,750	102,850	109,950	117,050
Stark	61,400	70,200	78,950	87,700	94,750	101,750	108,750	115,800
Burleigh/Morton/Oliver	60,850	69,550	78,250	86,900	93,900	100,850	107,800	114,750
Cass	58,350	66,650	75,000	83,300	90,000	96,650	103,300	110,000
McKenzie	57,550	65,750	73,950	82,150	88,750	95,300	101,900	108,450
All Other Counties	53,600	61,250	68,900	76,550	82,700	88,800	94,950	101,050

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

Mr. Dettlaff presented for consideration of approval increases to acquisition cost limits for the FirstHome Standard, Start, HomeAccess, and DCA programs.

The IRS issues a Revenue Procedure each year that provides the average area purchase price for counties in each state and a nationwide minimum. This is done by adjusting the FHA loan limits to consider the differences between average and median purchase prices. The IRS tax code then requires

setting Acquisition Cost limits at no more than 90% of the applicable average area purchase price as provided in the Revenue Procedure.

It was moved by Commissioner Goehring and seconded by Governor Burgum that the Industrial Commission approve the Acquisition Cost Limits for the FirstHome Standard, Start, HomeAccess, and DCA programs as adjusted per Program Directive 120, partially set forth below, effective July 1, 2023.

PROGRAM DIRECTIVE NO. 120

**Area Limits
(Maximum Acquisition Cost)**

The following Program Directive will serve as written notice of the Area Limits (as defined in the 1994 Mortgage Purchase Agreement dated as of August 3, 1994) for the Acquisition Cost of a Single-Family Residence. These Area Limits are effective for Mortgage Loans in which the Reservation is dated on or after the herein effective date.

Previously Occupied

All Counties	<u>1 Unit</u>	<u>2 Unit</u>	<u>3 Unit</u>	<u>4 Unit</u>
	\$481,176	\$616,111	\$744,679	\$925,491

Previously Unoccupied

All Counties	<u>1 Unit Only</u>
	\$481,176

Attorney General Wrigley joined the meeting at this time.

Ms. Jennifer Henderson presented a report on Authorizing Declaration of Intent to Issue Multifamily Revenue Bonds, Lashkowitz Riverfront 4, Fargo.

On May 25, 2023, NDHFA issued a Declaration of "Official Intent" to issue Multifamily Revenue Bonds in the amount not to exceed \$14,000,000. The proceeds of the bonds will be used for the construction of Lashkowitz Riverfront 4, an 83-unit apartment complex located at 101 2nd St South, Fargo, North Dakota.

The issuance of tax-exempt bonds is required for a project to qualify for a non-competitive 4% tax credit allocation. The authority to issue the intent declaration was given by a Resolution Authorizing Declarations of Intent adopted by the Commission on March 24, 2015.

Fargo Housing and Redevelopment Authority, a North Dakota Housing Authority, is proposing the demolition of the existing 248-unit public housing complex known as the Lashkowitz Highrise and replace it with the new construction of 110 units to be developed as a twin 4 percent/9 percent transaction. The 4 percent transaction, for which tax-exempt bonds will be issued, will consist of 83 units and comprise floors 2-4. The remaining units will be financed as a separate asset utilizing 9 percent competitive credits. This transaction will remove units from public housing and replace with traditional affordable housing as part of a repositioning strategy.

The issuance of an official intent memo declares the intention to issue multifamily bonds, however does not obligate the Agency to give final approval for the issuance of the bonds. Final approval for issuance of the bonds can only be authorized by independent action of the Industrial Commission. Prior to final

bond issuance, the application must meet underwriting conditions and receive an approval for 4% tax credits. Once underwriting conditions are met, the project will then be presented to the Commission with a request to approve the issuance of a Resolution Authorizing Revenue Bonds and approve the substantially drafted bond documents. A copy of the declarations can be found on the website.

Ms. Tyler presented for consideration of approval the recommendation of reappointment of Ninetta Wandler and Jim Farnsworth to Housing Finance Advisory Board.

The memo reads as follows:

“The North Dakota Century Code 54-17-07.1 states:

54-17-07.1. Advisory board - Rules.

The Industrial Commission shall appoint a six-member advisory board consisting of representatives of lenders, the residential real estate industry, the mobile home and manufactured housing industry, and homeowners and buyers, and in consultation with such board may adopt rules and regulations for the conduct of its housing finance program which may, among other matters, establish requirements for the type and purchase price of dwelling units and multifamily facilities eligible to be financed, the income limits for eligible low or moderate income persons or families, the interest rates and other terms of mortgage loans to be financed, requirements relating to federal or private mortgage insurance or guarantees, and the general terms and conditions for the issuance and security of housing revenue bonds to be issued.

The current terms for HFA Advisory Board members Ninetta Wandler (Real Estate) and Jim Farnsworth (Manufactured Housing) will expire on July 1, 2023. Ms. Wandler was first appointed to the advisory board on January 22, 2004 and currently serves as board Chair. Mr. Farnsworth was first appointed to the board on December 28, 2010. Both members are interested in continuing their service on the advisory board and the full board voted to support this reappointment at the March 10, 2023 advisory board meeting.

I recommend the Industrial Commission accept the recommendation of the HFA Advisory Board and reappoint Ninetta Wandler and Jim Farnsworth for three-year terms, and also reappoint Ninetta Wandler as Chair.

Respectfully submitted,

Karen Tyler”

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of the Interim Executive Director approve the reappointment of Ninetta Wandler and Jim Farnsworth for three-year terms on the Housing Finance Agency Advisory Board, and also reappoint Ninetta Wandler as the Chair of the Advisory Board.

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

Mr. Dave Flohr gave a brief Housing Finance Agency Legislative update where he stated that the Housing Finance Agency was approved to hire four new FTE’s which will be used for finance and IT positions.

NORTH DAKOTA INSURANCE RESERVE FUND

Brennan Quintus presented for consideration of approval the reinsurance policy recommendation for the Excess Loss Reinsurance Coverage.

The State Fire and Tornado Fund provides property insurance coverage to over 1,200 state agencies and local governments and protects over \$19.5 billion of total insured value (TIV). The North Dakota Insurance Reserve Fund (NDIRF) administers the Fund through a contract with the North Dakota Insurance Department. The contract has been in place since June 2019. The NDIRF is a member-owned nonprofit corporation that provides liability, automobile, and equipment coverage to North Dakota local governments. Currently, the Fund has excess loss reinsurance for claims over \$2 million up to \$250 million through Travelers. The deposit premium paid on this reinsurance was approximately \$5.4 million based on over \$18 billion of property values as of August 1, 2022, which translates to a rate of .029273 per \$100 of insured value. N.D. Cent. Code § 26.1-22-21 requires the Insurance Commissioner to procure excess loss reinsurance with the approval of the Industrial Commission. The Fund's current excess loss reinsurance treaty expires at midnight on July 31, 2023.

Travelers quoted a limit of \$250 million over a \$2 million retention per occurrence at a rate of .03316 per \$100 of TIV. Based on a TIV of \$19,621,296,125, the deposit premium with Travelers is \$6,506,490.

Due to the change in terms made by Travelers in 2022, NDIRF staff began work on finding alternative options for the Fund shortly after the 2022 renewal. NDIRF staff, through a reinsurance broker, approached reinsurance companies all over the world. We were able to compile a shared and layered structure that includes multiple reinsurance companies taking different portions of a \$250 million limit above a \$2 million retention per occurrence at a rate of .0351 per \$100 of TIV. Based on a TIV of \$19,704,027,873, the deposit premium for this structure is \$6,918,270. The main benefit of this structure is that all NDFT properties will be covered through the same program, and the Fund will not need to buy reinsurance coverage for separate properties.

It is recommended that the Fund accept the shared and layered structure. This structure will guarantee that all Fund property is reinsured in the short term. The structure will also provide long-term stability because no single carrier can dictate terms like Travelers has done over the past two years. Aside from multiple reinsurers participating in the program, the terms offered in the shared and layered structure are either better or the same as the terms Travelers has provided.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of the North Dakota Insurance Commissioner regarding the Excess Loss Reinsurance Coverage for property coverage provided by the Fire and Tornado Fund, and approve the proposal for a shared and layered program policy with participation of the insurers as presented, which will provide reinsurance coverage of \$250,000,000 with a \$2,000,000 deductible per occurrence on Total Insured Value of \$19,704,027,873, with a total policy premium of \$6,918,270.

This motion acknowledges that the Century Code specifies that insurance must be purchased from "authorized" insurance companies, and further acknowledges that the Century Code does not specify whether non-admitted companies qualify as "authorized" companies. However, this same section of the century code, N.D.C.C. § 26.1-22-21, provides a general exception that, among other things,

authorizes the Commissioner and the Industrial Commission to disregard the authorized insurance company requirement with the approval of the Industrial Commission, and such approval is herein recommended under this motion.

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

NORTH DAKOTA MILL AND ELEVATOR

Mr. Vance Taylor presented for consideration of approval capital projects expenditures – Midds Storage Project Phase III and Industrial Vacuum purchase.

Phase III of the project will be the final phase and includes electrical for the building and the collection system, steam for the building, and the plant side midds and screening collection system to move the midds and screenings from the milling units to the new midds building to be processed and loaded. The total cost of Phase III is \$18,800,000, bringing the total project cost to \$56,000,000. The purchase of a portable industrial vacuum will improve cleaning efficiency, sanitation levels and employee safety throughout the terminal elevator and outside areas of the facility and the cost is \$175,000.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the following capital project expenditures:

Phase III of the Midds Storage and Handling project with costs totaling \$18,800,000 which includes electrical for the building and the collection system, steam for the building, and the plant side midds and screening collection system to move the midds and screenings from the milling units to the new midds building to be processed and loaded. With the approval of Phase III which is the final phase of the project the total project cost is \$56,000,000.

The purchase of a portable industrial vacuum at a cost of \$175,000 to improve cleaning efficiency, sanitation levels and employee safety throughout the terminal elevator and outside areas of the facility.

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

Mr. Taylor presented for consideration of approval a Mill and Elevator Profits Transfer for Fiscal Year 2023.

The memo reads as follows:

“North Dakota Century Code § 54-18-19 and 54-18-21 state the following:

54-18-19. Transfer of North Dakota mill and elevator profits to general fund. The industrial commission shall transfer to the state general fund fifty percent of the annual earnings and undivided profits of the North Dakota mill and elevator association after any transfers to other state agricultural-related programs. The moneys must be transferred on an annual basis in the amounts and at the times requested by the director of the office of management and budget.

54-18-21. Annual transfer. Within thirty days after the conclusion of each fiscal year, the industrial commission shall transfer five percent of the net income earned by the state mill and elevator association during that fiscal year to the agricultural products utilization fund.

Mill management is planning to close their books on July 21, 2023, and is proposing to make the transfers no later than July 25, 2023. Therefore, we are requesting that the Industrial Commission authorize the transfer of 50% of the Mill FY 2023 profits to the General Fund and the 5% of net income to the Agricultural Products Utilization Fund utilizing unaudited numbers by no later than July 25, 2023, with Mill management reporting the amount of the transfers to the Commission at the next Industrial Commission meeting.

Respectfully submitted,

Vance Taylor
Karen Tyler”

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley to authorize the North Dakota Mill to transfer 5% of the net income earned by the Mill for fiscal year 2023 to the Agricultural Products Utilization Fund (APUF) and transfer to the General Fund 50% of the annual earnings and undivided profits of the Mill after any transfers to other state agricultural-related programs as per the request of the Office of Management and Budget Director noting that the transfers will be based on unaudited year-end results and reserving the right to adjust the transfer numbers once the year-end results have been audited. Further that Mill management reports the amount of the transfers to the Commission at the next Industrial Commission meeting.

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

STATE ENERGY RESEARCH CENTER

Mr. Reice Haase presented for consideration of approval modifications to Contract No. SERC 2019-01 to incorporate 68th Legislative Assembly changes.

In 2019, North Dakota’s 66th Legislative Assembly established the Energy & Environmental Research Center (EERC) as the State Energy Research Center (SERC) through Senate Bill No. 2249. The legislation included \$5 million of funding per biennium to fulfill three objectives: 1) conduct exploratory, transformational, and innovative research of technologies and methodologies that facilitate the prudent development and clean and efficient use of the state’s energy resources; 2) provide greater access to energy experts for timely scientific and engineering studies to support the state’s interests; and 3) educate stakeholders on issues related to the state’s energy resources through public outreach.

In 2023, North Dakota’s 68th Legislative Assembly passed Senate Bill No. 2161 in continuing support of SERC efforts. This bill reaffirms SERC’s mandate and directs the following actions:

- Changing the end date of SERC activities and funding from its current end date of June 30, 2027, to June 30, 2029.
- Raising the SERC fund limit from \$5 million per biennium to \$7.5 million per biennium.

In keeping with the directive of Senate Bill No. 2161, the EERC requests a modification to NDIC Contract No. SERC 2019-01 to update the end date to June 30, 2029, and increase the funding amount to \$7.5 million per biennium. The scope of work will remain the same.

In addition to the actions directed by Senate Bill No. 2161, House Bill No. 1014 contained two legislatively directed projects for SERC, specifically a salt cavern underground energy storage research project (Section 15) and a study related to prospective in-state resources of economically feasible accumulations of critical minerals (Section 14). The EERC will submit separate requests for these projects at a later date.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves the following amendments to Contract SERC 2019-01, and authorizes the Office of the Industrial Commission to execute an amended contract as follows:

- **Extend the end date of the contract from June 30, 2027 to June 30, 2029**
- **Increase the State Energy Research Fund limit from \$5,000,000 per biennium to \$7,500,000 per biennium**

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

NORTH DAKOTA OUTDOOR HERITAGE FUND

Mr. Haase presented the Outdoor Heritage Fund Project Management and Financial Report. The Industrial Commission has awarded funding for 213 projects for a total of \$76,383,949. To date, there has been \$4,222,260 of commitments that have been returned. Every county in North Dakota has received some sort of funding or benefit from the Outdoor Heritage Fund. There are currently 74 active projects, \$13.3 million paid to date, \$47.9 million awarded, \$34.3 million payable, and \$6.9 million available for commitment.

Mr. Bob Kuylen presented for consideration of approval the Outdoor Heritage Fund Advisory Board recommendations for Grant Round 22 applications:

- i. 22-2 (C) McLean County Water Resource District: Katz Dam Fish Passage, \$112,572.75
- ii. 22-3 (D) Coyote Clay Target League: Coyote Clay Target Range, \$293,158
- iii. 22-4 (C) National Wild Turkey Federation: Turkey's enhancing Water Quality and Wildlife Habitat, \$200,000
- iv. 22-5 (B) North Dakota Conservation District Employees Association: North Dakota Statewide Tree Planting Initiative, \$2,550,000
- v. 22-6 (C) Theodore Roosevelt Presidential Library Foundation: TRPL Prairie Enhancement Land Management Phase I, \$498,374
- vi. 22-7 (B) Pembina County Historical Society: Pembina County Community Orchard, \$8,900
- vii. 22-8 (C) North Dakota Wildlife Federation: The Conservation Capacity Program, \$30,000
- viii. 22-9 (C) North Dakota Natural Resources Trust: North Dakota Partners for Wildlife Project 3, \$1,957,500
- ix. 22-10 (A) American Foundation for Wildlife: Howard Oppegard Landing Improvements, \$50,550
- x. 22-11 (D) Williams County Parks: Epping Springbook Dam Algae Control, \$131,921
- xi. 22-12 (D) Turtle Mountain Band of Chippewa: TMBCI Belcourt Lake Rejuvenation Phase II, \$105,741

A motion was made by Commissioner Goehring and Seconded by Attorney General Wrigley that the Industrial Commission accept the Outdoor Heritage Fund Advisory Board recommendations for the Grant Round 22 applications for the amounts listed above.

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

Mr. Kuylen presented for consideration of approval the Outdoor Heritage Fund Advisory Board recommendations for amendments to the following contracts:

- i. 021-208 Audubon Dakota: UWP Initiative, reallocation of \$45,000 within budget line-items

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accepts the recommendation of the Outdoor Heritage Fund Advisory Board and authorizes the Office of the Industrial Commission to amend Contract 021-208 – Urban Woods and Prairies Initiative Pollinator Plots Project to reallocate \$45,000 of project funding as follows:

Budget Line Item:	Original OHF Amount:	Revised Amount:	
Seed Mix	\$29,375	\$27,000	
Seeding Labor	\$7,500	\$0	
Land Management	\$75,000	\$39,875	
Plant Plugs	\$0	\$45,000	

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

- ii. 017-169 Audubon Dakota: ND Conservation Forage Program transition payment timeline

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accepts the recommendation of the Outdoor Heritage Fund Advisory Board and authorizes the Office of the Industrial Commission to amend Contract 017-169 – North Dakota Conservation Forage Program to allow transition payments to be paid in full within the first year of enrollment.

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

NORTH DAKOTA RENEWABLE ENERGY PROGRAM

Mr. Haase presented the Renewable Energy Program Management and Financial Report. There are currently 17 active projects, \$1.7 million has been paid to date, there has been \$6.6 million awarded, there is \$4.8 million that is outstanding committed, and \$1.1 million cash available for commitment in the Renewable Energy Fund.

Mr. Haase presented for consideration of approval the following Grand Round 51 applications:

- i. R-051-C 4H2, Inc.: DEFC Research and Development, \$346,915.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accepts the recommendations of the Renewable Energy Council and approves funding for application R-051-C – DEFC Research and Development and authorizes the Office of the Industrial Commission to enter into a contract with 4H2, Inc. for the amount of \$346,915.

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

NORTH DAKOTA DEPARTMENT OF MINERAL RESOURCES

Dr. Lynn Helms presented for consideration of approval the following cases:

- i. **Order 32416 for Case 29808** regarding the termination of the Tracy Mountain-Tyler Unit operated by Northwestern Production, LLC in Billings County, ND, the temporarily abandoned status of wells with the unit, the reclamation status of wells within the unit, and the bond amount required for the operation of the unit.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order No. 32416 issued in Case No. 29808 authorizing the Tracy Mountain-Tyler Unit, Billings County, ND to remain in full force and effect; approving a bond reduction for the operation of the Tracy Mountain-Tyler Unit pursuant to NDAC Section 43-02-03-15 from \$995,000 to \$724,000; authorizing the Director to issue an administrative order reducing the bond amount when non-compliant wells have been brought into compliance; and/or such other relief.

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

- ii. **Order 32617 for Case 30008** regarding an application of Resonance Exploration, LLC for an enhanced oil recovery pilot project in the South West Roth-Madison Pool, Bottineau County, ND.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order No. 32617 issued in Case No. 30008 approving an application of Resonance Exploration (North Dakota) LLC for an order granting temporary authority to use the proposed Resonance Fyllum 6-36H INJ well to be located in a 720-acre spacing unit comprised of the E/2, E/2W/2 of Section 36, T.163N., R.79W. and NE/4, E/2NW/4 of Section 1, T.162N., R.79W., Bottineau County, ND, as an injection well for an enhanced oil recovery pilot project in the West Roth-Madison Pool, and such further and additional relief.

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

- iii. **Order 32618 for Case 30009** regarding an application of Resonance Exploration, LLC for an enhanced oil recovery pilot project in the South Westhope-Spearfish/Charles Pool, Bottineau County, ND.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order No. 32618 issued in Case No. 30009 approving an application of Resonance Exploration (North Dakota) LLC for an order granting temporary authority to use the proposed Resonance Stratton 16-12H INJ well to be located in a 640-acre spacing unit comprised of the S/2SW/4 of Section 1 and the S/2, NW/4, and S/2NE/4 of Section 12, T.162N., R.80W., Bottineau County, ND, as an injection well for an enhanced oil recovery pilot project in the South Westhope-Spearfish/Charles Pool, and such further and additional relief.

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

Mr. Bruce Hicks presented the Oil and Gas Division Quarterly Report. In Q1 2023 there were 231 Permit Applications Received, a rig count of 46, and a producing well count of 17, 538. There was 1,056,285 Barrels of Oil per Day and the Gas Capture rate in the Bakken was 95%.

Discussion was had surrounding the issues of laying down rigs due to workforce shortages. Governor Burgum stated that drilling rig employees are among the most important in the State, so this is an issue that needs to be resolved.

A RESOLUTION OF APPRECIATION WAS MADE

Whereas, Bruce Hicks has served the North Dakota Industrial Commission for 43 years, and has been employed by the Department of Mineral Resources in several capacities since its creation in 1981, including his current position as Assistant Director; and

Whereas, Bruce has been dedicated to the Department's mission of encouraging and promoting the development, production, and utilization of oil and gas in the state in such a manner as will prevent waste, maximize economic recovery, and fully protect the correlative rights of all owners to the end that the landowners, the royalty owners, the producers, and the general public realize the greatest possible good from these vital natural resources; and

Whereas, During Bruce's tenure with the Department, North Dakota's average monthly oil production has grown from approximately 100,000 barrels per day in 1980 to over 1.1 million barrels per day in 2023; and

Whereas, Bruce's work during this time fostered a stable regulatory environment within which the incredible growth of North Dakota's oil and gas industry was made possible, which has resulted in the greatest possible good for all North Dakotans, revenues from which are used to fund public infrastructure like drinking water, schools, and roads; and

Whereas, Bruce's dedication to the Industrial Commission and to the State of North Dakota, including his service as a representative of North Dakota on the Interstate Oil and Gas Compact Commission, will leave a lasting legacy for all citizens of our state and is deserving of recognition.

Now, therefore, the North Dakota Industrial Commission hereby expresses deep gratitude to Bruce Hicks for his 43 years of service to the citizens of North Dakota and wishes him the very best in his retirement.

Adopted this 29th day of June, 2023.

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. Dominek v Equinor et al – allocation of production from overlapping spacing units
- v. Liberty Resources vs. NDIC et al – appeal of Industrial Commission Order 31792
- vi. North Dakota Industrial Commission v. U.S. Department of Interior – quarterly lease sales

Dr. Helms gave an update on the Dakota Access Pipeline Environmental Impact Statement cooperating agency comments. There is currently a delay as leadership has to approve the release of comments.

Dr. Helms gave an update on the rule revision process. The process has been started and ideas have gone out to staff. The process will be brought to the September 7, 2023 Industrial Commission meeting for approval on public comments.

Dr. Helms presented for consideration of approval the submittal of agency comments in support of the State of Louisiana Application for Underground Injection Control Class VI Primacy.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves the submittal of agency comments in support of the State of Louisiana Application for Underground Injection Control Class VI Primacy.

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

Dr. Helms presented for consideration of approval the Resolution of the North Dakota Industrial Commission Naming Hearing Examiners.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the Resolution of the North Dakota Industrial Commission Naming Hearing Examiners as presented.

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

A RESOLUTION WAS MADE

Whereas, Section 38-08-04.1 of the North Dakota Century Code provides that the Industrial Commission may use hearing examiners under such rules and regulations as the Commission may prescribe; and

Whereas, Section 43-02-03-93 of the North Dakota Administrative Code provides that the Commission may by motion designate and appoint qualified individuals to serve as examiners,

NOW, THEREFORE, the Industrial Commission rescinds all prior appointments of examiners and designates and appoints the following individuals to serve as the Commission's examiners as it relates to the Commission's responsibilities under Chapter 38-08 of the North Dakota Century Code:

David Garner, Assistant Attorney General
Matt Sagsveen, Assistant Attorney General
**Lynn D. Helms, Ph.D., Director, Department of Mineral Resources and
Director, Oil and Gas Division**
Mark Bohrer, Assistant Director, Oil and Gas Division
Ashleigh Day, UIC and Treating Plant Manager, Oil and Gas Division
Michael Ziesch, EGIS Staff Officer, Department of Mineral Resources
David Tabor, Field Supervisor, Oil and Gas Division

This Resolution shall be effective as of July 1, 2023.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley 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 Department of Mineral Resources attorney consultation, and to consider Clean Sustainable Energy Authority confidentiality requests.

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

The Commission is met 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 participated in that executive session.

After the Bank of North Dakota executive session, the Commission met in executive session for attorney consultation related to the case listed on the agenda. Only Commission members, their staff, Commission staff, and Department of Mineral Resources staff participated in that executive session.

After the Department of Mineral Resources executive session, the Commission met in executive session regarding to consider Clean Sustainable Energy Authority confidentiality requests. Only Commission members, their staff, and Commission staff participated in that executive session.

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

Governor Burgum reminded the Commission members and those present in the executive sessions that the discussions must be limited to the announced purposes which was anticipated to last approximately 1 hour and 10 minutes.

The executive session began at 4:00 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

BND Members Present

Craig Hanson, BND

Others in Attendance

Ryan Norrell	Governor'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
Philip Axt	Assistant Attorney General
Matt Sagsveen	Attorney
Karen Tyler	Industrial Commission Office
Reice Haase	Industrial Commission Office
Brenna Jessen	Industrial Commission Office

CLEAN SUSTAINABLE ENERGY AUTHORITY EXECUTIVE SESSION

Industrial Commission Members Present

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

Others in Attendance

Ryan Norrell	Governor's Office
John Reiten	Governor's Office
Karen Tyler	Industrial Commission Office
Reice Haase	Industrial Commission Office

The executive session ended at 5:25 p.m. and the Commission reconvened in open session.

During the Bank of North Dakota executive session, the Commission made a motion regarding one increase in a credit line.

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

During the Department of Mineral Resources executive session, the Commission consulted with its attorney.

During the Clean Sustainable Energy Authority executive session, the Commission considered confidentiality requests.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of its Deputy Director and pursuant to North Dakota Century Code sections 54-63.1-06, 44-04-18.4 and 44-04-19.2 grant the confidentiality requests and determine that the information described in the Grant Round 4 requests consists of trade secrets and/or financial or proprietary information and is confidential.

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

A RESOLUTION OF APPRECIATION WAS MADE

Whereas, Al Anderson has admirably served as the first Director of the Clean Sustainable Energy Authority since September 27th, 2021, and was instrumental in implementing the program by working with members of the Authority and the Industrial Commission to support research, development, and technological advancements that reduce environmental impacts and increase sustainability of energy production; and

Whereas, Al has a distinguished career serving North Dakota and the United States, beginning with his service in the United States Marine Corps from 1973-1977, and continuing with over 30 years serving the energy industry in the private sector and 5 years as director of the North Dakota Department of Commerce; and

Whereas, Under Al's leadership, the Clean Sustainable Energy Program has funded 11 projects which will make North Dakota a world leader in the production of clean sustainable energy, and will diversify and grow North Dakota's economy; and

Whereas, These 11 projects at completion would represent an amount of carbon capture that would be equal to over 1/3 of North Dakota's annual production, and have already resulted in the capture of over 1 billion cubic feet of natural gas which would have otherwise been flared, yielding over \$30 million in additional tax revenues to the State that would have otherwise been lost; and

Whereas, Al has announced his intention to retire effective July 1, 2023.

Now, therefore, the North Dakota Industrial Commission hereby expresses deep gratitude to Al Anderson for his service to the citizens of North Dakota and wishes him the very best in his retirement.

Adopted this 29th day of June, 2023.

OFFICE OF THE INDUSTRIAL COMMISSION

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

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

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

Ms. Tyler presented for consideration of approval the executive salary adjustments pursuant to legislative recommendation.

The memo reads as follows:

“Senate Bill 2015 adopted by the 2023 Legislative Assembly states in part:

The 2023-25 biennium compensation adjustments for permanent state employees are to average 6 percent per eligible employee for the first fiscal year of the biennium and are to average 4 percent per eligible employee for the second year of the biennium. The increases for the first year of the biennium are to be given beginning with the month of July 2023, to be paid in August 2023, and for the second year of the biennium are to be given beginning with the month of July 2024, to be paid in August 2024. Increases for eligible state employees are to be based on documented performance and are not to be the same percentage increase for each employee.

The Industrial Commission Agency Directors continue to lead with excellence and a dedicated commitment to serving North Dakota citizens and businesses, and supporting the Industrial Commission in executing on its vast portfolio of responsibilities. I am recommending the following salary increases effective July 1, 2023:

	<u>Current</u>	<u>6%</u>	<u>New</u>
DeAnn Ament	128,503	7,710	136,213
Dave Flohr	153,690	9,222	162,912
Lynn Helms	276,271	16,576	292,847
Vance Taylor	358,378	21,503	379,881

Regarding the Interim Executive Director salary, my current compensation from the Industrial Commission is \$60,000. A 6% increase is \$3,600.

Respectfully submitted for your consideration,
Karen Tyler”

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the 6% salary increases for Industrial Commission executives as approved by the Legislature for the first fiscal year of the 2023-2025 biennium, and as recommended by the Interim Executive Director.

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

With no further business, the Industrial Commission meeting adjourned at 5:30 p.m.

The next meeting is scheduled for Thursday, July 27th, 2023 at the Bank of North Dakota Conference Room.

North Dakota Industrial Commission

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

Karen Tyler, Interim Executive Director