

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on October 22, 2019 beginning at 12:30 p.m.  
Governor's Conference Room - State Capitol

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

Also Present: Other attendees are listed on the attendance sheet available in the Commission files  
Members of the Press

Governor Burgum called the Industrial Commission meeting to order at approximately 12:30 p.m. and the Commission took up Oil & Gas Research Program (OGRP) business.

### **OIL & GAS RESEARCH PROGRAM**

Ms. Karlene Fine, Industrial Commission Executive Director, provided the Oil and Gas Research Fund financial report for the period ending August 31, 2019. She stated that there is \$8.8 million of uncommitted funding available for project awards during the 2019-2021 biennium.

Ms. Fine presented the Oil and Gas Research Council 2019-2021 budget recommendation and stated the budget includes the uncommitted dollars and the payments scheduled for projects previously approved by the Commission.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Oil and Gas Research Council's recommendation and approves the following 2019-2021 biennium allocation for Oil and Gas Research Program funding:**

Research	46.70%	\$ 7,770,415
Education	8.42%	\$ 1,350,000
Pipeline Authority	4.37%	\$ 700,000
Administration	1.20%	\$ 300,000
Legislative Directive	39.31%	<u>\$ 6,300,000</u>
		\$16,420,415

**and further authorizes the Industrial Commission Executive Director/Secretary to transfer \$700,000 from the Oil and Gas Research Fund to the Pipeline Authority Fund during the 2019-2021 biennium. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 44-04-19.2 and 54-17.6-06 the Industrial Commission close the meeting to the public and enter executive session for the purpose of discussing a confidential document. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Governor Burgum reminded the Commission members and those present in the executive session that the discussion during executive session must be limited to the announced purpose for entering into executive session which was anticipated to last approximately 10 minutes, noting that the Commission was meeting in executive session to discuss a confidential document. Commission members, their staff, DMR staff,

OGRC Director, ATCO company representatives (if present) and Industrial Commission staff remained but the public was asked to leave the room. The executive session began at 12:38 p.m.

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## OGRP EXECUTIVE SESSION

### Members Present:

Governor Doug Burgum  
Attorney General Wayne Stenehjem  
Commissioner Doug Goehring

### Others in Attendance:

Leslie Bakken Oliver	Governor's Office
Reice Haase	Governor's Office
Nici Meyer	Attorney General's Office
Brent Brannan	Oil & Gas Research Program
Lynn Helms	Department of Mineral Resources
Bruce Hicks	Department of Mineral Resources
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

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The Industrial Commission reconvened at 12:53 p.m. and the public was invited to return to the meeting room. Governor Burgum noted that during its executive session the Commission discussed a confidential document.

Mr. Brent Brannan, OGRP Director, presented the summaries and the Oil and Gas Research Council recommendations for the following four Grant Round 50 applications:

*G-050-03: Study to determine the feasibility of developing salt caverns for hydrocarbon storage in Western North Dakota; Submitted by: ATCO Energy Solutions Ltd.; Principal Investigator: Bob Armstrong; Project Duration: 18-24 months; Total Project Cost \$2,095,000; Request for: \$1,047,500; OGRC recommendation is \$932,500 with contingencies.*

The objective of this study is to prove the viability of developing salt caverns in western North Dakota for hydrocarbon storage capable of supporting a large petrochemical industry. A key requirement for petrochemical development is the availability of affordable large capacity hydrocarbon storage in the form of salt caverns. In general, the salt formations across the state are very thin and too deep for the development of salt caverns. A preliminary review of available geological data from the State and other sources was conducted which identified salt formations in several locations that potentially meet requirements for the development of caverns.

This study will produce the following results:

- Determine locations in western North Dakota that salt cavern development is viable;
- Determine the maximum size of cavern that can be developed;
- Establish a solution mining plan for developing caverns;
- Develop a cost estimate for mining the caverns
- Provide conclusions, developed through the project, which will support the assessment of the suitability of western North Dakota as a location for petrochemical development.

ATCO will conduct the study in two phases: Phase 1) Geomechanical and a geological review of the study area using existing information. Phase 2) Field study to obtain data and refine models.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Oil and Gas Research Council's recommendation to fund the grant application "Study to determine the feasibility of developing salt caverns for hydrocarbon storage in Western North Dakota" and to authorize the Industrial Commission Executive Director and Secretary to negotiate and execute a contract with ATCO Energy Solutions to provide a total of not to exceed \$932,500 in funding (research) with the following condition that the Industrial Commission Executive Director/Secretary and the Oil and Gas Research Program Director are authorized a "go or no go" determination after Phase 1 is completed; and,**

**Further, to approve a confidentiality period of up to 4 years from the execution date of the contract contingent upon the applicant providing non-confidential reports with enough information to determine that the work outlined in the application is being completed. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

*G-050-06: PCOR Initiative to Accelerate CCUS Deployment; Submitted by: Energy & Environmental Research Center; Principal Investigator: Neil Wildgust; Project Duration: 5 years; Total Project Cost \$6,254,617; Request for: \$2,000,000 (\$500,000 for agreed scope, \$1,500,000 contingent on additional future scope from DOE)*

The Energy & Environmental Research Center (EERC) has been selected for an award of \$5,000,000 from U.S. Department of Energy (DOE) for the PCOR Initiative, to foster the development of infrastructure and accelerate carbon capture, utilization, and storage (CCUS) deployment in the northwest quadrant of North America, comprising 11 U.S. states and four Canadian provinces. The initiative retains the PCOR brand name because of the success of the preceding PCOR (Plains CO<sub>2</sub> Reduction) Partnership Program efforts related to CCUS. The PCOR Initiative will utilize a significant network of organizations to address the critical challenges outlined in DOE Funding Opportunity Announcement (FOA) DE-FOA0002000. This region is rich in fossil fuel resources, CO<sub>2</sub> sources, and storage options, thereby providing all essential elements necessary for infrastructure development and widespread CCUS deployment. The vision for the PCOR Initiative is to be the premier regional forum to promote CCUS infrastructure and accelerate CCUS deployment, thus enabling very low greenhouse gas emissions for current and future plants that use coal and other fossil fuels. The PCOR Initiative anticipates dynamic growth in support, building on over 120 partner companies and organizations of the PCOR Partnership. The team also includes the partners associated with Project Tundra, which constitutes the largest planned capture of CO<sub>2</sub> in the world from a power generation facility. With many partners actively engaged in commercial projects, the PCOR Initiative will harness a powerful team to advance and accelerate regional CCUS deployment.

The goal of the PCOR Initiative is to identify and address onshore regional storage and transport challenges facing commercial deployment of CCUS in an expanded region, compared to past initiatives. To achieve this endeavor, the PCOR Initiative will meet the following objectives: 1) address key technical challenges by advancing critical knowledge and capabilities; 2) facilitate data collection, sharing, analysis, and collaboration; 3) evaluate regional infrastructure challenges and needs; and 4) promote regional technology transfer.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the Oil and Gas Research Council's recommendation to fund the grant application "PCOR Initiative to Accelerate CCUS Deployment" and to authorize the Industrial**

**Commission Executive Director and Secretary to execute a contract with the Energy and Environmental Research Center to provide a total of not to exceed \$2,000,000 (\$500,000 for agreed scope, \$1,500,000 contingent on additional future scope from DOE) in funding. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

*G-050-05: Improving EOR Performance Through Data Analytics and Next-Generation Controllable Completions; Submitted by: Energy & Environmental Research Center; Principal Investigator: Dr. Nicholas Azzolina; Project Duration: 5 years; Total Project Cost \$10,000,000; Request for: \$500,000*

The Energy & Environmental Research Center (EERC) was selected by the U.S. Department of Energy (DOE) to field-test controllable completions (interval control valves [ICVs]) for active (smart) well control during CO<sub>2</sub> enhanced oil recovery (EOR) (Award DEFE0031790). The goals of this field test are to 1) implement controllable completions in horizontal wells through a rigorously monitored field test in a reservoir undergoing new tertiary recovery, 2) apply data analytics and machine learning to evaluate the test performance and develop a semiautonomous active control system, and 3) assess various business case scenarios to accelerate the development and application for commercial EOR.

The outcomes of this project will be to 1) evaluate perceived risks of deploying semiautonomous controllable completions technology in horizontal wells; 2) quantify the lowered net CO<sub>2</sub> utilization and increased oil recovery with fewer wells, which will lower infrastructure costs and improve overall EOR project economics; and 3) develop economic (business) cases for implementation of this approach applicable to a wider range of reservoirs and fields, including potential application for conformance control for Bakken EOR. These outcomes will reduce the uncertainty in CO<sub>2</sub> EOR performance for a range of reservoir types, accelerating adoption of the approach across existing operations and expansion of CO<sub>2</sub> EOR into other locations where current marginal economic outlook or conformance control issues deter investment.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Oil and Gas Research Council's recommendation to fund the grant application "Improving EOR Performance Through Data Analytics and Next-Generation Controllable Completions" and to authorize the Industrial Commission Executive Director and Secretary to execute a contract with the Energy and Environmental Research Center to provide a total of not to exceed \$500,000 in funding.**

In response to a question regarding the proposed match, Mr. Brannan clarified that \$8 million cash is being provided from the U.S. Department of Energy and \$1.5 million in-kind will be provided from industry.

Mr. John Harju, EERC, clarified that this project involves new research regarding interval control valves on horizontal wells in the state. Prior work in the Bakken shows that injecting into long horizontals without the ability to control where injection occurs makes it difficult to control sweep efficiency. This would be using new technology on two existing wells in Bowman County and will help interpret where injection and production is occurring.

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

*G-050-07: Weather Information System to Effectively Reduce Oilfield Delays and Disruption (WISE Roads) – Supplemental to Secure Meteorological Services; Submitted by: Western Dakota Energy Association*

*(WDEA); Principal Investigator: Geoff Simon and Brent Bogar; Project Duration: 24 months; Total Project Cost \$125,000; Request for: \$60,000*

The Commission previously approved the second phase of the Wise Roads Project (Weather Information System to Effectively Reduce Oilfield Delays and Disruption) in which WDEA, along with its partners, deployed 10 research-grade weather stations in areas of western North Dakota that experience moderate to heavy oil industry traffic. WDEA is currently deploying 15 additional weather stations. The second phase will bring to 50 the total number of stations deployed, enhancing the availability of real-time weather information, especially precipitation data, to allow county/township road managers to more precisely identify those roads that require temporary restrictions and exclude those that do not.

The Commission approved a \$250,000 matching OGRC grant on August 28<sup>th</sup>, 2019 that will enable WDEA to install up to 25 additional weather stations (for a total of 50) in high traffic areas throughout the oil-producing region, making available even more weather data to guide road management policies. The stations collectively will generate an immense amount of data, the proper utilization of which will deliver multiple identifiable benefits. However, to fully realize the benefits the data can provide, a full-time meteorologist position is required to analyze the data. The meteorologist will collaborate with county/township road managers in the oil producing counties to make appropriate use of the weather station data in determining if, when, and where road restrictions are necessary. This request will supplement the recently approved application with an additional \$60,000 to help support the meteorologist position.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Oil and Gas Research Council’s recommendation to fund the grant application “Weather Information System to Effectively Reduce Oilfield Delays and Disruption (WISE Roads) – Supplemental to Secure Meteorological Services” and to authorize the Industrial Commission Executive Director and Secretary to execute a contract with the Western Dakota Energy Association to provide additional funding in the amount of \$60,000 to the original application award of \$250,000 for a total of not to exceed \$310,000. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Governor Burgum noted that this information is important for efficient operation. Operations are shut down when roads are dry due to a lack of data. Information gained from this project can also be applied in a variety of areas such as agriculture.

Mr. John Harju, EERC, reported on the results of the Phase 1 scoping study regarding lightning protection at oil production and saltwater disposal facilities. Mr. Harju stated that the purpose of the study was to develop an understanding of lightning strike/fires at saltwater disposal and oil production facilities in the Williston Basin through information gathered from facility operators, lightning protection companies, regulators, and subject matter experts.

Key findings of the study included the following:

- Lightning is a natural phenomenon, and many details about how lightning works are not fully understood.
- Lightning strikes resulting in spills do not appear to be increasing with the growing number of oil- and gas-related facilities.
- The EERC found no peer-reviewed scientific data proving tank material is the only factor influencing failure due to lightning strikes.
- Lightning protection technologies fall in to two categories; traditional and nontraditional. Only traditional lightning protection systems are recognized by NFPA, and none are able to claim 100% effectiveness at preventing failure due to lightning.

- Only Colorado and Ohio require operators to address lightning hazards, but only where facilities are located in urbanized areas.
- There is no indication that insurance carriers are requiring oil and gas companies to install lightning protection, and many oil and gas companies self-insure for first-party losses.

It was noted that 55 strike-related spills occurred in North Dakota between 2014 and 2019, representing less than 1% of total spills. There was a perception that fiberglass allowed static to build up and that steel would be able to transmit electrons to the ground. The data does not support these perceptions.

There was discussion regarding the information that is unknown, including:

- What material the tanks were;
- How many tanks there are of each type of material;
- Where the lightning struck or what the material of the tanks were;
- If the lightning strike was direct or indirect;
- If there was a protection mechanism in place.

Potential next steps include:

- Compilation and review of information from prior lightning strikes and spills could help clarify the root cause of failures and aid in identifying corrective strategies.
- North Dakota Department of Mineral Resources may gather and critically examine information related to future incidents. This information could support a more comprehensive root cause analysis.

Mr. Helms indicated that there is an effort underway to unify incident reporting. If an incident occurred due to a lightning strike, additional information would be requested.

Potential future research could include computational modeling, simulations, and pilot-scale testing to improve the understanding of the following issues:

- The role tank material plays on the likelihood of a lightning strike and/or tank failure.
- The roles operating conditions, contained fluid properties, and electrostatic potentially play on the likelihood of a lightning strike.
- The understanding of the failure mechanism(s) from a direct or indirect lightning strike (i.e., electrical, thermal and/or mechanical).

Mr. Harju indicated that one company is interested in contributing and there is the potential that other companies would be interested as well. Those funds could be a leveraged study for OGRC.

Mr. Helms suggested that one option would be for the EERC to put together a cost estimate and take it to OGRC. The Commission would see the cost estimate in January. There was discussion about the fact that insurance coverage isn't being required for lightning protection. With a scarce amount of funds, it was the consensus of the Commission that industry would need to take the lead and determine if this is a problem that needs to be further studied.

Mr. Helms stated that industry will be looking at the issue through an industry led technical solutions group. Mr. Helms indicated that the group can also provide input on what should be included on the incident reporting form.

## **PIPELINE AUTHORITY**

Mr. Justin Kringstad, Pipeline Authority Director, presented the Oil and Gas Research Council recommendation to grant his request to retain the Energy and Environmental Research Center to conduct a study on Bakken – Three Forks Natural Gas Liquids Chemistry at a cost of \$300,650 with a completion date of May 1, 2020.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Oil and Gas Research Council to approve the request of the Pipeline Authority Director and authorize the Industrial Commission Executive Director/Secretary to enter into a contract with the Energy and Environmental Research Center to conduct a study on Bakken – Three Forks Natural Gas Liquids Chemistry at a cost of \$300,650 with funding to come from the Pipeline Authority Fund. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Ms. Fine provided the annual financial report for the Pipeline Authority Fund that is required by law. As of June 30, 2019, there was \$72,974 in the Fund.

## **DEPARTMENT OF MINERAL RESOURCES**

Mr. Lynn Helms, DMR Director, and Mr. Bruce Hicks, Oil and Gas Division Assistant Director, presented the following orders for consideration.

*Case 27749, Order 30198 – termination of two 1280-acre spacing units and establishment of two new 1,920-acre spacing units*

This involves a request from Oasis Petroleum North America LLC to amend the applicable orders for the Eightmile-Bakken Pool to terminate two standup 1,280-acre spacing units and establish two laydown 1,920-acre spacing units in Williams County as well as authorize up to nine horizontal wells to be drilled on each such unit. The recommendation is to grant the request. The majority working interest owner in Sections 28 and 33, Iron Oil, would like the units to remain as north/south 1280s to develop that area. Flooding will be an issue – this area was underwater five times this year alone. Even if US Army Corps of Engineers (USACE) would allow the drilling on an elevated well pad, it would not be prudent for the Commission to approve it when there is a different feasible option. Roads would still be flooded. The most protective of correlative rights, least waste and flood protection is through Oasis Petroleum's proposed option. It was noted that this will also minimize the footprint of the well operations on the surface.

In response to a question, Mr. Helms indicated that this is located approximately four miles east of the confluence in an area subject to frequent ice jams. It was noted that the Yellowstone is free flowing and subject to wide variations. Mr. Helms stated that all parties will receive their appropriate share of the oil production. This will provide a better chance of the area being developed.

*Case 27750, Order 30199 – establishment of three overlapping 3840-acre spacing units*

In Case 27750 which had been consolidated with Case 27749 in the hearing process, Mr. Helms stated Case 27750 involves an Oasis Petroleum's request to amend the applicable orders for the Eightmile, Rosebud and/or Trenton-Bakken Pools to establish three overlapping 3840-acre spacing units in Williams and McKenzie Counties as well as authorize one horizontal well to be drilled on each such unit. Three standup 1280 acre spacing units would be modified to create two lay down 1920 spacing units. Two of the current

1280-acre spacing units will require surface locations within the Missouri River floodplain USACOE flowage easement area. For the same reasons as outlined in Case 27749, (ice jams and flooding are common in this area; the best practice is to avoid placing surface locations within the floodplain and avoid potential conflict with FEMA flood insurance regulations) the recommendation is to approve the Oasis Petroleum application.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order 30198, issued in Case 27749 amending the applicable orders for the Eightmile-Bakken Pool to terminate the two standup 1280-acre spacing units described as Sections 28 and 33; and Sections 30 and 31, T.153N., R.102W and to establish two laydown 1920-acre spacing units consisting of Sections 28, 29 and 30; and Sections 31, 32 and 33, T.153N., R.102W., Williams County, ND, and authorizing up to nine horizontal wells to be drilled on each such unit and Order 30199, issued in Case 27750 amending the applicable orders for the Eightmile, Rosebud and/or Trenton-Bakken Pools to establish three overlapping 3840-acre spacing units described as Sections 19, 20, 21, 28, 29 and 30, T.153N., R.102W.; Sections 28, 29, 30, 31, 32 and 33, T.153N., R.102W.; and Sections 31, 32 and 33, T.153N., R.102W. and Sections 1, 2 and 3, T.152N., R.103W., Williams and McKenzie Counties, ND, and authorizing one horizontal well to be drilled on each such unit, be approved this 22<sup>nd</sup> day of October, 2019. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

*Case 27832, Order 30284 – confiscation of reclaim plant, equipment, and bond at the Klandl Reclaim Plant*

This involves the consideration of confiscation, under NDCC §§ 38-08-04 and 38-08-04.9, of all equipment at the Klandl Reclaim Plant in McKenzie County, operated by Alturas Energy, LLC, or any working interest owner. The Klandl Reclaim Plant is located on the same site as the Klandl SWD well that has already been confiscated. The saltwater disposal well and treating plant has existed since late 1970s. The Klandl Reclaim Plant is addressed in a complaint with penalties totaling \$379,294. In the complaint the Commission has stated that the well is not acceptable for use as a disposal well (the surface casing is insufficient in the well). In response to the complaint, Alturas denies any responsibility for the Klandl Reclaim Plant because it ceased operations before they assumed management in October 2012. The Klandl Reclaim Plant is on a \$25,000 cash bond. To date, over \$80,000 has been spent from the Abandoned Well Fund to clean up spills at the site. The Oil and Gas Division staff believes the prudent action is to plug the disposal well, clean up the entire site – treating plant and disposal facilities, and sell the equipment. The DMR Oil and Gas Division has applied for funds from EPA and they anticipate receiving \$51,000 to help with the costs for plugging the well. The net estimated reclamation costs from the Abandoned Well Fund are \$500,000-\$800,000. (Mr. Helms noted that in his presentation earlier in the month this amount had been included in his information regarding expenditures from the Abandoned Well Fund.) Alturas testified they plan to address the Klandl Reclaim Plant as part of a consent agreement. Mr. Helms stated it was the Division's recommendation to approve the order to confiscate the Klandl Reclaim Plant, equipment, salable oil and bond, and reclaim the entire site in 2020.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 30284 issued in Case 27832 authorizing the confiscation, under NDCC §§ 38-08-04 and 38-08-04.9, of the reclaim plant, all equipment at the Klandl Reclaim Plant (File No. 50068), NWNE Section 26, T.148N., R.105W., McKenzie County, ND, operated by Alturas Energy, LLC, or any working interest owner and the bond for the Klandl 26-31X SWD well (File No. 90013), co-located with the Klandl Reclaim Plant, and to authorizing the plugging of the Klandl 26-31X SWD well and the reclamation of the site in 2020 be approved this 22<sup>nd</sup> day of October, 2019.**



In response to a question, Mr. Helms indicated that the total site covers 3-4 acres. The land was leased from a farmer. When this is reclaimed, the lease will be terminated and landowner will retain ownership.

It was noted that the \$45,000 in bonds for the plant and disposal well are not enough to cover the costs for properly plugging and reclaiming the site. Mr. Helms indicated that steps are underway to address this issue for treating plants from occurring in the future through administrative rules.

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

*Case 27791, Order 30240 – recovery of proportionate share of costs and expenses*

This involves a request to authorize the recovery of the proportionate share of costs and expenses accruing and a risk penalty. Hunt Oil invited another company, Pfanenstiel Company, to participate. Pfanenstiel Company accepted the invitation to participate but has not paid their bills. Hunt Oil has asked the Commission to determine that someone that does not pay bills is a nonparticipating owner and subject to the risk penalty. However, the Commission's attorney has indicated that is not an accurate interpretation of statute and the correct way for Hunt Oil to recover the unpaid amounts is to get a lien. The recommendation is to deny Hunt Oil's motion for summary judgement and approve Pfanenstiels Company's request to dismiss the case since this is a contract matter.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 30240, issued in Case 27791 granting Pfanenstiel Company's Motion to Dismiss and denying Hunt Oil Company's Motion for Summary Judgment regarding Hunt Oil Co.'s application for the recovery of the proportionate share of costs and expenses accruing to the Pfanenstiel Company, LLC, and a risk penalty as provided by NDCC § 38-08-08 for the drilling and completing of the Halliday 146-92-19-18H-3 (File No. 35164), Halliday 146-92-19-18H-4 (File No. 35359), Halliday 146-92-19-18H-5 (File No. 35360) and Halliday 146-92-19-18H-6 (File No. 35361) wells all located in a spacing unit described as Sections 18 and 19, T.146N., R.92W., Werner Bakken Pool, Dunn County, ND, pursuant to NDAC § 43-02-03-88. and dismissing the matter without prejudice be approved this 22<sup>nd</sup> day of October, 2019. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Helms presented proposed amendments to the North Dakota Industrial Commission Drilling Permit Review Policy for consideration.

FEMA recognized that oil wells were sometimes being permitted in areas of special flood hazard. For the Industrial Commission to do that without impacting the ability of communities to get flood insurance, these policy revisions would require the Commission seeking input from the following entities: FEMA, State Water Commission, and local flood insurance administrator. The State Water Commission has agreed to the language being proposed in the amended Drilling Permit Review Policy.

Applicants would need to demonstrate that those identified parties have been consulted. Those parties would have 45 days to file comments. The Industrial Commission would decide upon receiving and reviewing the comments if a well should be permitted or what kind of mitigating strategies should be implemented.

Mr. Helms stated that the proposed changes should allow communities to get flood insurance, not interfere with development, and enable the Industrial Commission to retain authority. In response to a question, Mr. Helms stated that the Industrial Commission is not ceding any of its authority.

Mr. Helms clarified that if FEMA doesn't act within 45 days, there would be no FEMA restrictions placed on the permit. Typically, FEMA works with local and state floodplain administrators.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the following amendments to the North Dakota Industrial Commission Drilling Permit Review Policy be approved:**

#### **NORTH DAKOTA INDUSTRIAL COMMISSION DRILLING PERMIT REVIEW POLICY**

**NDIC-PP 1.01.** For all applications for a permit to drill under NDAC 43-02-02, 43-02-02.2, 43-02-02.3, 43-02-02.4, 43-02-03 and 43-02-05, regardless of location, the director shall consider the proximity of the proposed location to the following:

- a. A shallow glacial aquifer;
- b. A lake (with a water surface of 640 acres or more);
- c. Lake Sakakawea;
- d. A wellhead protection area;
- e. Near-surface coal, sand, or gravel deposit;
- f. Unstable soils or areas with a high potential for soil instability;
- g. A natural drainage;
- h. An "Area of Special Flood Hazard" as defined under the national flood insurance program 44 CFR § 59-60. Maps can be accessed on FEMA portal at the following link;  
<https://msc.fema.gov/portal/home>
- i. An occupied dwelling;
- j. A military facility;
- k. A plugged and/or abandoned well;
- l. A planned bypass route that has been proposed in an approved ten year, or less, county, state, or federal road master plan;
- m. 33 feet of any section line which has not been closed or within 200 feet of the centerline of a state or federal highway;
- n. A city's extra-territorial boundary;
- o. A county, state, or federally designated historic site; a public recreation area; or a wildlife management area;
- p. A public use airport listed in the Airport/Facility Directory, Alaska Supplement, or Pacific Chart Supplement of the U.S. Government Flight Information Publications; military airport under construction, or an airport under construction that will be available for public use; airport operated by a Federal agency or the DOD; airport or heliport with at least one FAA-approved instrument approach procedure; and
- q. Any other areas or geographical formations the director deems appropriate.

**NDIC-PP 1.02.** Because of the proximity of a surface location to any of items listed in NDIC-PP 1.01, the director may attach additional stipulations to the permit deemed necessary, such as:

- a. Closed mud system with no cuttings pit;
- b. Impermeable liner underlying the entire site;
- c. Casing cemented to ground level placed in the rat and mouse holes;
- d. Prohibiting the drilling pit from being constructed with porous materials, i.e., sand, coal, gravel, or scoria;
- e. Spill contingency plan and diking around the entire location;
- f. Hydrogen sulfide contingency plan;
- g. Fencing around the site;
- h. Additional casing strings;
- i. Additional precautions to avoid adverse effects to nearby well(s);
- j. Locating production equipment further from occupied dwellings than the well head;
- k. Requiring access from an off-spacing unit site;
- l. Planting of trees to minimize visual impact;
- m. Restrictions on access road location;
- n. Limiting flaring to completion or work over flow back periods;

- o. Restricting excavation during site construction;
- p. Timing limits on construction, drilling and fracture stimulating operations; or
- q. Any other provision deemed necessary.

**NDIC-PP 1.03.** If the proposed location is within 1/4 mile of a military installation, the director shall require documentation that the applicant has notified the applicable military service.

**NDIC-PP 1.04.** If the proposed location is within a wellhead protection area, the director shall require documentation that the applicant has notified the North Dakota Department of [Environmental Quality](#).

**NDIC-PP 1.05.** If the proposed location is within 33 feet of any section line which has not been closed or within 200 feet of the centerline of a state or federal highway or is within any setback previously established by the governing body prior to the filing of the application, the director shall require documentation that the applicant has notified the applicable county or township.

**NDIC-PP 1.06.** If the proposed location is an off-spacing unit site, the applicant must provide an affidavit affirming that the surface owner of the pad location agrees to accept the underground burial of cuttings generated from drilling.

**NDIC-PP 1.07.** If the proposed location is within 2,640 feet of any runway end of an airport as defined in NDIC-PP 1.01(p), the director shall require documentation that the applicant has notified the appropriate city, airport, and federal officials in compliance with Title 14 CFR Part 77. Comments regarding the permit application regarding potential impacts of oil and gas operations that pose or create an undue risk or interference with the use and operation of the airport may be accepted by the Industrial Commission executive director's designee within 45 calendar days after the notice is provided. All comments shall be reviewed by the executive director's designee who shall summarize any comments received for the director. The director may consider, but is not bound to act upon, the comments. The director may attach conditions to any permit pursuant to NDCC 38-08 and 38-12, and NDAC 43-02-02, 43-02-02.2, 43-02-02.3, 43-02-02.4, 43-02-03 and 43-02-05 to mitigate potential impacts of oil and gas operations that pose or create an undue risk or interference with the use and operation of the airport to the maximum extent allowed by North Dakota law. This policy will not impact any other legal remedies available under NDCC chap 38-08.

If the proposed location is within 10,000 feet of any runway end of an airport as defined in NDIC-PP 1.01(p), the director shall require documentation that the applicant has notified the appropriate officials in compliance with Title 14 CFR Part 77. The director may attach conditions to any permit pursuant to NDCC 38-08 and 38-12, and NDAC 43-02-02, 43-02-02.2, 43-02-02.3, 43-02-02.4, 43-02-03 and 43-02-05 to mitigate potential impacts of oil and gas operations that pose or create an undue risk or interference with the use and operation of the airport to the maximum extent allowed by North Dakota law. This policy will not impact any other legal remedies available under NDCC chap 38-08.

**NDIC-PP 1.08.** If the proposed location is within an "Area of Special Flood Hazard" as defined in NDIC PP 1.01 (h), the director shall require documentation that the applicant notified the appropriate flood plain administrators to include the local Floodplain Administrator (community building permitting office or planning department), state flood plain administrator (State Engineer) and Director of the Federal Emergency Management Agency (FEMA) in compliance with 44 CFR § 59-60. Comments regarding the permit application and the potential impacts of oil and gas operations within the flood plain will be accepted by the Industrial Commission executive director's designee within 45 calendar days after the notice is provided. The director may consider, but is not bound to act upon, the comments. The director may attach conditions to any permit pursuant to NDCC 38-08 and 38-12, and NDAC 43-02-02, 43-02-02.2, 43-02-02.3, 43-02-02.4, 43-02-03 and 43-02-05 to mitigate potential impacts of oil and gas operations within the flood plain to the maximum extent allowed by North Dakota law. This policy will not impact any other legal remedies available under NDCC chapter 38-08.

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

Mr. Helms reported on challenges to natural gas capture. He noted that North Dakota's non-discrimination statutes (NDCC §38-08-06.2) (without agency guidance) are affecting gas gathering approaches by midstream companies. This issue has only been dealt with at one time back in 1988 in which there was a decision from the Industrial Commission that resulted in confusion in terms of discrimination and equal standing or equal status as far as gas gathering capacity. Some midstream companies provide firm capacity; most are not fully comfortable doing so. A few companies will not provide firm capacity to producers until the Industrial Commission makes clear that it is permissible. He noted Oklahoma and Texas have provisions regarding this issue.

Mr. Helms provided a handout that explained the current situation. Gas is generally gathered and processed in North Dakota under one of the following contractual arrangements: interruptible capacity or firm capacity. Interruptible capacity is the most common. However, there are some disadvantages to this approach. The shipper has no specific entitlement, guarantee, or right to transport gas on system. Gathering can be cut off, resulting in: Increase in well shut-ins, flaring, and value loss; Delay and decreased capacity of infrastructure expansion; Inefficient production and increased value loss.

Firm capacity is provided by some midstream companies in which the shipper agrees to purchase specific amount of guaranteed capacity (e.g. ship or pay). This can lead to: Quicker and larger infrastructure expansion(s), Less service interruptions (and thus less flaring), Increased value capture by stakeholders, including federal, State, landowners, working interest owners, tribes, producers, midstream and service companies.

North Dakota Non-Discrimination Statutes (Titles 38 and 49) requires that crude oil and gas produced in the state must be processed and purchased without discrimination between similarly-situated producers.

Statute currently does not expressly prohibit firm capacity but is unclear what constitutes "discrimination." For there to be discrimination, producers must be "similarly situated," which is undefined. Other states have defined "discrimination" and "similarly situated" with success.

There was discussion that the hearing will provide clarity on the definitions of "discrimination" and "similarly situated" to reduce uncertainty.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission directs the Department of Mineral Resources Oil and Gas Division to hold a hearing on Friday, November 15, 2019 at 9:00 a.m. on Natural Gas Capture strategies used by other states to achieve:**

**Quicker and larger infrastructure expansion(s)  
Fewer service interruptions (and thus less flaring)  
Increased value capture by stakeholders**

There was discussion about the importance of having a public hearing and hearing from industry and those that might be impacted by a policy change. Current policies are not working. It is important to keep the larger problem in mind of how to create the proper environment to incentivize investment. Options for incentives to add the capacity to catch up instead of always being behind should be explored. It would be beneficial to explore other basins that have other tools available. Maybe there is a tool to enable smaller operators to aggregate. The goal is to foster collaboration and maintain competition.

Mr. Helms indicated that if it is noticed today the hearing can be held November 15<sup>th</sup>. This could be back before the Commission in either November or December.

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

Mr. Bruce Hicks, Oil and Gas Division Assistant Director, provided a quarterly report. (A copy of the report is available in the Commission files.) Of note:

- Permits received are down compared to the same quarter last year,
- Permits issued are up,
- Approval time for permits issued is up (staff has also been working on development of the Northstar data system),
- There have been five permit requests located in areas of interest,
- The number of wells waiting on completion is starting to increase,
- Production of oil and gas consistently increases, setting new records almost every month.

In response to a question, Mr. Hicks indicated that the rig count is relatively consistent. Periodically, the rig count will drop due to relocation of rigs. Mr. Helms noted that there are some issues with capital flow to the Bakken. A rise in uncompleted wells is also attributed to the rig count. This situation can be a positive as it may allow time for infrastructure to be put in place.

Regarding the discussion on production levels, Mr. Hicks stated that self-curtailment is occurring to help producers meet gas capture goals.

Mr. Hicks noted that \$18 billion has been spent on gas infrastructure and plants in the last 15 years. The amount of investment over the last two years totals approximately \$1.8 billion. While investment is taking place, additional incentives are needed to meet the gas capture goals.

There are two new complaints for the second quarter. Four complaints are in settlement negotiations. Of the four, three are not advancing in the process and so DMR has requested an administrative law judge hearing. It was noted that these are situations in which an abandoned well was transferred to a new operator. This is being addressed with the new administrative rules.

Attorney General Stenehjem noted that October 23<sup>rd</sup> is the deadline to submit a rebuttal for PHMSA and thanked Mr. Helms for information that was provided. While it is hoped that PHMSA will act swiftly, they have 180 days. The only opposition from a state Attorney General came from the State of Washington.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2 the Industrial Commission close the meeting to the public and enter executive session for the purpose of attorney consultation. The purpose of the executive session will be to consult with the Commission's attorney(s) regarding current adversarial proceedings in:**

- Supreme Court Case No. 20190203/Case No. 09-2018-cv-00089/Sorum, et al vs. State of North Dakota et al
- Case No. 05-2019-cv-00085/Northwest Landowners Association v State of North Dakota, et al

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

Governor Burgum reminded the Commission members and those present in the executive session that the discussion during executive session must be limited to the announced purpose which is anticipated to last between 15 and 30 minutes.

Governor Burgum stated that the Commission is meeting in executive session to consult with the Commission's attorney(s) regarding Supreme Court Case No. 20190203 and District Court Case 2019-cv-00085 (Sorum and Northwest Landowners). He noted that any formal action by the Commission will occur after it reconvenes in open session.

Commission members, staff, DMR staff, and Special Assistant Attorney General(s) and counsel with the Attorney General staff remained, but the public was asked to leave the room. The executive session began at 2:43 p.m.

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### DMR EXECUTIVE SESSION

#### **Members Present:**

Governor Doug Burgum  
Attorney General Wayne Stenehjem  
Commissioner Doug Goehring

#### **Others in Attendance:**

Leslie Bakken Oliver	Governor's Office
Reice Haase	Governor's Office
Nici Meyer	Attorney General's Office (for the Northwest Landowners Case discussion)
Dan Gaustad	Special Assistant Attorney General, Attorney General's Office (for the Sorum Case discussion)
Lynn Helms	Department of Mineral Resources
Bruce Hicks	Department of Mineral Resources
Katie Harsaager	Department of Mineral Resources
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

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The Industrial Commission reconvened in open session at 2:58 p.m. and the public was invited to return to the meeting room. Governor Burgum noted that during its executive session the Commission consulted with its attorneys regarding Supreme Court Case No. 20190203/Case No. 09-2018-cv-00089 and Case No. 2019-cv-00085 (Sorum and Northwest Landowners).

Mr. Helms noted that comments regarding the EPA methane regulations are due Nov. 25<sup>th</sup>. The attorney representing North Dakota feels that the Commission should comment on the Trump roll back. Commission comments would be helpful if the political climate changes, and the regulations are litigated. Mr. Helms requested permission to draft comments for the Commission to consider at their next meeting. The consensus of the Commission was that Mr. Helms should proceed with the drafting of comments.

### **BANK OF NORTH DAKOTA**

Mr. Eric Hardmeyer, BND President, presented the 2020 BND Holiday Schedule for consideration. This schedule mirrors that of the Federal Reserve Bank of Minneapolis and its Helena Branch.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approve the following Bank of North Dakota 2020 BND Holiday Schedule**

New Year's Day .....	Wednesday, January 1
Martin Luther King Jr. Day .....	Monday, January 20
Presidents Day .....	Monday, February 17
Memorial Day .....	Monday, May 25
Independence Day .....	Saturday, July 4*
Labor Day .....	Monday, September 7
Columbus Day .....	Monday, October 12
Veterans Day .....	Wednesday, November 11
Thanksgiving Day .....	Thursday, November 26
Christmas Day .....	Friday, December 25

**\*BND will be open Friday July 3, 2020 with a skeleton crew. Employees who work that day can choose to take another day off.**

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

Mr. Hardmeyer provided the Third Quarter 2019 Performance Highlights. (A copy of the Performance Highlights is available in the Commission files.) Assets remain steady while loan volume is down approximately \$49 million compared to projections. Deposits continue to grow, up \$571 million from projections. Equity is at \$928 million.

In response to a question about the securities portfolio, Mr. Hardmeyer stated that there is no credit risk as the securities are all AAA government secured. The goal is to maximize return while maintaining enough liquidity. The security portfolio has grown along with the Bank.

There was considerable discussion about the impacts of fall flooding and wet conditions on agriculture and roads and the types of assistance BND would be able to offer through their programs. Governor Burgum and Agriculture Commissioner Goehring reported on the meetings they had held the previous day with farmers and ranchers and those impacted by the unseasonable wet conditions. They noted that this is having a devastating impact on the farmers and ranchers. Mr. Hardmeyer indicated that the Bank has offered disaster programs in the past and there are options that would not require legislative action. A couple of those options included stretching out loan payments and lowering interest rates. The Bank's position is to get through harvest to fully understand the situation, determine what assistance might be coming at the federal level and then offer programs to fill in the gaps.

It was the consensus of the Commission that this is a significant situation and there is a sense of urgency. A comprehensive plan is required that incorporates partners at all levels. Mr. Hardmeyer noted the Bank has banking partners that will play a role. The Bank will start setting up meetings with agricultural groups and banking partners. It is important to understand the extent of the problem and then develop a strategy to move forward. Prior programs can be used as blueprints.

Mr. Hardmeyer continued with the Performance Highlights report and noted that income is anticipated to exceed projections. Credit loss position will be continually evaluated to ensure appropriate provisions are in place. The Bank is well positioned to deal with credit losses. Currently, 14% of the allowance for credit losses is unallocated. Given that adversely classified loans are increasing slightly and because of the hardships the agriculture industry is currently facing, additional reserves have been allocated for credit losses.

In response to a question regarding the decrease in loans, it was noted that in the commercial sector, originations and renewals are up. Local lenders are experiencing a decrease in loans and are buying loans

back from the Bank. It was also noted that there currently is a limited need for hotels and multi-family housing. Mr. Steinwand noted that one borrower had found another funding source and that borrower had resulted in a decrease of \$38 million in loan volume. Last year was a big year with bank stock acquisition so there is limited borrowing for that purpose this year. Student loans are down because people are borrowing less. Student loan consolidations have already been occurring, so the pool is smaller for additional consolidation.

Regarding student loans, Deal One loans are being utilized as a workforce recruitment tool. The College Save program currently totals over \$510 million of which \$176 million is North Dakota funds. There is a total of 38,488 accounts, of which 27,090 are North Dakota accounts. At the beginning of the program, Morgan Stanley was the program administrator and rolled it out nationwide. The Bank receives 10 basis points for out-of-state activity which is used to pay for grant programs. The grant programs have led to an increase in North Dakota accounts.

Mr. Hardmeyer provided the Bank of North Dakota Advisory Board August 15 & 23, 2019 nonconfidential meeting minutes.

Pursuant to N.D.C.C. 6-09-35, the Industrial Commission entered executive session. Governor Burgum reminded the Commission members and those present in the executive session that the discussion during executive session must be limited to those items listed on the agenda which is anticipated to last between 30 and 45 minutes. It was noted that any formal action by the Commission would occur after it reconvened in open session. Commission members, their staff, and BND staff remained but the public was asked to leave the room. Governor Burgum closed the meeting at 3:55 p.m. pursuant to N.D.C.C. 6-09-35 to discuss the following items:

- Consideration of loan applications
- Non-Accrual Loans Quarterly Recap/Detail
- Problem Loans – Adversely Classified Quarterly Recap
- Loan Charge-Offs and recoveries Y.T.D. 09/30/19
- Problem Loans
- Presentation of Bank of North Dakota Advisory Board July 25 and August 15 & 23, 2019 confidential meeting minutes.
- Other Bank of North Dakota confidential business (as defined under N.D.C.C. 6-09-35)

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**BND EXECUTIVE SESSION**

**Members Present:**

Governor Doug Burgum  
Attorney General Wayne Stenehjem  
Agriculture Commissioner Doug Goehring

**Bank of North Dakota Personnel Present:**

Eric Hardmeyer            Bank of North Dakota  
Todd Steinwand           Bank of North Dakota  
Kirby Evanger             Bank of North Dakota

**Others in Attendance:**

Leslie Oliver              Governor's Office  
Reice Haase                Governor's Office  
Andrea Pfennig            Industrial Commission Office  
Karlene Fine                Industrial Commission Office

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The meeting reconvened in open session at 4:15 p.m. and Governor Burgum invited the public to return to the meeting room. He noted that during its executive session, the Commission made a motion regarding three Bank of North Dakota loan applications. **On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

### HOUSING FINANCE AGENCY

Mr. Pat Nagel, HFA, presented Supplemental General Authorization Resolution and 2019 Series F Bond Resolution for the Issuance of not to exceed \$100,000,000 in Housing Finance Program Bonds for consideration.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring to adopt the 2019 Series F Bond Resolution as follows:**

#### SUPPLEMENTAL 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, residential dwelling units; and

WHEREAS, the Commission adopted the Housing Finance Program General Bond Resolution of 1994, on July 21, 1994, as amended (the "General Resolution") under which Wilmington Trust, National Association, Minneapolis, Minnesota, was appointed successor trustee (the "Trustee"), which General Resolution was accepted by the Trustee, and which General Resolution is hereby ratified and confirmed; and

WHEREAS, the General Resolution authorizes the issuance and sale of the captioned Bonds (the "Bonds") pursuant to the Act, the application of the proceeds of which will provide funding for the captioned Home Mortgage Finance Program (the "Program") contemplated by the Act in furtherance of the Program for the provision of decent, safe, and sanitary housing for persons and families of low or moderate income; and

WHEREAS, the Commission acting as the Agency, pursuant to that 2019 General Authorization Resolution adopted by the Commission on January 18, 2019 (the "General Authorization Resolution"), regarding the authorization of and the negotiation and sale of the Bonds, appointed as its agents the Executive Director, the Director of Homeownership Programs, and the Chief Financial Officer of the Agency for the purpose of negotiation of the terms of sale of the Bonds, subject to the limitations set out in the General Authorization Resolution, and to sign such agreements as are required for the issuance of the Bonds on behalf of the Commission after such terms of sale had been negotiated and to sign 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 (as hereinafter defined, and which are so designated by an Authorized Officer); and

WHEREAS, the Agency wishes to authorize the issuance of not to exceed \$100,000,000 in aggregate principal amount of the Bonds upon the terms stated herein and in the 2019 Series F Bond Resolution (as defined below) and to use the proceeds thereof in furtherance of the purposes of the Program; and

WHEREAS, in furtherance of the above stated objectives, the Commission, the Agency and RBC Capital Markets, LLC, with such co-managers and selling group members as an Authorized Officer may specify, as the purchasers of the Bonds (the "Underwriters") have caused to be prepared and presented to the Commission the proposed forms of the following documents (unless otherwise indicated) (collectively, the "Bond Documents"):

- A. 2019 Series F Bond Resolution, in substantially final form, attached hereto as Attachment A;

- B. 2019 Series F Purchase Contract by and between the Commission and the Underwriters, attached hereto as Attachment B; and
- C. Preliminary Official Statement, with respect to the Bonds attached hereto as Attachment C; and

WHEREAS, in the judgment of the Commission, it is advisable that the Agency by its Executive Director, its Director of Homeownership Programs, or its Chief Financial Officer (each an "Authorized Officer"), jointly or severally, be authorized, and are hereby so authorized, to do all things necessary to establish the final rates and terms of the Bonds and to complete the transaction described herein, and in the Bond Documents.

**NOW BE IT HEREWITH RESOLVED:**

1. The Agency is hereby authorized to issue, execute, sell and deliver the Bonds, in substance as provided in the 2019 Series F Bond Resolution and in the final forms of the Bond Documents as approved by an Authorized Officer, provided that the Bonds meet the following conditions:
  - A. The Bonds: (i) shall be sold, issued, executed and delivered at such time as an Authorized Officer shall determine, in one or more series, in an aggregate principal amount not to exceed the amount set forth in the preambles to this Resolution; (ii) shall bear interest at fixed rates determined by an Authorized Officer, provided, however that such rates shall not exceed 4.50% per annum; (iii) shall be subject to redemption prior to maturity, at prices and otherwise as determined by an Authorized Officer to be in the best interests of the Agency; (iv) shall have long term ratings no lower than the long term rating on the bonds outstanding under the General Resolution immediately prior to the issuance of the Bonds; and (v) shall mature not later than January 1, 2051.
  - B. The Bonds shall be issued as bonds the interest on which is exempt from federal income taxation, unless otherwise determined by an Authorized Officer.
  - C. The Bonds shall not constitute debt of the State or any political subdivision thereof. Neither the faith and credit nor the taxing powers of the State or any political subdivision thereof may be pledged to the payment of the principal of or interest on the Bonds.
  - D. The Bonds shall be special limited obligation revenue bonds of the State payable solely from the revenues and assets pledged therefore under the General Resolution and the 2019 Series F Bond Resolution.
2. The forms and substance of the Bond Documents and any other documents that an Authorized Officer deems necessary or desirable to effect the issuance of the Bonds are hereby approved, with such changes, variations, omissions and insertions as an Authorized Officer shall approve. The execution of the applicable Bond Document by such Authorized Officer shall constitute conclusive evidence of such approval.
3. The Preliminary Official Statement, in substantially the form submitted to this meeting, with such changes, omissions, insertions and revisions as an Authorized Officer shall deem advisable, is hereby authorized, and the furnishing of the information in the Preliminary Official Statement and in a final Official Statement for the Bonds, and the use of such Preliminary Official Statement and final Official Statement by the Underwriters in connection with the offering of the Bonds to the public, are hereby approved. Any Authorized Officer is hereby authorized to execute and deliver to the Underwriters the final Official Statement for the Bonds in substantially the form of the Preliminary Official Statement submitted to this meeting, with such changes therein as are approved by such Authorized Officer. The execution of one or more copies of the final Official Statement by an Authorized Officer shall constitute conclusive evidence of such approval.
4. All prior acts of the officers, agents and employees of the Commission and the Agency which are in conformity with the purpose and intent of the General Resolution, the General Authorization Resolution and this Supplemental General Authorization Resolution in furtherance of the issuance and sale of the Bonds shall be and the same hereby are in all respects approved, ratified and confirmed.

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

Ms. Mindy Piatz, Brady Martz, provided a report on the Housing Finance Agency FY 2019 Audit. Ms. Piatz stated that it was a clean audit with an unmodified opinion.

Ms. Piatz noted that the Housing Finance Agency had changed its method of accounting for bonds sold at a premium or discount from a straight-line method to the effective interest method. This change is an improvement.

Ms. Piatz provided a report on the Housing Incentive Fund FY 2019 Audit. Ms. Piatz stated that it was a clean audit with an unmodified opinion. The activity in 2019 was distributing the funds that had been appropriated in previous legislative sessions. There was a transfer of \$5 million from the General Fund in 2019. Fiscal activity is expected to increase in 2020.

#### **BUILDING AUTHORITY**

Ms. Piatz provided a report on the North Dakota Building Authority FY 2019 Audit. Ms. Piatz stated that it was a clean audit with an unmodified opinion. There were no new bonds issued.

#### **PUBLIC FINANCE AUTHORITY**

Ms. Fine noted that the Public Finance Authority (PFA) has previously provided a disaster assistance program for political subdivisions.

Ms. DeAnn Ament, PFA Executive Director, presented the following Drinking Water State Revolving Loan Fund (DWSRF) loan applications for consideration.

*Dakota Rural Water District – \$1,550,000*

The purpose of the project is to construct transmission lines to connect 200 new users to a clean and safe drinking water source. The District currently provides water services in Griggs and Steele Counties and parts of Barnes, Cass, Grand Forks, Nelson, and Traill Counties.

The term for the loan is 30 years. The District will issue revenue bonds payable with water user fees. The average annual payment for the revenue bonds will be \$65,265. The reserve requirement will be \$76,125 and the 120% coverage requirement will be \$78,318. She noted that the PFA Advisory Committee recommended approval of the loan.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approves the resolution as follows:**

#### **RESOLUTION APPROVING LOAN FROM DRINKING WATER STATE REVOLVING FUND**

**WHEREAS, the Industrial Commission has heretofore authorized the creation of a Drinking Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4, 61-28.1, and 61-28.2; and**

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

**WHEREAS, the Dakota Rural Water District (the "Political Subdivision") has requested a loan in the amount of \$1,550,000 from the Program for system expansion; and**

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

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

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

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

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

*McLean Sheridan Rural Water District – \$2,656,000*

The purpose of the project is to improve and expand the water distribution system, transmission system and Booster A within the treatment facility. The term for the loan is 30 years and the District will issue revenue bonds payable with water user fees. The average annual payment for the revenue bonds will be \$111,789. The reserve requirement will be \$121,800 and the 120% coverage requirement will be \$134,146. The PFA Advisory Committee recommended approval of the loan.

In response to questions, Ms. Ament indicated that there are a variety of factors that can cause concern regarding potential loans. Examples included the quality and availability of the financial statements and projects where rates haven't been raised in several years. In some cases, PFA works with a loan application for 5-6 months before it is ready to be approved. Most of the time applicants come in with new customers signed up. They often have commitments increase as infrastructure gets installed. There is not a requirement for leak detection, but meters are required and that should provide leak detection.

Ms. Ament stated that PFA works closely with the State Water Commission.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approves the resolution as follows:**

**RESOLUTION APPROVING  
LOAN FROM DRINKING WATER STATE REVOLVING FUND**

**WHEREAS, the Industrial Commission has heretofore authorized the creation of a Drinking Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4, 61-28.1, and 61-28.2; and**

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

**WHEREAS, the McLean Sheridan Rural Water District (the "Political Subdivision") has requested a loan in the amount of \$2,656,000 from the Program for system expansion; and**

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

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

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

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

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

*Stutsman Rural Water District – \$1,000,000*

The purpose of the project is to deliver water to the north and western portions of the distribution system which have experienced increased residential and agriculture demand for water. Stutsman Rural Water District provides water services to 2,410 residential users, 3 bulk city users and 3 industrial users in the Counties of Stutsman and portions of Foster, Griggs, LaMoure, Logan and Kidder. They also provide water to the Cities of Woodworth, Cleveland, and Montpelier.

The loan term is 30 years and the District will issue revenue bonds payable with user fees for this loan. The average annual payment will be \$41,654. The required debt service reserve is \$50,750 and the 120% net operating coverage requirement is \$49,985.

The District has four Drinking Water State Revolving Fund loans with a total outstanding balance of \$7,272,411, one Clean Water State Revolving Fund loan with a balance of \$2,320,000, and one Capital Financing Program loan with \$7,285,000 outstanding. The PFA Advisory Committee recommended approval of the loan.

In response to a question about extraterritorial designation, Ms. Ament indicated that this is truly a rural project and is not extraterritorial.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approves the resolution as follows:**

**RESOLUTION APPROVING  
LOAN FROM DRINKING WATER STATE REVOLVING FUND**

**WHEREAS, the Industrial Commission has heretofore authorized the creation of a Drinking Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4, 61-28.1, and 61-28.2; and**

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

**WHEREAS, the Stutsman Rural Water District (the "Political Subdivision") has requested a loan in the amount of \$1,000,000 from the Program for Phase 7 system expansion; and**

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

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

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

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

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

Ms. Ament reported on SRF Clean Water and Drinking Water Loans under \$1 million that were approved by the Public Finance Authority Advisory Committee as follows:

- Rutland Clean Water: \$205,000
  - Loan for emergency lagoon repairs which include new crossover pipes and discharge pipe, gate valves, spot repair force main pipe, salvage and replace rip rap, inlet and discharge assemblies, concrete work, seeding and restoration. The total project cost is \$321,400 with \$116,400 coming from CDBG. The CWSRF term for the loan is 20 years. The City will issue revenue bonds payable from sewer user fees.
- Enderlin Drinking Water: \$760,000

- Loan to remove and replace portions of water mains, install a new water supply well and ice pig the water supply mains. The total project cost is \$885,000 with \$125,000 coming from CDBG and the DWSRF loan request is \$760,000. The term for the loan is 20 years. The City of Enderlin will issue revenue bonds payable with utility user fees.
- North Prairie Rural Water District Drinking Water: \$253,000 increase to the original \$175,000 loan (total \$428,000)
  - Loan to construct a backup generator, additional pumping and demolish the 50,000-gallon water tower built in 1917. The original project replaced the elevated tower standpipe, repaired paint, and added safety enhancements. The loan term is 30 years. They will issue revenue bonds payable with user fees.
- Agassiz Water Users District Drinking Water: \$996,000
  - Loan to construct transmission lines to connect 20 new users, increase pipeline capacity in the southern and eastern reaches of the system, add larger pipeline between reservoir 5 and 6 and connect reservoir 5 to 4. The total project cost is \$3,983,00 with \$2,987,000 coming from the State Water Commission. The requested term for the DWSRF loan is 30 years. They will issue revenue bonds payable with water user fees.
- Wing Clean Water: \$444,500 (net loan amount)
  - Loan to rehabilitate sanitary sewer mains and manholes and spot repair areas that cannot be rehabilitated. The total project cost is \$635,000 with \$190,500 of loan forgiveness. The term for the CWSRF loan is 30 years. The City of Wing will issue revenue bonds payable with sewer user fees.

Ms. Ament will follow up with the State Water Commission to ensure they are aware that the Wing project was a water tower repair, not a replacement.

Ms. Ament stated that the Agassiz project originally was anticipated to cost over \$1 million, but after receiving the bid it was less than \$1 million.

### **RENEWABLE ENERGY PROGRAM**

Ms. Andrea Pfennig, Industrial Commission Deputy Executive Director, presented Renewable Energy Council recommendations regarding amendments to two contracts:

- Contract R-016-026 – Renewable Energy Commodity Trading Education Program Modification – revised deliverables and reallocation of expenditures, and
- Contract R-035-044 – Preparation of Graphene-Modified LiFePO<sub>4</sub> Cathode for Li-Ion Battery Modification – reallocation of expenditures.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Renewable Energy Council and authorizes the Industrial Commission Executive Director/Secretary to amend Contract No. R-016-026, "Renewable Energy Commodity Trading Education Program," submitted by NDSU as follows:**

- **Remove deliverable: Deliver educational programs;**
- **Add deliverable: Delivery of educational materials to industry seminars and existing NDSU causes in commodity and risk management; and**
- **Move \$12,686.78 from travel to salaries.**

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

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Renewable Energy Council and authorizes the Industrial Commission Executive Director/Secretary to amend Contract No. R-035-044, "Preparation of Graphene-Modified LiFePO4 Cathode for Li-Ion Battery," submitted by UND as follows:**

**Remove:**

- **\$10,000 from minor equipment;**
- **\$15,000 from professional fees and services; and**
- **\$4,700 from equipment over \$5,000.**

**Add:**

- **\$28,381 to personnel costs; and**
- **\$1,319 to F & A.**

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

Ms. Pfennig presented the Renewable Energy Council recommended amendment to the Renewable Energy Program Mission Statement for consideration.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendation of the Renewable Energy Council and amends the Renewable Energy Program Mission Statement to include the following language:**

**Goals & Purposes**

**Promote efficient, economic and environmentally sound development and use of North Dakota's vast renewable energy resources, particularly in the areas of wind energy, biofuels (ethanol & biodiesel), biomass, advanced biofuels, and advanced energy technology.**

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

**TRANSMISSION AUTHORITY**

Mr. John Weeda, Transmission Authority Director, provided an update on transmission access and renewables integration. He indicated that due to a lack of transmission, renewable projects in the future will trigger large costs. It appears that additional transmission will be needed in order to have more renewable projects.

In response to a question about what constitutes high costs, Mr. Weeda provided an example of a proposed 200 MW project that would have cost \$200 million. Developers appear to find costs of \$40-\$50 million acceptable for that size of project. In this case, the interconnect to SPP drove the costs up. The developer is responsible for the cost and would need to recover it from the power purchase agreement. Mr. Weeda also gave an example of transmission needed in Minnesota and Wisconsin (MISO) with the costs being allocated back to North Dakota residents. Once the capacity is exhausted, the costs for additional transmission is attributed to the next project in the queue regardless of energy source.



Mr. Weeda indicated that work is underway with the Midwest Governors Association to push MISO for solutions. A conference will be held in November regarding cost allocation for new transmission. MISO has solutions but there currently is not consensus on who will pay for it. Basin is working with SPP to allow for growth in the Bakken.

Mr. Weeda noted that as companies shut down facilities, the interconnection rights are being retained. The interconnect point cannot be moved; however, the energy source can be changed.

#### **ADMINISTRATIVE BUSINESS**

Ms. Fine presented the draft October 2, 2019 non-confidential meeting minutes for consideration.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the October 2, 2019 non-confidential meeting minutes be approved. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 4:57 p.m.

North Dakota Industrial Commission

A handwritten signature in blue ink, appearing to read "Karlene Fine".

Karlene Fine, Executive Director and Secretary