

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on March 9, 2020 beginning at 12:40 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 12:40 p.m. as the Governor was delayed by a call regarding the Coronavirus. Following a brief update about the virus, the Commission took up Department of Mineral Resources Business.

DEPARTMENT OF MINERAL RESOURCES (DMR)

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

Case 27124, Order 30789

This involves an application of two companies for an order that would cancel the invitation to participate that was received and accepted on the basis that the operator elected to drill one well instead of the two wells that were originally proposed. Many issues were settled prior to the hearing. However, three issues were not, including:

- Was the invitation to participate acceptable? Staff's recommendation is to find that it did meet the law and intent with regards to rules on invitations to participate. To reopen that at this point would be unfair.
- Is it ok to include the cost of capital as part of reasonable actual drilling costs? Staff's recommendation is to find that the cost of raising capital to drill a well is a reasonable actual drilling cost.
- What is a reasonable rate on raising capital? In this case, the operator used the standard return on investment. The challenger provided testimony regarding how COPAS (Council of Petroleum Accountants Societies), which determines joint interest billings in the industry, relates cost of capital to the prime rate. The COPAS rate was determined to be more compelling and the staff recommendation is to determine that 8.7% should be used instead of the 15% utilized by the operator.

The proposed order determines that: the previously issued invitation is acceptable, costs of capital can be included as a reasonable actual drilling cost, but that rate must be calculated based on prime rate.

Mr. Helms clarified that there was no evidence in the record of actual borrowing costs of the operator. However, there is an industry standard to determine the rate. This is the rate that is recommended to be used.

In response to a question, Mr. Helms confirmed that this is an unusual request that has not previously been approved by the Commission.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 30789 issued in Case 27124 which states that

- **the Commission has jurisdiction to determine costs of drilling and operating a well, the validity of the invitations to participate in a well and the assessing of a risk penalty;**
- **the Commission has determined that Petro Harvester has complied with NDAC §43-02-03-16.3 by providing an estimate of expected costs to drill and complete the STR1 22-15 163-90 B;**
- **the Commission has determined that the cost of capital is a reasonable actual cost in drilling and operating a well;**
- **the Commission accepts the reasoning provided by Mach Energy's expert witness for a basis to determine the cost of capital; and**
- **the Commission denies Petro Harvester's motion to dismiss,**

be approved this 9th day of March 2020. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Ed Murphy, State Geologist, and Mr. Clint Boyd, Geological Survey Division, provided the Geological Survey Division quarterly report (a copy of the Report is available in the Commission files) which consisted of the following:

- Wilson M. Laird Core and Sample Library;
- Core Workshops;
- Core Descriptions of the Birdbear Formation;
- High-level Radioactive Waste Advisory Council;
- Landslide Project; (including photos of the 1804/River Road landslide)
- The Dakota Exhibit in the Heritage Center;
- Regulatory Programs;
- Publications this Quarter;
- Presentations this Quarter.

Mr. Murphy clarified that the Geological Survey is currently in the process of digitizing the core collection. Because preliminary research is done online, fewer core samples pulled doesn't necessarily mean less interest. Because of this, a different metric may need to be considered.

In response to a question regarding potential equipment upgrades, Mr. Murphy noted that DMR/Geological Survey is contemplating a system that would hover above the core. It may not be in this legislative session's budgeting. Governor Burgum encouraged discussion to advance technology that would avoid duplicative efforts.

In discussion on the Birdbear Formation (just below the Three Forks), it was noted that there is optimism that it could be a productive formation. It was productive in the past. It has potential, and, hopefully, the United States Geological Survey will take note of it.

Mr. Murphy reported on the first meeting of the High-level Radioactive Waste Advisory Council—Senator Roers was elected as Chairman of that Council. Rules are being worked on and will be brought to the Commission in the future for their consideration.

Mr. Murphy noted that when analyzing landslides, utilizing drones has increased both time efficiency and safety. The DMR/Geological Survey will provide data with industry groups to identify risks on current and proposed pipeline projects. In response to a question, Mr. Murphy indicated that this information has not been presented at an iPIPE meeting but can be in the future.

Mr. Helms indicated that the current practice has been to respond to Public Service Commission (PSC) requests for pre-permitting. DMR will reach out to PSC regarding opportunities to collaborate, such as spill follow up, etc.

Mr. Boyd discussed the details on the new proposed Dakota (dinosaur mummy—67 million years old) Exhibit to open later this year and how visitors will be able to feel how the dinosaur would have felt—*"Touch a Dinosaur"*. He noted the uniqueness of this fossil—with the preserved skin. This fossil is probably the only complete “hand” and “tail” of this type of dinosaur that has ever been found with so much of the fossil covered with the preserved skin. He displayed the “hand” from Dakota and allowed the Commission members to touch it. He reported on the x-rays that had recently been taken of the “hand” and how that information will allow them to digitally study how the bones are relating to the outside skin. He noted that over 10,000 hours of preparation work has been done on Dakota so far – more work continues to be done. Mr. Boyd responded to numerous questions about the Dakota dinosaur (size, weight, color, etc.) and the potential to find additional fossils with preserved skin if the excavation is done properly.

Mr. Murphy provided a review of the Geological Survey 2019 Strategic Plan (a copy is available in the Commission files) and presented the 2020 Strategic Plan for consideration.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the North Dakota Department of Mineral Resources Geological Survey 2020 Strategic Plan as follows:

MISSION

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

OVERVIEW

The 2020 Geological Survey Strategic Plan contains 85 one-year goals and 57 long-term goals. This is a flexible document and over the course of the year we will likely postpone existing projects and create new projects as priorities change.

SUBSURFACE ASSESSMENTS

One-year Plan:

1. Publish a report on the Madison Group.
2. Publish the 100K map and cross sections of the Inyan Kara for the Bowman 100K sheet.
3. Assist the USGS with their hydrocarbon evaluation of the Williston Basin.
4. Present a core workshop at the Williston Basin Petroleum Conference.
5. Present one talk at the Williston Basin Petroleum Conference.
6. Present a core workshop in the WML Core and Sample Library.
7. Publish the 100K map and cross sections of the Inyan Kara for the Belfield 100K sheet.
8. Publish drill-stem test data on the Winnipeg Group.
9. Propose or endorse a stratigraphic nomenclature system for the Three Forks Formation.
10. Publish the 100K map and cross sections of the Inyan Kara for the Dickinson 100K sheet.

Long-Term Plan:

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

CORE AND SAMPLE LIBRARY

One-Year Plan:

1. Photograph 12,500 feet of core and add to website.
2. Continue to expand on the phase II comparison of onsite vs offsite cuttings coming into the core library.
3. Photograph thin sections as they become available and post on website.
4. Continue to assist with janitorial duties at building.
5. Compile core analyses from core library files and post on website.

Long-Term Plan:

1. Post all core analyses on website.
2. Determine the best means of accelerating the core photography project.
3. Photograph all 450,000 feet of core in the core library (prioritize based upon industry interest).
4. Identify whole core holdings and determine what should remain whole and what should be slabbed.
5. Take a large view photograph of each thin section and add it to subscription site.
6. Evaluate cross-training of technicians every other year.

GEOHERMAL ASSESSMENTS

One-year Plan:

1. Temperature log two temporarily abandoned wells.

Long-Term Plan:

1. Publish all forty-four 100k geothermal sheets using actual subsurface temperature data for ND.
2. Enhance ability to respond quickly to requests for geothermal data from industry.
3. Periodically evaluate methods of storing and publishing geothermal data.

LIGNITE ASSESSMENTS

One-Year Plan:

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

Long-Term Plan:

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

GEOLOGIC MAPPING

Detailed Surface or Subsurface Mapping

One-Year Plan:

1. Publish the surface geology of 12 quads in the Fargo area.
2. Publish the surface geology of Moffit NW and Moffit SW quadrangles in the Bismarck area.
3. Publish the remaining 379 LiDAR quadrangles from North Dakota.
4. Publish a lineament density map of North Dakota.
5. Publish a report on glacial stratigraphy in eastern North Dakota.

Long-Term Plan:

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

Mineral Resource Mapping

One-Year Plan:

1. Publish a phase III report on rare earth concentrations in western North Dakota lignites.
2. Complete a report on strategic elements in ND lignites.
3. Publish potash maps for the Mohall 100K sheet.
4. Complete a report on the proppant potential of North Dakota's windblown deposits.

Long-Term Plan:

1. Add a minerals geologist to work fulltime on critical elements in ND rocks.

2. Complete mapping of all nonhydrocarbon mineral deposits in ND at a scale of 1:24,000.
3. Update existing maps, such as uranium, as nonconfidential information becomes available.
4. Digitize all uranium logs in our well files.

Geologic Hazards Mapping

One-Year Plan:

1. Publish 40 landslide maps (1:24,000) in northcentral North Dakota.*
2. Publish 40 landslide maps (1:24,000) in central North Dakota.*
3. Publish 30 landslide maps (1:24,000) of potential wind farms in North Dakota.
4. Publish 40 landslide maps (1:24,000) in northeastern North Dakota.
5. Publish 40 landslide maps (1:24,000) in southeastern North Dakota.
6. Utilize drone for landslide mapping as needed and provide assistance to other agencies.

Long-Term Plan:

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

PALEONTOLOGICAL ACTIVITIES

One-Year Plan:

1. Manage the installation of the new Dakota exhibit.
2. Organize the Dakota grand opening event(s).
3. Administer Bismarck Public Fossil Dig.
4. Administer Medora Public Fossil Dig.
5. Administer the Pembina Gorge Dig.
6. Complete the revamp of Walhalla Public Library fossil exhibit. *
7. Revamp the Barnes County Museum Exhibit.
8. Evaluate a public fossil exhibit outside of the Bismarck area.
9. Evaluate the feasibility of a North Dakota Dinosaur Park.
10. Conduct 35 tours of the Corridor of Time Exhibit or the Paleo Lab at the Heritage Center.
11. Complete the first of a PrehiStories series (mosasaur).*
12. Finish preparation and copying of two Thescelosaurus dinosaur skeletons.
13. Spend one week excavating dinosaur fossils at Fort Rice site.
14. Assess land tracts for development for potential impact on paleo resources for the Land Dept.
15. Interact with federal agencies to assure effective management of ND paleontological resources.
16. Create a public fossil dig for the Western Governors' Association Meeting in Medora.
17. Present lectures on prehistoric life in North Dakota to public and academic groups.
18. Organize and label the Fort Rice Fossil Collection and identify those specimens for appraisal.
19. Identify the best location for a bison antiquus fossil exhibit in Williston.
20. Assist the Theodore Roosevelt National Park on the first year of their paleontological inventory.

Long-Term Plan:

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

STATE FOSSIL COLLECTION

One-Year Plan:

1. Collect, prepare, and curate fossil specimens from public digs and agency digs into the collection.
2. Enter 750 paleontological localities into the Specify database program.
3. Enter 800 specimens into the Specify database program.
4. Organize and catalog the US Forest Service collection from the Hell Creek Formation.

Long-Term Plan:

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

STATE ROCK AND MINERAL COLLECTION

One-Year Plan:

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

Long-Term Plan:

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

REGULATORY ACTIVITIES

One-Year Plan:

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

Long-Term Plan:

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

OUTREACH ACTIVITIES

Public Outreach

One-Year Plan:

1. Continue providing educational content to users on Facebook, Twitter, and Instagram.
2. Assist with the 2020 ND Petroleum Council Teacher Seminar.
3. Publish seven geology articles in the DMR newsletter.
4. Prepare a program for the 2020 Kids Reading Day at the Heritage Center.
5. Prepare a program for the 2020 Earth Day Festival.
6. Prepare a program for the 2020 Central Dakota Gem and Mineral Society Annual Rock Show.
7. Assist with the 2020 Science Olympiad.
8. Assist with the 2020 State or Regional Science Fairs.
9. Provide lecture/tour to geoscience classes at Bismarck State College and Dickinson State University.
10. Provide public presentations pertaining to a variety of geologic topics in ND.
11. Expand on the newly implemented live streaming paleo outreach program.
12. Publish DMR newsletter in a timely manner.
13. Continue to maintain a wide variety of map products related to North Dakota.
14. Continue to help manage the GPS station and draft legislation to hand it over to the City of Bismarck.

Long-Term Plan:

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

Survey Web Page

One-Year Plan:

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

Long-Term Plan:

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

Computerized Geologic Database

One-Year Plan:

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

Long-Term Plan:

1. Complete digitization of existing databases and maintain files.

Information Dissemination

One-Year Plan:

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

Long-Term Plan:

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

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

Governor Burgum expressed appreciation for the team and its enthusiasm about their work.

Copies of the first of the PrehiStories children's books were provided. The artwork and writing were done by Becky Barnes. One of the books will be on Dakota and will be available at the grand open of the Dakota exhibit.

Mr. Helms presented draft comments supporting extension of the BIA FBIR Waiver to issue grants of easement before an official appraisal is prepared for consideration.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approve the following comments supporting extension of the BIA FBIR Waiver to issue grants of easement before an official appraisal is prepared and direct the Industrial Commission Executive Director/Secretary to submit the comments prior to March 20, 2020.

March 9, 2020

The Honorable Tara Sweeney
Assistant Secretary - Indian Affairs
U.S. Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240

Dear Assistant Secretary Sweeney:

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

The NDIC appreciates this opportunity to provide input regarding the development of oil and gas infrastructure on the Fort Berthold Indian Reservation, North Dakota (FBIR). We respectfully request your assistance in ensuring continued infrastructure development to serve the Mandan, Hidatsa, and Arikara Nation, individual Indian landowners, the oil and gas industry, and the public.

As you are aware, oil and gas development within FBIR has significantly increased applications to the U.S. Department of the Interior, Bureau of Indian Affairs ("BIA") for rights-of-way ("ROW") across Indian trust lands. Timely issuance of ROW allows the construction of pipelines and related facilities to support the transportation of produced minerals, increased gas capture, reduced gas flaring, increased revenue from royalty bearing gas, and reduced truck traffic.

On April 5, 2019, you signed a one-year regulatory waiver (the "Waiver") needed to "keep pace with increased activity, preserve the trust asset, ensure the continuity of production and therefore maintain revenue streams important to the land and mineral owners that benefit from this approach". The Waiver allows BIA to approve a ROW based on negotiated compensation in advance of a completed appraisal being submitted or approved. If the appraised value turns out to be greater than the negotiated amount, the grantee is required to submit an additional payment.

Since issuance of the Waiver, industry and the U.S. Department of the Interior, Appraisal Valuation Services Office ("AVSO") have worked to develop a streamlined Indian trust lands appraisal process. We have been informed that AVSO is in the process of previewing its initial iteration of the revised appraisal process applicable to Indian trust lands. We appreciate the time and energy AVSO has put forth in this effort and believe the Waiver should be extended an additional twelve (12) months to April 2021 to allow the AVSO, BIA, and industry to fully implement the newly revised appraisal system.

The NDIC appreciates that regulatory waivers are not the ideal solution and that it would be preferable to find a permanent solution, but the Waiver should be extended until a permanent solution is finalized.

Thank you very much for your support in this matter.

Mr. Helms noted that the existing process is slow and the extension of the variance is needed to keep infrastructure (water, gas lines, etc.) moving forward for another year. The Congressional Delegation is also involved and the industry (midstream and operators) has submitted similar requests. Staff at BIA is also supportive of this variance being continued.

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

Mr. Helms presented draft comments on CEQ-2019-0003 Update to the Regulations Implementing the Procedural Provisions of NEPA for consideration.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approve the following comments on CEQ-2019-0003 Update to the Regulations Implementing the Procedural Provisions of NEPA and direct the Industrial Commission Executive Director/Secretary to submit the comments prior to 5:00 p.m. EDT on March 10, 2020.

March 9, 2020

Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503
Attn: Docket No. CEQ-2019-0003

RE: Notice of Proposed Rulemaking: “Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act”, Docket ID No. CEQ-2019-0003

The North Dakota Industrial Commission (NDIC), consisting of three state-wide elected officials Governor Doug Burgum, Attorney General Wayne Stenehjem and Agriculture Commissioner Doug Goehring, has jurisdiction to administer North Dakota's comprehensive oil and gas regulations found at North Dakota Administrative Code Chapter 43-02-03. These regulations include regulating the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and chemical treatment of wells, including hydraulic fracturing; the spacing of wells; operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the Underground Injection Control Program; and all other operations for the production of oil or gas.

NDIC respectfully submits the following comments in response to the Notice of Proposed Rulemaking to update regulations implementing provisions of the National Environmental Policy Act (NEPA). NDIC supports modernizing and clarifying NEPA regulations, which have too often been used in the past to delay or block projects. Specifically, NDIC supports the following provisions of the proposed rulemaking:

NEPA Timeline Clarification

- NDIC strongly supports the clarification of “timely decision making” in § 1501.10, specifically the one-year time limit to complete Environmental Assessments (EAs) and the two-year time limit to complete Environmental Impact Statements (EISs). Numerous projects in North Dakota have been delayed beyond the proposed time limit, increasing project costs and delaying public benefits. The revised time limits will allow for fair review while preventing projects from being vetoed through delay tactics.
- NDIC supports the development of schedules and milestones for environmental reviews included in § 1501.7. This will provide transparency on the status of environmental review and ensure lead agencies remain accountable.
- NDIC supports the page limits for EAs and EISs in § 1501.5 and § 1501.7. This will reduce costs and ensure NEPA documents remain focused on relevant project impacts.
- NDIC supports the joint record of decision requirement in § 1501.7. This will streamline project review and remove ambiguity for projects with multiple federal agency involvement.

Clarification of Scope of NEPA Review

- NDIC supports the NEPA threshold applicability analysis included in § 1501.1. Additionally, NDIC strongly supports the clarified definition of “Major Federal action” included in § 1508.1. Past projects in North Dakota have been subject to significant costs and delays because of federal involvement, even at minimal levels. This has incited project sponsors to avoid a federal nexus which, among other things, has delayed or prevented public benefits. The revised definition will clarify that projects with a minor federal nexus will not be subject to additional regulatory burden.
- NDIC appreciates the addition of “reasonable alternatives” to the definitions in § 1508.1. This definition will clarify that reasonable alternatives considered as part of the NEPA process need to meet the purpose and need of the project and must be technically and economically feasible. This will prevent wasted effort in the consideration of unfeasible alternatives.

NEPA Review Efficiencies

- NDIC supports allowing the adoption of existing NEPA documents included in § 1506.3, specifically the adoption of EAs and Categorical Exclusions for proposed actions which are substantially the same as previous actions. This will prevent unnecessary duplication of NEPA review.
- Likewise, NDIC supports the requirement in § 1506.4 for agencies to combine NEPA documents to reduce duplication of paperwork.

- **NDIC supports the flexibility provided in § 1506.1 which allows authorization of certain activities such as acquisition of land interests during the environmental review process. This will allow project schedules to proceed in parallel to the NEPA process and prevent costly delays.**

Enhanced Public Engagement

- **NDIC supports the addition of “other opportunities for public engagement” in § 1506.6. This will allow flexibility for incorporating the latest technology in engaging the public and not unnecessarily limit the public to traditional meetings and hearings.**

Enhanced Coordination with States, Tribes and Local Governments

- **NDIC supports the inclusion of Tribal coordination throughout the proposed rulemaking. This will ensure North Dakota’s tribal nations are included in government-to-government consultations.**
- **NDIC supports allowing State, Tribal and local agencies to become cooperating agencies as included in § 1501.8. Local governments have the expertise and inherent interest in preserving their local environmental quality.**

The ultimate purpose of NEPA is to consider a reasonable range of project alternatives to provide for fully informed decision-making. Since its inception in 1978, the NEPA process has too often been used contrary to its original intent to delay or block vital infrastructure projects. NDIC believes that the proposed rulemaking will return the process to the original spirit of NEPA by removing ideology and preordained, narrow consideration of alternatives. Thank you for this opportunity to provide comments on the Notice of Proposed Rulemaking.

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

Attorney General Stenehjem stated that the Commission did not need to enter into closed session to discuss the Sorum case. The arguments were made before the Supreme Court and no further action by counsel is needed until the Supreme Court has ruled on the case.

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:

- **Case No. 05-2019-cv-00085/Northwest Landowners Association vs. 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 that the discussion during executive session must be limited to the announced purpose for entering into executive session which was anticipated to last between 15 and 30 minutes. He noted that the Commission is meeting in executive session to consult with the Commission’s attorney(s) regarding Case No. 05-2019-cv-00085 and that any formal action by the Commission would occur after it reconvened in open session.

Commission members, their staff, DMR staff, 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 1:37 p.m.

DMR EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

Others in Attendance:

Tami Miller	Governor's Office
Leslie Bakken Oliver	Governor's Office
Reice Haase	Governor's Office
John Schneider	Department of Agriculture
Nici Meyer	Attorney General's Office
Lynn Helms	Department of Mineral Resources
Bruce Hicks	Department of Mineral Resources
Ed Murphy	Department of Mineral Resources
Katie Haarsager	Department of Mineral Resources
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

The Industrial Commission reconvened in open session at 1:51 p.m. and the public was invited to return to the meeting room. Governor Burgum noted that during the executive session the Commission consulted with its attorneys regarding Case No. 05-2019-cv-00085.

Mr. Helms commented on the significant drop in oil prices that has taken place since the OPEC-Russia agreement fell apart.

LIGNITE RESEARCH, DEVELOPMENT, & MARKETING PROGRAM

Mr. Jason Bohrer, Lignite Research Council, and Mr. Mike Holmes, Lignite Research Program Director and Industrial Commission Technical Advisor, provided an update on proposed legislation in Minnesota that could have impacted lignite production in North Dakota—it appears that the legislation will be written to only impact energy development in Minnesota.

Mr. Bohrer and Mr. Holmes provided an overview of Rare Earth Element (REE) research and development funded by the Industrial Commission. (A copy of the written report is available in the Commission files.) The North Dakota REE R&D includes:

- Economic Extraction and Recovery of REEs and Production of Clean Value-Added Products from Low-Rank Coal (LRC) Fly Ash – EERC and UND
- Rare Earth Element Extraction and Concentration at Pilot-Scale from North Dakota Coal-Related Feedstocks – Phase 3 – UND Institute for Energy Studies
- Development of Low-Cost Rare Earth Element Analysis and Sorting Methods – MTI
- Rare-Earth Elements in U.S. Coal-Based Resources: Sampling, Characterization and Round-Robin Interlaboratory Study; - EERC and UND Institute for Energy Studies

Governor Burgum noted that given the current significant supply chain disruption, this topic has been elevated on a national basis. There is a likelihood that the Federal Government could put funds towards this research, and North Dakota should be positioned to take part in that work.

Mr. Holmes noted that refining, utilization, and policy will drive North Dakota opportunities.

Mr. Holmes presented slides that included:

- Why are REEs Important;

- Example of Military REE Usage;
- United States 100% Reliant on Imports

In response to questions about why United States production is so low it was stated that was due to environmental policies and regulations along with pricing.

He reviewed the slide titled “What has North Dakota lignite to offer?”

- North Dakota is host to the world’s largest lignite deposit – 1.3 trillion tons.
- Work to date has identified coal seams in North Dakota with REE concentrations as high as anything ever measured in coal in the United States
- The Harmon-Hanson coal seam in North Dakota has the potential to hold ~2 million tons of REEs.

It was stated that North Dakota lignite has higher occurrences of REEs, and the REEs are more loosely held making extraction easier.

Mr. Holmes noted that in-situ extraction is being researched by the State Energy Research Center. There is also a study on Rare-Earth Elements: A Collaborative Vision for How UND Research Can Strengthen U.S. National Security and Economic Prosperity.

Mr. Holmes provided slides on the work that is being done by the UND Institute for Energy Studies on Rare Earth Elements. One of the objectives is to construct and test UND’s extraction and concentration mechanism at a 0.5 ton/hr scale. They want to evaluate the economics of the UND processing technology; evaluate the technology and resource in a pre-feasibility and pre-FEED mechanism and develop a technology and commercialization roadmap and business.

It was noted that the Department of Energy has funding opportunities, but they are mostly driven by determining resource. Other opportunities include Department of Defense funding that could be pursued, along with refining and end use opportunities such as magnets, catalysts, military applications, etc.

Mr. Holmes stated that the North Dakota researchers are working with other entities to generate interest in this work and commercialization by the private sector. There are ongoing discussion at the federal level to guarantee a price and a market.

Mr. Bohrer discussed the energy bill currently being debated in Congress that has significantly improved rare earth element sections that speak to better informing 1) what is going to happen for supply shortages, 2) increased environmental reviews and streamlining that process and, for the first time, specific improvements in targeting for co-produced rare earth elements with coal. That is one of the improvements that could be beneficial to North Dakota. Instead of taking a threshold that is arbitrary 300 ppm let’s specifically look at how cost competitive the end-product is when co-produced with something else. Split those economics so the operator isn’t carrying the whole fixed cost of a mining operation on a rare earth element.

In response to a question of whether there has been any talk about a strategic rare earth elements reserve, Mr. Bohrer stated it is not included in the energy bill. There have been conversations about a study that could lead to that type of reserve. Part of the conversation needs to be on how to implement a price floor and not destroy the free market. Having a strategic reserve is one way without directly implementing a price floor but still providing some price certainty that would allow for the investment into developing this industry in North Dakota.

It was recognized that the DMR/Geologic Survey did the groundbreaking work in discovering the REEs in North Dakota.

Mr. Murphy talked about the efforts of DMR/Geological Survey to keep moving forward on their work with limited staffing. There was discussion about coordinating work between the Geological Survey and the Lignite Research Program to help spur progress during the current biennium. The goal is to be positioned to take advantage of federal opportunities. Mr. Holmes and Mr. Murphy indicated they would have further discussions and report back to the Industrial Commission at a future meeting.

It was noted that a benefit of utilizing REEs found in lignite would result in a reduced environmental footprint.

Commissioner Goehring left the room at this time.

Ms. Fine presented a request from Minnkota for a no-cost modification of Contract FY19-LXXXVIII-220 to include the purchase of a research scale wet electrostatic precipitator (WESP), which will be used to conduct testing under Task 3 (Identification and Performance of Optimization Studies) of the grant.

Mr. Holmes stated that one of the challenges facing post-combustion carbon capture processes using amine solvents, such as the one to be employed by Project Tundra, is that ultrafine particulate formed during the combustion process and not captured by the power plant's existing particulate control systems will enter the CO₂ capture system and cause challenges associated with solvent degradation and emissions.

The Project Tundra team intends to employ a WESP upstream of the CO₂ capture device to prevent the entry of these ultrafine particles into the CO₂ capture system, thus mitigating the challenges described above. Testing under Task 3 will be performed to provide actual WESP design information, confirmation of the performance on Milton R. Young Station flue gas, performance in combination with EERC's existing pilot-scale CO₂ capture system, and real data on impact on the solvent degradation/emissions. The information gathered from this testing will directly support the FEED study and permitting activities for Project Tundra. Mr. Holmes noted that the equipment is a good addition and will be helpful in reaching the project goals.

It was moved by Attorney General Stenehjem and seconded by Governor Burgum that the Industrial Commission accept the recommendation of the Lignite Research Program Technical Advisor and the Industrial Commission Executive Director/Secretary and authorize the Executive Director to execute an amendment to Contract FY19-LXXXVIII-220 authorizing a no-cost revision and approving the purchase of a research scale wet electrostatic precipitator in the amount of \$127,500. On a roll call vote, Governor Burgum and Attorney General Stenehjem voted aye with Commissioner Goehring absent and not voting. Commissioner Goehring noted when he returned to the meeting that he was in favor of the motion. The motion carried unanimously.

PUBLIC FINANCE AUTHORITY

Attorney General Stenehjem presented a recommendation for selection of Public Finance Authority Bond Counsel. The request for proposals was issued in December 2019 to 10 firms. Two firms responded.

It was moved by Attorney General Stenehjem and seconded by Governor Burgum that the Industrial Commission appoint Steve Rosholt, Kutak Rock LLP as bond counsel for the Public Finance Authority for a four-year engagement.

Commissioner Goehring reentered the meeting.

Ms. DeAnn Ament, PFA Executive Director, noted that Minnesota only had two responses to an RFP for Bond Counsel, so the response rate was similar. It was noted in discussion that this recommended bond counsel has served in this capacity since the program was established—however with different law firms. It was noted that there are no restrictions on using the same bond counsel, but an RFP process is required every four years.

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

Ms. Ament presented a Drinking Water State Revolving Fund loan application for the City of Carrington in the amount of \$3,750,000 for consideration.

The purpose is to refinance USDA-RD and Bank of North Dakota bonds which were issued for water treatment plant improvements. The requested loan term is 30 years. The City of Carrington will issue revenue bonds payable with utility user fees. The average annual payment for the revenue bonds will be \$153,950. This would be an approximately \$24,497 annual reduction in payments.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Public Finance Authority Advisory Committee and adopt the following resolution regarding a Drinking Water State Revolving Fund loan for the City of Carrington in the amount of \$3,750,000:

**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 City of Carrington (the “Political Subdivision”) has requested a loan in the amount of \$3,705,000 from the Program for system expansion and an elevated water tank; 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.

BANK OF NORTH DAKOTA

Mr. Eric Hardmeyer, BND President, presented an amended 2020 BND Annual Budget for consideration.

Due to the market's recent response to the coronavirus and the projected impact on oil prices, along with pressures in the agriculture sector, the forecasted income is reduced from \$163 million to \$154 million, an almost 9% decrease from last year. He noted that the Federal Reserve's recent activities also impacted the Bank's revising their proposed budget.

A question was raised regarding any similar times in history when the Bank had recommended a decrease in their annual budget from the prior year. Mr. Hardmeyer indicated 2001-2002 might have been the last time there was a decrease. However, this is an unprecedented situation. Mr. Hardmeyer indicated that lowering the budget would not have any operational impacts that would prevent the Bank from exceeding projections if the market turns around. This is just a function of interest rates. The Bank will be dealing with compression. As rates come down, assets will come down and there will be compression in net interest margin. The Bank will see \$14 million less in net interest income from their original proposed budget for the year. In response to a question, Mr. Hardmeyer stated that it is easier to make money when interest rates are rising vs. a period of declining interest rates. This will be true of the whole industry.

It was noted that the Federal Reserve in the US is one of the only central banks with a positive interest rate and a question was raised regarding what would happen if there are negative interest rates. Mr. Hardmeyer indicated that Bank management has built into the budget that rates will go down and modeled an even further reduction in interest rates of 50-75 basis points. However, the Bank has not considered what would happen with negative interest rates.

Mr. Hardmeyer stated in his written memorandum that:

The Fed changed course in 2019, reducing interest rates by 75 basis points. In addition, the Fed's recent response to the coronavirus reduced the fed funds rate by an additional 50 basis points. We anticipate another 50 basis points reduction at the March FOMC meeting, and another 50 basis points between the March meeting and June 30. This will bring the Fed Funds rate to 25 basis points which is considered the floor. The resulting flat yield curve and a shift in the Bank's asset mix has put pressure on margins. Based upon this project, BND will end 2020 with net interest income of \$191 million, a decrease of \$14.3 million or 6.97% from 2019.

Mr. Hardmeyer stated that Bank management feels comfortable that this is conservative enough. It was noted that low interest rates will help consumers. For example student loans with a variable student loan rate will see a significant reduction in their interest rate.

A question was raised if there is any way to increase demand with the lower rates. Mr. Hardmeyer noted that anything around oil will be concerning. However, these lower rates could revive the agriculture economy depending how quickly the markets rebound. The Bank anticipates many of their current borrowers will be asking for refinancing of their loans to take advantage of the lower rates.

There was discussion about whether fee structures should be revised. Bank management indicated that the market is very competitive right now and Bank management must work with the lead lenders.

It is anticipated that the Bank will shrink in size with a \$350 million – \$400 million drop in deposits. For the projections, Bakken was valued at \$25 per barrel.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approves the following CY 2020 Budget for the Bank of North Dakota contingent on approval by the Bank of North Dakota Advisory Board:

ENDING BALANCE SHEET				
Actual 2019 vs. Budget 2020				
(In thousands)				
	Actual 2019	Budget 2020	Difference	% Change
Cash and due from banks	487,689	150,000	(337,689)	-69.24%
Federal funds sold	10,685	91,000	80,315	751.66%
Securities	2,016,126	1,714,260	(301,866)	-14.97%
Loans				
Commercial	2,078,573	2,074,257	(4,316)	-0.21%
Farm	647,108	687,692	40,584	6.27%
Residential	628,319	575,699	(52,620)	-8.37%
Student loans	1,183,943	1,184,544	601	0.05%
	4,537,943	4,522,192	(15,751)	-0.35%
Less allowance for loan loss	(95,690)	(96,499)	(809)	.85%
	4,442,253	4,425,693	(16,560)	-0.37%
Other assets	101,678	88,773	(12,905)	-12.69%
Total Assets	7,058,432	6,469,726	(588,706)	-8.34%
Deposits -				
Non-interest bearing	628,257	425,000	(203,257)	-32.35%
Interest bearing	4,460,836	4,230,548	(230,288)	-5.16%
Federal funds purchased and repurchase agreements	365,335	350,000	(15,335)	-4.20%
Short and long-term borrowings	631,030	456,639	(174,391)	-27.64%
Other liabilities	33,947	67,962	34,015	100.20%
Total liabilities	6,119,405	5,530,149	(589,256)	-9.63%
Equity	939,027	939,577	550	0.06%
Total Liabilities and Equity	7,058,432	6,469,726	(588,706)	-8.34%

**Ending Income Statement
Actual 2019 v Budget 2020**

Interest Income	263,738	225,964	(37,774)	-14.32%
Interest Expense	58,515	35,047	(23,468)	-40.11%
Net Interest Income	205,222	190,917	(14,305)	-6.97%
Provision for Loan Losses	6,000	4,800	(1,200)	-20.00%
Net Interest Income After Provision	199,222	186,117	(13,105)	-6.58%
Non-Interest Income	6,916	5,081	(1,835)	-26.53%
Non-Interest Expense	17,424	18,512	1,088	6.24%
Salaries and benefits				
Occupancy and equipment	728	845	117	16.07%
Data processing	5,488	9,851	4,363	79.50%
Other operating expense	13,450	7,731	(5,719)	-42.52%
	37,089	36,939	(150)	-0.41%
Net Income	169,049	154,259	(14,679)	-8.75%
Return on Average Assets	2.47%	2.33%		
Return on Average Equity	18.64%	16.17%		

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

Mr. Hardmeyer presented the Bank of North Dakota Advisory Board December 19, 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 15 and 30 minutes. It was noted that any formal action on the loan application 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 2:40 p.m. to discuss the following items:

- Consideration of De Minimus Cap Resolution
- Consideration of loan application
- Presentation of the Concentrations of Credit Report as of December 31, 2019
- Problem Loans
- Presentation of Bank of North Dakota Advisory Board December 19, 2019 confidential meeting minutes.
- Other Bank of North Dakota confidential (as defined under N.D.C.C. 6-09-35) business

BND EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General 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
Kelvin Hullet	Bank of North Dakota

Others in Attendance:

Leslie Bakken Oliver	Governor's Office
Reice Haase	Governor's Office
John Schneider	Department of Agriculture
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

The meeting reconvened in open session at 3:13 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 a Bank of North Dakota loan application. **On a roll call vote, Governor Burgum, Attorney General Stenhjem, Commissioner Goehring voted aye. The motion carried unanimously.**

WESTERN AREA WATER SUPPLY AUTHORITY (WAWS)

Ms. Fine presented the Western Area Water Supply Authority January Financial and Debt Reduction Report. Principal payments of \$260,826.81 were made to BND. When the principal payments are included, the net income for the month was \$147,632.76. If the principal payments are excluded, the net income for the month was \$408,459.57.

Ms. Tami Madsen, WAWS Executive Director, provided a copy of the 2020 WAWS Business Plan and highlighted various parts of the Plan. (A copy of the Plan is available in the Commission files.)

- Pricing contracts have been negotiated up—there are no longer any \$.40 contracts. Maintenance water went from \$.60 to \$.62. There have been requests to renegotiate contracts back down due to recent market events, which will be discussed with the WAWS Board.
- Salary costs have been reduced from \$1.4 million a year to \$904,000 a year, a reduction of roughly 35%. It is anticipated that the staffing levels will be able to be maintained. She noted that even with staff taking on more responsibilities the morale is high.

A question was raised regarding whether there are other things that should be considered in order to set WAWS up for success. Ms. Madsen indicated that WAWS is working with BND on restructuring debt, as well as looking at baseline sales.

Background Information was provided regarding baseline sales. The baseline level was the amount of revenue that the local member entities were receiving from their own depots prior to the creation of WAWS. The law states that the member entities will receive a baseline payment from industrial revenues prior to making loan payments. WAWS has not had sufficient revenues in recent years to make the baseline payments. Agreements were made with the member entities to waive those payments for a period of time. There is discussion in the business plan of options that will allow for some baseline sales payments to the member entities while still paying WAWS's outstanding debt. Previously the baseline sales had been accruing as a liability but agreements with the member entities resulted in that liability being removed from the WAWS financial statements.

Ms. Madsen stated that water was presold, and the \$2.2 million of proceeds were used for needed infrastructure. The result is that while the sales for January and February are good those revenues have already been disbursed. WAWS had some discussions with the Bank regarding their cashflow needs during the month of February. The prepayment agreement will be ending within the next two months which will improve the Authority's cashflow.

Concern was expressed regarding the financing structure of WAWS. It was noted that there is not a consistent funding mechanism for regional water systems across the state with some systems receiving a higher level of grants. WAWS has the highest debt level. It was noted that there needs to be a strategic discussion prior to the next legislative session as well as a financing discussion.

The Commission suggested that WAWS consider engaging with the baseline entities to determine if they'd be interested in a different model/renegotiation. In response to a question of what triggered the request for baseline payments the response was that the member entities are facing financial pressures which have resulted in questions about receiving baseline payments when WAWS is increasing their revenues. Mr. Chorne commented on the language that is in the agreements with the member entities and the language that was included in the 2013 legislation. It was indicated that the baseline payments totaled \$4.1 million annually.

Ms. Madsen stated that sales are predominantly occurring in the southern part of the system. However, due to capacity limitations, this will not generate enough revenue to pay the outstanding debt.

It was noted that WAWS will be discussed at the next Water Topics Committee in March. This topic may come up.

Background information was provided on WAWS income over the past several years and the loss of market share. WAWS sales are down to 10% of the market. It is anticipated that this information will be beneficial as discussions take place with the member entities.

It was explained that the Commission did not need to take any action on the Business Plan. The Commission had requested last year that WAWS prepare a Business Plan and the WAWSA Board did adopt the 2020 Business Plan in February. This presentation was only for the Commission's information and in response to their request that a plan be developed.

The 2020 Forecasted Industrial Sales were reported as follows.

2020 Western Area Water Supply Authority Budgeted Revenues	
January	\$1,542,332
February	\$1,556,418
March	\$1,743,974
April	\$1,326,147
May	\$1,415,313
June	\$1,306,429
July	\$1,408,291

August	\$1,537,152
September	\$1,505,527
October	\$1,568,687
November	\$1,464,265
December	<u>\$1,352,610</u>
	<u><u>\$17,727,145</u></u>

Ms. Madsen presented the proposed 2020 Industrial Capital Improvements Budget for consideration. She noted that the projects are listed from highest priority to lowest priority. She explained the purpose of each project. In response to a question, Ms. Madsen indicated that all the improvements will increase the Authority's earning potential.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the request of the Western Area Water Supply Authority Board and approve the 2020 Industrial Capital Improvements budget as follows:

Cost share on connection in MCWSRD to improve industrial flows	\$ 60,000
Cost share on industrial vault-Maintenance water connection	\$ 10,000
Hydrant and gate valve to sell ground water from Watford City plant	\$ 10,000
Drainage system at depots (Keene/13 Mile)	\$400,000
IDT units for meter trailers and industrial vaults	<u>\$ 6,675</u>
	\$486,675

and further authorize the Industrial Commission Executive Director/Secretary to approve the 2020 industrial capital expenditures in an amount not to exceed \$486,675 from industrial sales income contingent upon sufficient funds being available in the industrial account and receipt of documentation on the completion of the work. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Fine noted that at the January 21, 2020 Industrial Commission meeting the Commission approved the 2020 base reimbursement rates for WAWS. At that time the Commission was given a Summary of the Rates. Subsequent to that meeting three of the member entities – Northwest Rural Water District, R&T Water District and Burke-Divide Williams Rural Water District approved their reimbursement rates and the Summary has been updated. No action is needed but the minutes will reflect the updated Summary of Rates is available in the Commission files.

Mr. Cory Chorne, AE2S, provided an update on sales and current activity through January and provided the following documents: (Copies are available in the Commission files.)

- WAWSA Cumulative 2020 Actual and Budgeted Industrial Revenue – Through January 2020
- 2020 WAWSA Industrial Water Sales YTD
- 2020 WAWSA Monthly Budgeted and Adjusted Industrial Sales Forecast
- WAWSA 2020 and Historical Industrial Water Demands
- WAWSA 2019 and Historical Total Water Demand

Gross revenue for the month was \$1.49 million, and \$1.54 was budgeted. The budgeted revenue for the year is \$17.73 million; the current projected revenue is \$17.67 million.

Industrial water sales \$.54 per barrel. It is anticipated that this number will rise during the year as a result of the renegotiated contracts.

Ms. Madsen stated that the water plant had its biggest month ever in February. It was noted that generally market pressure increases in the spring when surface water becomes available.

Ms. Madsen indicated that WAWS system can't handle more than 2-3 fracs in the southern part of the system. WAWS can handle about the same number of fracs in the northern part of the system. WAWS currently has 11 maintenance contracts. Infrastructure in the south limits the capacity of fracs, where demand is currently located. It was noted that there may be a misconception that WAWS is primarily an industrial water system, when it is built to be a rural water system with excess water used for industrial sales.

Mr. Chorne noted that WAWS manages approximately 1 million gallons/day of maintenance water contracts. While this provides significant revenue, it is not enough to get WAWS to the breakeven point.

Ms. Madsen noted that with the improvements, the south section of WAWS will be able to pump 4,800 gallons per minute. There is demand for more water. However, the north section can pump 11,000 gallons per minute, but only has contracts for 6,000 gallons. Mr. Chorne pointed out that the improvements that the Commission cost shared in last year with pump and pipeline improvements is now all in the ground. A reservoir is being constructed on the domestic side and will be available in the 3rd or 4th quarter of 2020. That reservoir will help with meeting the market demand. The market potential on the south side is more than 8,000 gallons.

NORTH DAKOTA MILL

Mr. Vance Taylor, Mill President and CEO, noted that the Mill has a pandemic plan as part of its food safety certification and are currently in the process of implementing that plan.

Mr. Taylor presented the Second Quarter Report as follows.

Summary

Activities in the 2nd Quarter of the year resulted in a profit of \$3,303,615 compared to \$3,151,168 last year. For the six months ending December there is a profit of \$6,425,806 compared to \$7,003,864 last year.

	Quarter		Year-to-Date	
	12/19	12/18	12/19	12/18
Profits	3,303,615	3,151,168	6,425,806	7,003,864
Sales	76,154,998	83,166,165	153,130,185	162,165,483
Cwt. Shipped:				
Spring	3,417,704	3,651,494	6,899,020	7,106,916
% to Total	92.8%	93.2%	93.1%	93.4%
Durum/Blends	<u>265,926</u>	<u>264,748</u>	<u>510,579</u>	<u>498,389</u>
Total	<u>3,683,630</u>	<u>3,916,243</u>	<u>7,409,599</u>	<u>7,605,304</u>
Bulk Shipments	3,041,652	3,248,690	6,097,640	6,253,863
% to Total	82.6%	83.0%	82.3%	82.2%
Bag Shipments	594,770	632,176	1,230,079	1,275,645
% to Total	16.1%	16.1%	16.6%	16.8%

Tote Shipments	47,208	35,377	81,881	75,797
% to Total	1.3%	0.9%	1.1%	1.0%
Family Flour	93,539	103,754	194,566	186,607
% to Total	2.5%	2.6%	2.6%	2.5%
Organic Flour	38,528	37,327	66,554	72,682
% to Total	1.0%	1.0%	0.9%	1.0%
Wheat/Durum Bought:				
Spring/Winter	7,726,725	7,606,746	15,176,185	15,136,866
Durum	641,894	530,675	1,138,832	1,005,318
Total	<u>8,368,619</u>	<u>8,137,421</u>	<u>16,315,017</u>	<u>16,142,184</u>

Sales2nd Quarter

Sales for the 2nd Quarter were \$76,154,998 compared to \$83,166,165 last year. Shipments of 3,683,630 cwt. are 232,612 cwt. below last year. Bag shipments for the 2nd Quarter are 594,770 cwt., which is 5.9% below last year's 2nd Quarter. Tote shipments for the 2nd Quarter are 47,208 cwt., which is 33.4% above last year's 2nd Quarter. Family flour shipments of 93,539 cwt. is 9.8% below last year's 2nd Quarter. Organic flour shipments were 38,528 cwt., which is 3.2% above last year's 2nd Quarter.

Year-to-Date

Sales for the six months ended December were \$153,130,185 compared to \$162,165,483 last year, a decrease of 5.6%. For the first six months the average settled price of grain is \$0.50 per bushel less than last year. Shipments of 7,409,599 cwt. are 195,705 cwt. below last year, a decrease of 2.6%. Year-to-date bag shipments are 1,230,079 cwt., a decrease of 45,567 cwt. from last year. Tote shipments are 81,881 cwt., an increase of 6,084 cwt. from last year. Family flour shipments for the six months ending are 194,566 cwt., an increase of 4.3%. Organic flour shipments of 66,554 cwt. is a decrease of 8.4% from last year.

Operating Costs2nd Quarter

Operating costs for the 2nd Quarter were \$9,205,274 compared to \$8,833,215 last year, an increase of 4.2%. Operating cost per cwt. of production was \$2.47 compared to \$2.26 last year, an increase of \$0.21 per cwt.

Year-to-Date

Year-to-date operating costs are \$17,983,718 compared to \$17,510,676 last year, an increase of 2.7%. Operating cost per cwt. of production for six months ending is \$2.43 compared to \$2.29 last year, an increase of \$0.14 per cwt. Flour production declined 2.9% to 7,411,793 cwt.

Profits2nd Quarter

Operating activity for the 2nd Quarter led to a profit of \$3,305,615 compared to a profit of \$3,151,168 last year. Gross margins as a percent of gross sales for the Quarter were 17.0% compared to 14.9% last year, an increase of 2.1%.

Year-to-Date

Operating activity for six months ending December led to a profit of \$6,425,806 compared to a profit of \$7,003,864 last year. Gross margins as a percent of gross sales for the year are 16.5% compared to 15.6% last year, an increase of 0.9%.

Risk Management Position

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

Position Report	
31-Dec-19	
Period	Hedge Ratio
Mar-20	1.1
May-20	1.1
Jul-20	1.0
Sep-20	1.1
Dec-20	1.0
Net Position	1.0

A question was raised regarding the dip in family flour sales for the quarter. Mr. Taylor indicated the Mill is ahead for the year, but the quarter sales fluctuate from time to time and is not indicative of a demand drop.

In response to questions, Mr. Taylor indicated that generally 15% of the Mill’s grain is sourced from North Dakota. The Mill has not had challenges getting product and has been able to find quality wheat. The Mill does not foresee issues going into the next crop year. Because the Mill has been able to source trucks at less cost than shuttle trains, the new shuttle train system has not yet been utilized. This may change as spring load restrictions are enforced. The Mill does plan to test the system. Flooding may be an issue that will be watched. Historically, the Mill has not included reselling wheat as part of the Mill business model. The possibility will be analyzed moving forward.

Mr. Taylor noted that Mill management is closely monitoring sales for the third quarter and the impact the coronavirus may have on flour demand in the future. A considerable amount of the Mill’s flour is used for products that end up in restaurants and there may be reduced sales depending on how the public deals with the coronavirus. The planting condition outlook is slowly improving in North Dakota—the warm March weather has resulted in an early and slow snow melt which should help.

Mr. Taylor presented the following request for a capital project. The project involves Grain Terminal Receiving Scales and Conveyors and has two phases. He provided diagrams showing where the new scales and drag conveyor systems will be installed.

Grain Terminal Receiving Scales and Conveyors Phase I and II \$8,350,000

Install inbound and outbound truck scales, a garner scale (used for rail unloading) and 3 high speed drag conveyor systems to speed up 4 unloading pits in the terminal elevator. This project will double truck and rail unloading capacity in the grain terminal building.

This system replaces 3 antiquated pit scales, an obsolete garner scale and 3 low capacity conveyor belt/tripper systems. Terminal building (old system) truck and rail unloading speeds will be increased from 12 trucks per hour to 24 trucks per hour (additional 12 trucks per hour are currently unloaded on the new pit).

By completing this project plant safety will be significantly enhanced for terminal elevator employees.

Waiting time for inbound grain trucks will be reduced by 35% resulting in an average savings of \$.05 per bushel. Inbound rail demurrage will also be further reduced. Plant traffic patterns will be improved.

Phase I Components

Truck Scales	\$800,000
Drag Conveyor System (1)	\$1,550,000
Garner scale and bucket elevator leg	\$650,000
Electrical and Controls	\$750,000
Contingency	\$400,000
Total	\$4,150,000

Phase II Components

Drag Conveyor Systems (2)	\$3,100,000
Electrical and Controls	\$700,000
Contingency	\$400,000
Total	\$4,200,000

Total Cost Phase I and II **\$8,350,000**

Project Returns

Bushels of grain ground and purchased	31,000,000
Annual cost savings at \$0.05 per bushel	\$ 1,550,000
Payback period in years	5.39
Return on Investment	18.56%

The Mill currently unloads 24 trucks per hour. Twelve trucks are unloaded per hour on the new truck rail pit and will not change with this proposal. Twelve trucks per hour on four pits in the old terminal elevator building. The proposed project involves improvements to the old pits which operate slowly processing only 7,000 bushels per hour per system. Some of the conveyor belts date back to 1922.

Mr. Taylor stated that there have been discussions about making changes to the old pits in the past. However, the new pit was installed instead. The new pit is able to process trucks at a rate of 5 minutes per truck, 12 trucks an hour. Conversely, the other 4 pits combined process 12 trucks an hour. With the upgrades, it is anticipated that the pits could process 15,000 - 20,000 bushels per hour.

In response to a question about the savings, Mr. Taylor clarified that trucks with grain to sell will go somewhere else if the wait is too long. The average waiting time is 2.5 hours. The estimated savings of \$.05 per bushel is conservative. The Mill could pay less for grain. If both phases are completed, the Mill will be able to process 36 trucks per hour.

It was moved by Attorney General Stenhjem and seconded by Commissioner Goehring that the Industrial Commission approve the expenditure of \$8,350,000 for an additional FY2020 capital project – Grain Terminal Receiving Scales and Conveyors – Phases 1 and 2.

There was discussion by the Commission that for the project to achieve maximum savings potential, it will be important to avoid paying a premium while paying to do things more quickly. Mr. Taylor indicated that the pricing at local elevators will be tracked to determine how Mill pricing compares to ensure that the Mill isn't paying a premium. It is also expected that more grain from local producers will be available as a result.

Mr. Taylor clarified that parts from the existing system will be saved for spare parts.

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

From a capital standpoint, this will come from the line of credit. Currently, short term borrowing is not separated from long term capital. With interest rates so low, the Mill will consider locking in a fixed rate.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the provisions of N.D.C.C. § 44-04-18.4 the Industrial Commission proceed into executive session to discuss commercial information including the North Dakota Mill's marketing strategies and sales strategies. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum noted that the executive session would be recorded and reminded the Commission members and those present to limit their discussion during the executive session to the announced topic. He stated that the executive session was anticipated to last 30 to 45 minutes and that following the executive session the Commission would reconvene in open session. Commission members, employees of the North Dakota Mill, and staff remained but the public was asked to leave the room. The executive session began at 4:22 p.m.

MILL EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Mill Personnel Present:

Vance Taylor North Dakota Mill
Ed Barchenger North Dakota Mill
Cathy Dub North Dakota Mill

Others in Attendance:

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

The meeting reconvened in open session at 5:03 p.m. and Governor Burgum invited the public to return to the meeting room.

HOUSING FINANCE AGENCY

Ms. Fine presented the Resolution Authorizing Carryforward Procedures for the Commission's consideration to carryforward the State's unused 2019 private activity bond allocation to the Housing Finance Agency.

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

**RESOLUTION AUTHORIZING CARRYFORWARD PROCEDURES
FOR THE NORTH DAKOTA HOUSING FINANCE AGENCY
Preliminary Statement**

The Industrial Commission of North Dakota (the "Commission") is authorized to issue North Dakota Housing Finance Agency Mortgage Revenue Bonds (the "Bonds") pursuant to Section 54-17-07.4 of the North Dakota Century Code; and

The Bonds are private activity bonds which are "qualified bonds" on which the interest income earned is not included as gross income for federal income tax purposes under Section 103 of the Internal Revenue Code for 1986, as amended (the "Code"), when an "allocation" is obtained and, if necessary, "carried forward" pursuant to Section 146 of the Code; and

Executive Order 1988-13 (the "Order") Section 2(c) requires the submission of certain documents by an issuer in order to receive a carryforward allocation.

BE IT RESOLVED by the Commission as follows:

1. The Commission affirms the Industrial Commission Executive Director's submission on behalf of the Commission in its capacity acting as the North Dakota Housing Finance Agency (the "Agency") of the application and additional information which are or may be required and requested pursuant to the Order to obtain a 2019 "carryforward allocation", as the term is described by the Code and the Order, in an amount not to exceed \$296,745,000.

2. The Commission affirms the Governor's actions on behalf of the Agency upon the advice of counsel to the Commission, as the authorized public official and representative of the Agency, in executing and submitting to the Internal Revenue Service the appropriate forms pursuant to and in compliance with all necessary (i) requirements of Section 146 of the Code, and (ii) requirements of the Order.

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

OIL & GAS RESEARCH PROGRAM

Ms. Fine presented a budget modification from the University of North Dakota Petroleum Engineering Department—Dr. Vamegh Rasouli—for the Commission's consideration regarding Contract G-045-089 – Support for Petroleum Engineering Research. This does not increase the total funding amount for the project but rather reallocates the funding between line items.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the budget related to Contract G-045-089 be amended as follows:

Total Personnel Costs	+32,224.35
Waivers, Scholarships, Fellowships	-34,495.18
Indirects	+ 2,270.83

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

ADMINISTRATIVE BUSINESS

Ms. Fine presented the North Dakota Investment Board's request to provide investment management services for the North Dakota Veterans' Cemetery Trust Fund for consideration.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the Industrial Commission Executive Director's recommendation and grant the Investment Board's request to enter into an agreement with the North Dakota State Treasurer to provide investment management services for the North Dakota Veterans' Cemetery Trust Fund. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Fine presented the January 21, 2020 non-confidential meeting minutes.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the January 21, 2020 non-confidential meeting minutes be approved. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

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

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary