

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on August 20, 2020 beginning at 1:00 p.m.  
Pioneer Room - State Capitol

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

Also Present: Some attendees are listed on the attendance sheet available in the Commission files  
This meeting was open through a call-in number so not all attendees are known  
Members of the Press

Governor Burgum called the Industrial Commission meeting to order at approximately 1:00 p.m. and the Commission took up Department of Mineral Resources (DMR) business.

**DEPARTMENT OF MINERAL RESOURCES (DMR)**

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

*Case 28530 – confiscation of production and/or injection related equipment, salable oil at certain (81) abandoned wells, certain (2) produced water underground gathering systems, and certain (8) treating plants located in Billings, Bottineau, Bowman, Burke, Golden Valley, McHenry, McKenzie, Mountrail, Renville, Ward, and Williams Counties:*

*Order 31050 – New Way Energy Services, LLC*

*Order 31051 – Alturas Energy, LLC*

*Order 31052 – Apollo Resources, LLC*

*Order 31053 – Bakken Western Services, LLC*

*Order 31054 – Berg Specialty Fluids-Holding, LLC*

*Order 31055 – Cobra Oil & Gas Corporation*

*Order 31056 – DES, LLC*

*Order 31057 – Eagle Operating, Inc.*

*Order 31058 – MBI Oil & Gas, LLC*

*Order 31059 – Newalta Environmental Services, Inc./Tervita Environmental Services, Inc.*

*Order 31060 – Paul Rankin, Inc*

*Order 31061 – Pride Energy, An Oklahoma General Partnership*

*Order 31062 – R360 Williston Basin, LLC*

*Order 31063 – Ranch Oil Company*

*Order 31064 – Samson Oil and Gas USA, Inc.*

*Order 31065 – Solutions Energy, LLC*

*Order 31066 – The 85 Disposal, Inc.*

*Order 31067 – White Rock Oil & Gas, LLC*

The first group of proposed orders includes six treating plants in which the operator has work in progress and has asked for more time. The proposed orders would grant an extension. If the work is not completed by October 1, 2020, the Director would have authority to confiscate.

There are ten proposed orders in which the operators requested, during previous testimony, that the Industrial Commission confiscate additional wells. The Commission was asked by the majority of the operators to waive the Commission's rights to civil action and bond confiscation. The proposed orders

don't do that. The proposed orders confiscate the wells and state the Commission's intent to use CARES Act funds first and follow that with Abandoned Well Plugging Site Restoration money but preserves the Commission's rights to confiscate bonds and also to take civil action if it is necessary. This set of orders would confiscate 75 oil and gas wells, 4 saltwater disposal wells, 1 EOR water injection well.

Proposed Order 31051 is slightly different in that the wells and treating plant have already been confiscated. However, the saltwater gathering system, which is located mostly on US Forest Service land, would now be confiscated. This includes making sure all the pipeline risers are removed, any contamination that occurred is removed, any pipeline that is shallower than three feet is removed, and the pipeline gets flushed and capped. When this work is completed the entire infrastructure, producing wells, produced water gathering system and the treating plant are all gone.

Proposed Order 31052 was drafted to respond to Apollo's legal arguments of why the Commission should not confiscate their plant. The plant is abandoned, and the site had a significant spill incident in 2016. (The insurance company for the plant did pay for the cleanup of the offsite contamination.) The plant and site is abandoned and has a \$175,000 cash bond, which will not cover the reclamation costs. DMR would use the bond, any funds received from the complaint that is before the Administrative Law Judge, and CARES funds. However, it is anticipated that there may be legal issues associated with this site. Mr. Helms reviewed the steps the Commission has taken too date to get this situation resolved—two attempts were made for Consent Agreements and are now waiting for a hearing in October.

In response to a question about employment associated with the CARES Act plugging and reclamation projects, Mr. Helms noted that employment has exceeded expectations. It had been estimated that 600 people would be employed using 20 rigs for the plugging. Currently, 700 are employed with 14 rigs. This may go up to 900 next week when the 6 other rigs are added. Originally, it was anticipated that 600 people would be employed on the reclamation part of the project. However, it is now anticipated that 800-900 people will be employed. The benefits are going to be much larger and spread over many small communities.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission approve the following orders with an effective date of August 20, 2020 in Case No. 28530:**

**Order 31050 (New Way Energy Services, LLC) authorizing the DMR Director to issue a Director's Order to confiscate the treating plant and related equipment and salable oil after October 1, 2020 if the treatment plant is not brought into compliance by October 1, 2020.**

**Order 31051 (Alturas Energy, LLC) authorizing the confiscation of the produced water gathering system. The Klandl 26-31X SWD and Klandl Reclaim Plant will be dismissed from the motion since they were previously confiscated by the Commission.**

**Order 31052 (Apollo Resources LLC) authorizing the confiscation of the treating plant.**

**Order 31053 (Bakken Western Services, LLC) authorizing the DMR Director to confiscate the Keene Thermal Desorption Treating Plant #1 and all related equipment and salable oil after October 1, 2020 if the plant is not brought into compliance by October 1, 2020.**

**Order 31054 (Berg Specialty Fluids-Holding, LLC) authorizing the DMR Director to confiscate the Fluidtech No. 1 Treatment Plant and all related equipment and salable oil after October 1, 2020 if reclamation has not been completed by October 1, 2020.**

**Order 31055 (Cobra Oil & Gas Corporation) authorizing the confiscation of 31 oil wells, 1 saltwater disposal well, and 1 water injection well, denying the request for a waiver of confiscation, forfeiture, bond suspension, or civil action remedies and finding that while the intent is to use CARES Act funds, it is not appropriate for the Commission to waive any available remedies.**

**Order 31056 (DES, LLC) authorizing the confiscation of two oil wells, and finding that while the intent is to use CARES Act funds, it is not appropriate for the Commission to waive any available remedies.**

**Order 31057 (Eagle Operating, Inc.) authorizing the confiscation of 14 oil wells and 2 saltwater disposal wells and finding that while the intent is to use CARES Act funds, it is not appropriate for the Commission to waive any available remedies.**

**Order 31058 (MBI Oil & Gas, LLC) authorizing the confiscation of 3 oil wells, denying the request for a waiver of confiscation, forfeiture, bond suspension, or civil action remedies and finding that while the intent is to use CARES Act funds, it is not appropriate for the Commission to waive any available remedies.**

**Order 31059 (Newalta Environmental Services, Inc/Tervita Environmental Services Inc.) authorizing the DMR Director to confiscate the New Town Fluid Treating Plant #1 and Alexander Treating Plant #1 and all related facilities and salable oil after October 1, 2020 if the plant is not brought into compliance.**

**Order 31060 (Paul Rankin, Inc) authorizing the confiscation of 2 oil wells, and finding that while the intent is to use CARES Act funds, it is not appropriate for the Commission to waive any available remedies.**

**Order 31061 (Pride Energy, An Oklahoma General Partnership) authorizing the confiscation of 6 oil wells, denying the request to waive confiscation of bonds and civil lawsuits, and finding that while the intent is to use CARES Act funds, it is not appropriate for the Commission to waive any available remedies.**

**Order 31062 (R360 Williston Basin, LLC) authorizing the issuance of a Director's Order to confiscate the Marx Waste Treating Plant #1 site and all related facilities and salable oil after October 1, 2020 if site reclamation has not been completed.**

**Order 31063 (Ranch Oil Company) authorizing the confiscation of 2 oil wells, denying the request to waive confiscation of bonds and civil lawsuits, and finding that while the intent is to use CARES Act funds, it is not appropriate for the Commission to waive any available remedies.**

**Order 31064 (Samson Oil and Gas USA, Inc.) authorizing the confiscation of 10 oil wells, denying the request to waive confiscation of bonds and civil lawsuits, and finding that while the intent is to use CARES Act funds, it is not appropriate for the Commission to waive any available remedies.**

**Order 31065 (Solutions Energy LLC) authorizing the confiscation of 1 oil well, and finding that while the intent is to use CARES Act funds, it is not appropriate for the Commission to waive any available remedies.**

**Order 31066 (The 85 Disposal, Inc.) authorizing the issuance of a Director's Order to confiscate the produced water underground gathering system and related facilities after October 1, 2020 if the system is not brought into compliance.**

**Order 31067 (White Rock Oil & Gas, LLC) authorizing the confiscation of 4 oil wells and 1 saltwater disposal well, denying the request to waive confiscation of bonds and civil lawsuits, and finding that while the intent is to use CARES Act funds, it is not appropriate for the Commission to waive any available remedies.**

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

The Commission members commented on the work that is being done and that it will have economic benefits to those that are employed, to the landowners and companies and will also benefit the environment. Mr. Helms commented on the new technology that has been developed by a Fargo company that will allow the filing of daily well reports on a Smartphone or tablet. This technology could be something that industry will want to use going forward.

In response to a question, Mr. Helms stated that the tracking/managing of all this work has significantly increased the workload for the staff. He indicated that staff is being shifted from other areas to assist where the plugging/reclamation work is being done.

In response to a question, Mr. Helms stated that North Dakota does not have in statute or rule a specific definition of an orphaned well although it is defined in three different ways in 38-08-04. If you read any one of those three categories and the well meets the test, it would be considered an orphaned well. The reason that there is an operator's name associated with these wells is that the named operator is the last operator that was involved in the well. That does not mean that that operator even exists today or that they have the funds or bonding in place to deal with the orphaned well. The connection is that operator is the last operator of record of the well.

Mr. Helms reported on a request from Scout Energy Management LLC to confiscate additional wells. The wells have been analyzed and it was determined that they do not qualify as orphaned wells. They either have produced too recently, are in active status, or have a single well bond in place.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that in response to the application from Scout Energy Management LLC the Industrial Commission has determined that it will not confiscate the 14 wells as requested and has determined that the wells do not qualify as orphan wells at this time. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

*Case 28516, Order 31036 – request to establish overlapping spacing units*

Mr. Helms provided information on the application and provided copies of the exhibit showing the location of the units being proposed. He noted that there are no topographic issues related to the proposal. This proposal would take five 1280-acre spacing units and turn them into two 3200-acre spacing units. He pointed out that the proposal leaves undeveloped acreage. In addition the operator believes that the water saturations in the Three Forks in the laydown spacing unit are too high to develop although Continental Resources has drilled in the north 1280-acre spacing unit the best well in any of the five spacing units in the Three Forks formation. There is a significant change in the Three Forks formation potential along these long spacing units. The applicant testified that as these wells cross that lay down well spacing unit, they are going to cause an uplift in its production. That uplift will not be shared by all the parties and there will be an impact on the other wells. It is obvious that this proposal doesn't prevent waste or protect correlative rights, and, in fact, it does the opposite. It leaves areas undeveloped; it stimulates a well that doesn't share with all the other parties; and it would reduce the productivity of wells in the other spacing units. It is the Oil and Gas Division staff recommendation that the Commission deny the application.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that effective August 20, 2020, the Industrial Commission approve Order No. 31036 issued in Case No. 28516 denying the application from Burlington Resources Oil & Gas Co. LP for the establishment of two overlapping 3200-acre spacing units described as Section 35, T.146N., R.96W. and Sections 2, 11, 14 and 23, T.145N., R.96W.; and Section 36, T.146N., R.96W. and Sections 1, 12, 13 and 24, T.145N., R.96W., Dunn County, ND, and authorization of sixteen horizontal wells to be drilled on each such**

**unit, finding that it does not prevent waste or protect correlative rights. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

*Case 28508, Order 30971 – request to establish overlapping spacing units*

This application proposed two section line wells that involve five square miles. The first path of the two section line wells would compete and interfere with up to 5 wells that cross its path. The first path would result in lost oil to currently producing wells. The second path would share oil production with owners that are not entitled to that production. While this proposal has the possibility to prevent waste, it would not protect correlative rights. Mr. Helms noted that there are alternatives that would work better, and the applicant was encouraged to come back with one of those options.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that effective August 20, 2020, the Industrial Commission approve Order No. 30971 issued in Case No. 28508 denying the application from EOG Resources, Inc. for the establishment of an overlapping 3200-acre spacing unit comprised of Sections 8, 17, 18, 19 and 20, T.150N., R.94W., authorization of drilling, completing and producing of multiple wells, finding that it does not protect correlative rights. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Helms raised a concern regarding Order No. 29398 involving oil conditioning. When PHMSA issued a ruling regarding the recent challenge to Washington State’s oil conditioning standard, it was noted that North Dakota also has a State standard that differs from the federal level. North Dakota’s adopted standard could also be subject to preemptive challenge. Mr. Helms indicated that because of this, the Commission may want to consider a modification. Mr. Helms presented the following three options for the Commission’s consideration:

1. Amend Order 29398 with minimum changes 13.7 -> 14.7 VPCR4, leave as oil conditioning, remove transportation references from Policy/Guidance, remove transportation and safety references from FAQ.
2. Amend Order 29398 with major changes 13.7 -> 14.7 VPCR4, change from oil conditioning standard to measurement standard, remove FAQ from website, and amend Policy/Guidance to require compliance under NDAC 43-02-03-48 MEASUREMENT OF OIL with the most current API standard for stable crude oil and most current ASTM testing standards through 1) a transporter implementing a tariff specification as stringent as the API standard—such tariff to be stated on the Authorization To Purchase And Transport Oil From Lease (Form 8), or 2) a VPCR4 test performed when deemed necessary by the Director.
3. Rescind Order No. 29398 and order operators to comply under NDAC 43-02-03-48 MEASUREMENT OF OIL with the most current API standard for stable crude oil and most current ASTM testing standards through 1) a transporter implementing a tariff specification as stringent as the API standard—such tariff to be stated on the Authorization To Purchase And Transport Oil From Lease (Form 8), or 2) a VPCR4 test performed when deemed necessary by the Director.

Mr. Helms recommended the third option. American Petroleum Institute (API) has an industry standard of 14.7, which is less stringent than North Dakota’s standard of 13.7.

There was discussion about what each of the options would do:

- Option 1 would adopt that industry standard and testing would still need to be done twice a year.
- Option 2 would be an amendment to the oil conditioning order and eliminate the oil conditioning guidance requirement of vapor pressure testing two times/year and would point to a measurement

standard when a meter is being tested and would eliminate requirements about treater temperature and pressure. It relies on pipeline and rail transportation tariffs and meter tests that include a vapor pressure test.

- Option 3 would rescind Order No. 29398 and order operators to comply with NDAC 43-02-03-48 the Measurement of Oil Rule at the API standard of 14.7. – API standards must be followed, and testing would be done when the meter is approved.

Discussion was held regarding potential modifications and associated benefits. Mr. Helms stated that under the current order staff would need to look at heater treaters for temperature and pressure beginning October 1<sup>st</sup>. For the time period of October 1 to April 1 industry would need to run about 2,000 vapor pressure tests that cost between \$150 to \$200 each and, for those operators who utilize the technique of running heater treater tests to meet the vapor pressure requirement, it is our best estimate that there is an additional cost of \$.10 a barrel. There would be a cost burden and a manpower burden that kicks in October 1.

Mr. Helms noted that no matter what action the Commission would take, there are still tariffs in place on pipelines and rail cars. He stated that PHMSA through Sandia National Labs gathered an enormous amount of science that demonstrated that the API standard for stable crude oil is appropriate. PHMSA did not need to impose a national standard. There has been a lot of science developed since 2015. In addition, operators are subject to pipeline and rail transportation tariffs which impose their own vapor pressure standard. In order to properly measure the oil, it must meet API standards. The great thing about API standards is that it is a national standard, so all crude oil nationwide is going to be treated the same.

Concern was expressed that while North Dakota's standard hasn't been challenged, North Dakota did ask PHMSA for a ruling regarding the State of Washington standard. It may be viewed as an integrity issue since North Dakota might be in violation for the same thing. It was also noted that North Dakota's rule hasn't been challenged in the five years it has been in place.

In response to a question, Mr. Helms explained that under the current guidance there are roughly 2,000 additional tests that are run; the staff will witness some of those but for the most part the tests are run and paid for by industry and then the operator has to submit a sundry notice to the Oil and Gas Division staff about the test that they ran. If they failed to run one of those tests during that 90-day period, then they are required to turn their treater temperatures up for the following 90 days and then the Oil and Gas Division staff makes special inspections to make sure that has been done.

It was noted that industry is struggling, and this may be adding unnecessary hardship. It was the consensus of the Commission that Mr. Helms should come back in a future meeting with additional information regarding the costs associated with testing. Moving forward with Option 1 right now will allow North Dakota to be aligned with API standards and reduce regulatory burden. The Commission would like to understand compliance costs before moving further forward with any changes.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that effective August 20, 2020, the Industrial Commission approve Order No. 31092 issued in Case No. 23084 regarding oil conditioning standards for the Bakken, Bakken/Three Forks, Three Forks, and Sanish Pool field rules and amend Order No. 29398 with minimum changes 13.7 -> 14.7 VPCR4, leave as oil conditioning, remove transportation references from Policy/Guidance, remove transportation and safety references from FAQ and further direct that Mr. Helms provide further information at a future meeting (either through a potential hearing or other form of analysis) regarding the costs to the State and to industry of complying with the 14.7 VPCR4 oil conditioning requirements versus compliance with NDAC 43-02-03-48. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Ed Murphy, State Geologist, presented the Geological Survey Quarterly Report. (A copy of the report is available in the Commission files.) He noted that there was 1,168 ft of core studied. Only DMR geologists and EERC staff were in the library due to COVID-19. He reported on the cuttings that had been received in 2019 compared to the prior year.

The Prairie Formation has the largest potash resource in the world. North Dakota has the largest single source of potash in the United States. Mr. Murphy provided a map of the thickness as that impacts the profitability of developing the resource. Currently, the price of potash is too low to make it economical to develop.

In response to a question, Mr. Murphy stated that this information was initially developed in response to industry interest and has been further updated to be prepared for industry interested in locating here. The areas are quite deep, ranging from 5,500 to 12,000 feet. Solution mining would need to be used. It was also studied as a gas storage source.

The paleontology staff started offering webinars when the schools closed due to the pandemic. Because the Heritage Center shut down, the paleontologists also needed to work from home. As part of the lecture series they came up with 20 guest speakers from around the world. Those live lectures will be available on the web for future use. As of today, there had been over 3,300 views of the paleo chat lectures on YouTube. The staff identified a need and addressed it.

Included in the report is a listing of the publications and presentations that were made during the second quarter.

Mr. Dan Gaustad, Special Assistant Attorney General, provided a review of the Supreme Court Case No. 20190203/Case No. 09-2018-cv-00089/Sorum, et al vs. State of North Dakota, et al decision.

- The opinion was issued at the end of July. (A copy of the opinion is available in the Commission files.)
- There have been two modifications in the past two weeks – one grammatical and one correction of a cite.
- The plaintiffs filed a petition for rehearing on August 12. The Commission is not allowed to provide a response unless requested by the Court. Currently, the State is waiting to hear more from the Court on that aspect.
- The Judgement was entered yesterday. Attorneys are currently reviewing the Judgement, especially the allocation of costs.

There was one section of the opinion in which we weren't successful. The State motioned early on for a dismissal based on the failure to join necessary parties and we were denied. The Supreme Court agreed with the District Court on that procedural motion. Overall, the Supreme Court opinion was a successful opinion finding that the plaintiffs did not meet their burden to demonstrate that the law was facially unconstitutional under any of the clauses that were presented. The Supreme Court affirmed the constitutionality of the law.

There were two concurring opinions from Justice Carruthers and Chief Justice Jensen, in which they disagreed with a citation to a California case regarding moral obligation.

Justice Tufte, who wrote the opinion on behalf of the Supreme Court, stated in Paragraph 38

“We hold that where the State has a legal obligation that becomes unenforceable by the passage of a statute of limitations, the Legislative Assembly may waive or extend the limitation period to revive a

previously valid claim against the State without making a prohibited ‘donation’ within the meaning of the gift clause.”

Mr. Gaustad reviewed the other provisions of the Supreme Court Opinion and stated that overall, it was a favorable ruling for the State.

In response to a question regarding the likelihood of the Supreme Court taking up a rehearing, Mr. Gaustad indicated that, based on his experience, it is unlikely, and it would be difficult to overturn a 5 to 0 ruling. While the Supreme Court usually acts quickly, there is not a timeline.

The Judgement awarded costs to the plaintiffs under Rule 39. Costs are specified under the rule as preparation of a transcript, bond, and filing fee. Normally the fees are paid by the losing party. That part of the Judgement is currently being reviewed.

Mr. Gaustad also noted the work done by Mark Hanson and Matthew Sagsveen on this case. The Commission expressed appreciation to Mr. Gaustad and his staff for their hard work in this matter.

### **OIL & GAS RESEARCH PROGRAM (OGRP)**

Ms. Karlene Fine, Industrial Commission Executive Director, provided the OGRP financial report. Typically, by this time all the funds appropriated have been received. An appropriation was provided of 2% of the oil and gas gross production tax and oil extraction tax revenues up to \$16 million. As of June 30, approximately \$12.3 million has been received. It is anticipated that all the funds will be received by the end of the year. There is currently approximately \$1.4 million available. Of the funds available, \$738,700 was budgeted for education and \$664,715 was budgeted for research. A reallocation is recommended for consideration today.

Mr. Brent Brannan, OGRP Director, presented the Oil and Gas Research Council recommendation for the following Grant Round 52 application for consideration.

*G-052-03 - North Dakota Petroleum Foundation Outreach and Education Program; Submitted by North Dakota Petroleum Foundation; Recommended funding: \$1,012,500; Total Project Cost: \$2,025,000; Project Duration: 26 months.*

The purpose of the project is to administer and continue the North Dakota Petroleum Foundation’s education and outreach programs, formerly branded Energy of North Dakota, through public outreach, education, messaging and informational opportunities. There will be continued development of online materials and messages that are smartly scalable, relatable to the millennial audience and able to be deployed via multiple channels. The mission is to educate the public about the North Dakota oil and gas industry and provide outreach in communities around the state to build relationships and develop understanding between the industry and North Dakota citizens.

**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 “North Dakota Petroleum Foundation Outreach and Education Program” and authorizes the Industrial Commission Executive Director and Secretary to execute a contract with the North Dakota Petroleum Foundation in an amount not to exceed \$1,012,500 in funding (education) noting that it is a reallocation of \$273,800 from the research priority to the education priority.**



It was noted that people still do not understand how important oil production is to the State and the applicant was encouraged to convey this message about the impact of tax revenues through the project.

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

Ms. Fine presented the Oil and Gas Research Council's recommendation for a budget modification for the following award.

*Contract G-041-81: "Functional Nanoparticle-Augmented Surfactant Fluid for Enhanced Oil Recovery in Williston Basin" – Submitted by Department of Petroleum Engineering, Department of Chemistry, Institute of Energy Studies, University of North Dakota*

The Department of Petroleum Engineering, Department of Chemistry, Institute of Energy Studies, University of North Dakota has requested a budget modification to the Oil and Gas Research Program project "Functional Nanoparticle-Augmented Surfactant Fluid for Enhanced Oil Recovery in Williston Basin." The Principal Investigators requested additional time to complete the work that is being done by UND faculty and graduate students. This is a budget modification and no additional funds are being requested.

**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 grant the request from the Department of Petroleum Engineering, Department of Chemistry, Institute of Energy Studies, University of North Dakota and authorizes the Industrial Commission Executive Director/Secretary to amend Contract No. G-041-81 "Functional Nanoparticle-Augmented Surfactant Fluid for Enhanced Oil Recovery in Williston Basin" as follows:**

Increase Personnel Expense	+17,219.92
Decrease Operating Expense	- 14,212.62
Decrease Equipment	<u>- 7,000.00</u>
Returned Commitment	3,992.70

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

#### **LIGNITE RESEARCH, DEVELOPMENT, & MARKETING PROGRAM**

Ms. Fine provided the financial report. A total of \$10 million has been appropriated from oil revenues and it is anticipated that the full amount will be received. However, it is coming in at a slower rate than expected. There is currently approximately \$12.9 million available.

Mr. Jason Bohrer and Mr. Mike Holmes, Lignite Research Council, presented the Lignite Research Council recommendations on special Grant Round 93 applications as follows.

*LRC-XCIII (93) A – Project Tundra FEED Amendment; Submitted by Minnkota Power Cooperative; Recommended funding of an additional \$5,000,000 bringing total NDIC commitment to the project at \$20,000,000; Total Project Costs: \$46,006,695; Project Duration: 13 months*

The objective of the ongoing work in Project Tundra is to complete a front-end engineering design (FEED) study for a commercial carbon capture system retrofitted onto a power plant fueled by North Dakota lignite.

This proposed amendment would increase the scope related to a near-term focus on CO2 storage adjacent to the plant. At this time, market conditions in the oil fields have changed and Minnkota – the operator of the Young Station – would expand on the option of geologic storage near the plant and Center Mine. While CO2 would be stored in the short term near the plant, the long-range plan is still focused on enhanced oil recovery in North Dakota’s oil fields. The goal of Project Tundra remains to implement carbon capture, utilization, and storage (CCUS) in North Dakota, preserving the use of lignite, revitalizing legacy oil fields and creating a new CO2 EOR industry.

Mr. Holmes noted that in the long term the possibility of EOR is still being investigated. However, in the near term the project will focus on nearby geologic storage.

DOE will be increasing the match and Minnkota’s match will be decreasing. However, they have invested \$3.5 million of funds, with approval to spend up to \$7 million on items associated with project outside of the scope of work.

Discussion was held about the importance of a reliable baseload, referencing brownouts in California as an example. A question was raised regarding where Tundra stands in terms of size and importance compared to other CO2 projects. Mr. Holmes indicated that this will be the largest CO2 plant. Petra Nova has shut down temporarily due to low oil prices. Their economic model was set up solely as EOR. This project is set up for the 45Q tax credit. Baseload is important and carbon management is critical. However, messaging about the benefits and value is equally important.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenhjem that the Industrial Commission accepts the recommendation of the Lignite Research Council to fund the amendment request to the Project Tundra FEED contract [Contract FY-19-LXXXVIII(88)-220] and authorizes the Industrial Commission Executive Director/Secretary to execute an amendment with Minnkota Power Cooperative to 1) provide an additional \$5,000,000 which will increase the total Industrial Commission Lignite Research Program commitment to \$20,000,000, 2) revise the match contributions to increase the total project costs to \$46,006,695 and 3) include the following contingencies:**

- **Technical Advisor participates in project review meetings.**
- **Technical Advisor reviews the project management plan with the project manager, including the revised budget.**

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

*LRC-XCIII (93) B – Naphtha and Tar Oil Overhead Refining Project; Submitted by Dakota Gasification Company; Recommended funding: \$142,500; Total Project Costs: \$285,000; Project Duration: 4 months.*

The project proposed by Dakota Gasification Company (DGC) focuses on an engineering study to upgrade and increase the value of its naphtha and tar oils. The proposed project would fund engineering and design activities to explore the feasibility of constructing a hydrotreater at the Synfuels Plant in order to further refine the naphtha and tar oil overheads into a stream suitable for gasoline blendstock. The Synfuels Plant was originally constructed in the early 1980s to turn lignite into synthetic natural gas. Since that time, many products have been added for commercial sale, such as fertilizers, carbon dioxide and several other byproducts. This project would seek to increase the product line at DGC and would provide an additional option for any future lignite gasification applications.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Lignite Research Council to fund the grant application “Naphtha and Tar Oil Overhead Refining Project” and authorizes the Industrial Commission Executive Director/Secretary to execute an agreement with Dakota Gasification Company to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$142,500 with the following contingencies:**

- **Technical Advisor participates in project review meetings**
- **Technical Advisor reviews the project management plan with the project manager including the staffing plan and the test plan.**

It was noted that they have a history of innovation and diversifying their revenue stream.

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

Mr. Holmes noted that the next grant round is October 1. DOE has an opportunity for a Rare Earth Element consortium and North Dakota is getting a team together. Discussion was held about progress towards the greenhouse project.

#### **HOUSING FINANCE AGENCY (HFA)**

Mr. David Flohr, HFA Executive Director, presented the Second Quarter report through June 30, 2020. Homeownership has remained very strong throughout the turmoil of recent months. Reservations have been strong all year, slightly ahead of projections.

The ND Roots program lowest interest level is 3.2%, which is slightly higher than the lowest interest level of the FirstHome program. This is to hedge interest rate risk. The higher interest rate is still aligned with the current industry average of approximately 3.125.

There have been 419 borrowers inquire about loan forbearance. HFA is obligated to provide forbearance in accordance with federal guidance. Currently, 211 are in active forbearance which represents 2.16% of HFA's portfolio and 79% of the portfolio is insured by FHA.

HFA provides three options to make up missed payments: pay the full amount from missed payments, set up a payment schedule by increasing monthly payments, or extend the repayment schedule with a second lien on the property.

This plan was provided to Moody's and accepted based on the strength of the fund balance. It was determined that the worst-case scenario would be if all 10,000 borrowers couldn't pay. This would cost \$11 million a month and could be maintained for a period of time. However, that did not happen. Mr. Flohr indicated that bond issues have not been affected by the forbearance.

A total of \$39,401 was committed to 11 households for the Rehab Accessibility Program. Eight projects have been completed totaling \$27,501. Of the eight projects completed, 75% of the funds were used for bathroom accessibility upgrades with the remaining funds used for mobility such as ramps and stair lift. The average income for households assisted was \$24,812.

Helping Hand funds were distributed to eight Community Action Agencies, Tribal entities, and other nonprofits to use for their single-family rehabilitation programs. A total of 132 homes received rehab repairs with total project costs equaling \$396,265. Approximately, 58% of the dollars expended went towards exterior repairs such as roofing. The Opening Doors Landlord Risk Mitigation Fund is currently covering

11 individuals. Since 2017, 21 individuals have been covered by the program, five finished their lease or terminated agreement without a claim and five were evicted with claims paid. Nearly all covered households had a criminal conviction and self-identified as having an addiction.

HFA recently closed on a Rural Housing Development loan for \$174,450 for the redevelopment of a city block in Oakes, ND. This project will include 6 lots for residential housing development. Century Cottages a 34-unit senior complex in Bismarck will complete construction by the end of September.

Earlier this year, HFA agreed to take over the administration of the North Dakota Homeless Continuum of Care at the request of the North Dakota Homeless Coalition. This program is funded by HUD. Mr. Flohr noted that the transition is going well.

### **BANK OF NORTH DAKOTA (BND)**

Mr. Eric Hardmeyer and Mr. Tim Porter presented the proposed 2021-2023 BND Biennium Budget. Some of the items include: a \$250,000 increase to operation, a \$2 million increase to Ag Pace and Beginning Farmer. It was noted that salaries and benefits will decrease by \$1.59 million as 16 employees that will transfer to ITD as a result of IT consolidation. Data processing will increase by \$4.7 million partly because of IT consolidation, but also because of software projects that will increase maintenance projects. To help meet the 5% budget reduction, the contingency budget was cut by \$2 million.

Mr. Hardmeyer noted that BND is still projecting profits of \$280 million. The Bank is being asked to forecast expenses 2 years out and does need a contingency. In the alternate package, the proposed contingency line item has been moved up to \$3 million. BND will submit the proposed budget to OMB within the next week.

Mr. Todd Steinwand presented proposed amendments to the PACE program for consideration noting that PACE programs require the community to make a contribution. Communities have asked that TIF, PILOT, and/or Renaissance Zone programs be considered as the contribution. This amendment would allow those programs to be used as contribution and defines how it would be calculated.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Bank of North Dakota Advisory Board and approve the following amendments to the Bank of North Dakota PACE Program policy:**

#### **Community's Percentage Funding –**

The local community will contribute its participation percentage of the interest rate reduction funding based on the Community Percentage Factor. The funds for the community's portion may come from a local development corporation, contributions, community funds, future dedicated tax programs or other community sources. The community's contribution of direct cash, loans, equity, investments, land, property or infrastructure may count towards the community's funding of its portion of the buydown.

**A Tax Increment Financing District (TIF), Payment in Lieu of Taxes (PILOT) or Renaissance Zone may be used to facilitate the in-kind community contribution with verification the community is foregoing future tax revenue. In this instance, the eligible community in-kind contribution is the amount of property taxes waived for the time period approved by the governing body. To calculate the amount of the eligible in-kind contribution:**

- 1. Establish the difference between the current taxable value and taxable value of the property after improvements.**
- 2. Multiply the difference by the current taxable rate by the number of years of benefit to determine amount of property taxes waived by the City. This is the eligible community in-kind contribution.**

**Prior to funding the loan, the community shall provide documentation to BND that outlines how the eligible amount of the community's in-kind contribution will be fulfilled for the term of the buydown period.**

The community's portion cannot come from a loan, grant or gift from the borrower or any party, other than the community, which would receive a direct or indirect financial benefit because of a direct or indirect financial relationship with the borrower. In addition, the local percentage cannot contain a contribution from the local lender greater than the local lender would normally contribute to the community's economic development efforts.

All parties to this program will be required to execute a ~~funding agreement~~ documentation that stipulates compliance with the program and sources of funding.

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

Mr. Hardmeyer provided a Covid-19 program update.

- Personnel continue to work remotely and productivity is good. Bismarck-Mandan public schools are starting in a hybrid model and this will help provide certainty for staff with school aged children.
- The Covid Pace Recovery Program has 122 loans for \$103.8 million using ~\$14 million of buydown.
- The Small Employer Loan Fund (SELF) has 656 loans for \$22.2 million.
- The Ethanol Recovery Program currently has 3 loans for \$16.3 million. It is anticipated that there will be a few more applications in that program.
- The Farm Disaster Relief has 281 loans for \$137.2 million. Activity is starting to decline.

The Emergency Commission asked for more detail on the CPR2 program and work is underway. The concept continues to be providing interest buy down on existing debt for those harmed most severely by the pandemic. There is a significant need for this type of program, but legislators are uncertain of what other needs there may be for the CARES Act funding.

Discussion was held regarding the livestock industry and a need to build it out by extending herds and increasing processing beef/poultry facilities. An increase in Ag PACE funding is being considered. After Labor Day, the needs will be clearer. The Cost Share program approved by the Emergency Commission only covered the purchasing of some types of equipment and didn't address expansion.

Mr. Hardmeyer presented the Bank of North Dakota Advisory Board June 2, 12, and 18, 2020 nonconfidential meetings minutes.

**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 remain in executive session following Bank of North Dakota confidential business to discuss commercial information including the North Dakota Mill's marketing strategies and sales strategies and upon conclusion of the North Dakota Mill executive session the Industrial Commission remain in executive session under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2 for the purpose of attorney consultation on Department of Mineral Resources business. The purpose of this executive session will be to consult with the Commission's attorney(s) regarding current adversarial proceedings in:**

- **Standing Rock Sioux Tribe, et. al. vs U.S. Army Corps of Engineers – DAPL**

- **Northwest Landowners Association vs. State of North Dakota, et al.**

**and upon conclusion of the DMR executive session the Industrial Commission remain in executive session for the purpose of reviewing confidentiality requests under the authority of North Dakota Century Code 54-63-02 and 44-04-19.2 (Renewable Energy Program). On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

Governor Burgum noted that the Commission was meeting in executive session to consult with Bank of North Dakota management, North Dakota Mill management, DMR staff, Pipeline Authority Director, the Commission's attorney(s) regarding the current adversarial proceedings listed on the agenda and to consider confidentiality requests.

Only the Commission members and their staff were in all the executive sessions. BND staff was in the Bank session, Mill management in the Mill session and DMR staff and the Pipeline Authority Director, and counsel with the Attorney General staff were in the DMR session.

The Commission first met in executive session pursuant to N.D.C.C. 6-09-35 regarding those items listed on the agenda under Bank of North Dakota confidential business.

Governor Burgum reminded the Commission members and those present in the executive sessions that the discussion during these executive sessions must be limited to those items listed on the agenda which was anticipated to last 90 minutes. Formal action by the Commission regarding the confidential items listed on the agenda occurred after reconvening in open session. Results of those actions were available by contacting the Industrial Commission Executive Director/Secretary following adjournment of the meeting.

The Commission first met in executive session pursuant to N.D.C.C. 6-09-35 regarding the following.

- Consideration of a loan application
- Presentation of Approved CPR Loans Report
- Presentation of Concentration of Credits Report (June 30, 2020)
- Problem Loans
- Presentation of Bank of North Dakota Advisory Board June 2 and 18, 2020 confidential meetings minutes.
- Other Bank of North Dakota confidential (as defined under N.D.C.C. 6-09-35) business

Commission members, their staff, and BND staff are asked to join the executive session at this time as per your invitation to the Teams meeting and the public was asked to leave the room.

The BND executive session began at 3:24 p.m.

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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 (Phone)  
Kirby Evanger            Bank of North Dakota (Phone)

Todd Steinwand            Bank of North Dakota (Phone)

**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

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The BND executive session ended at 4:02 p.m. The Mill executive session began at 4:03 p.m.

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STATE MILL 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  
John Schneider         Department of Agriculture  
Vance Taylor            State Mill (Phone)  
Cathy Dub                State Mill (Phone)  
Russ Bischof             State Mill (Phone)  
Chris Lemoine            State Mill (Phone)  
Brent Massmann         State Mill (Phone)  
Peder Skjoiten          State Mill (Phone)  
Bob Sombke              State Mill (Phone)  
Karlene Fine             Industrial Commission Office  
Andrea Pfennig         Industrial Commission Office

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The State Mill executive session ended at 5:02 p.m. The DMR executive session began at 5:03 p.m.

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DMR EXECUTIVE SESSION

**Members Present:**

Governor Doug Burgum  
Attorney General Wayne Stenehjem  
Commissioner Doug Goehring

**DMR Personnel Present (Remotely):**

Lynn Helms  
Bruce Hicks

**Others in Attendance:**

Leslie Bakken Oliver    Governor's Office  
Reice Haase             Governor's Office  
John Schneider         Department of Agriculture

Matt Sagsveen	Attorney General's Office (phone)
David Phillips	Attorney General's Office (phone)
Justin Kringstad	Pipeline Authority (phone)
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

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The DMR executive session ended at 5:28 p.m. The Renewable Energy Program executive session began at 5:29 p.m.

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## RENEWABLE ENERGY PROGRAM 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
John Schneider	Department of Agriculture
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

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The Renewable Energy Program executive session ended at 5:31 p.m. and the Commission is reconvened in open session. It was noted that during the DMR executive session, guidance was provided to the Commission's counsel regarding the matters listed on the agenda. During the BND executive session, a motion was made to approve a loan. **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 approve the following North Dakota State Mill & Elevator Strategic Plan for FY 2021:**

**North Dakota State Mill & Elevator  
Strategic Plan FY2021**

**The mission of the North Dakota Mill & Elevator is to:**

- **Promote and provide support to North Dakota agriculture, commerce, and industry.**
- **Provide superior quality, consistency, and service to our customers.**
- **Grow the business and provide a profit to our owners – the citizens of North Dakota.**
- **Conduct our business with the highest integrity so that our employees, customers, suppliers, and owners are proud to be associated with the North Dakota Mill & Elevator.**

**Strategic Plan FY 2021:**

- **Key Objective 1: Promote and Support North Dakota Agriculture, Commerce, and Industry**
- **Key Objective 2: Identify and Respond to Emerging Issues in the Flour Milling Industry**
- **Key Objective 3: Maximize Profit Potential**
- **Key Objective 4: Grow our Customer Base**
- **Key Objective 5: Invest in and Protect our Employees**

**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 the Industrial Commission accept the recommendation of the Industrial Commission Deputy Executive Director and pursuant to section 54-63-02.2, grant the following confidentiality requests:**

- **University of North Dakota regarding their application, Development of a Reactive Adsorbent for CO2 Capture from Ambient Air,**
- **Digital Stream Energy regarding their application, Flare Gas Mitigation in the Williston Basin: Turbine Generation for Advanced Computing,**

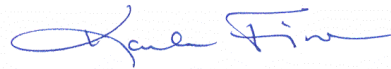
**and determine that the information described in both requests is a trade secret and confidential. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

Ms. Fine presented the July 7, 2020 Industrial Commission non-confidential minutes for consideration.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the July 7, 2020 Industrial Commission non-confidential 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 5:33 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary