

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on September 22, 2020 beginning at 1:00 p.m.  
Ft. Union 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 orders for the following cases:

*Case 28548, Order 31089 – application for overlapping spacing units*

Mr. Helms noted that this would respace an area along the Little Missouri River in Ft. Berthold where the topography is extremely rugged, and it is challenging to find surface locations to develop 1280 acres. Many of the proposed wells would be placed in areas that have already been drained by existing wells. The proposed spacing units would not include all the areas currently undeveloped. There were several concerns with the proposal but, ultimately, it doesn't protect correlative rights.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that effective September 22, 2020, the Industrial Commission approve Order No. 31089 issued in Case No. 28548 denying the application from XTO to amend field rules for the Heart Butte-Bakken Pool, Mountrail and Dunn Counties to create and establish three overlapping 1600-acre spacing units and one 3200-acre spacing unit, finding that the proposed spacing units do not protect correlative rights. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

*Case 28522, Order 31042 – temporary abandoned well status application*

The surface owner is asking that Temporary Abandoned well status (TA) be revoked and the well plugged and reclaimed. This is the second time the surface owner has made the request. The surface owner requested the TA status be revoked four years ago and the TA status was affirmed at that time. However, there has been no action since that time. It is a very poor injection well on the edge of a unit and the TA status that was initially approved in 1989 has expired. The landowner is anxious to farm the land again and eventually develop it into residential lots. The proposed lots are in the City of Dickinson's master plan.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that effective September 22, 2020, the Industrial Commission approve Order No. 31042 issued in Case No. 28522 revoking the temporarily abandoned status of the Scout Energy Management LLC #08 Dickinson-Heath-Sand Unit (File No. 4919) located in the NWSE of Section 22, T. 140N., R.96 W., Dickinson Field, Stark County, North Dakota pursuant to NDCC §38-08-04 which will result in requirements**

**to plug the well and reclaim the well site. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

*Consideration of revisions to Gas Capture Policy/Guidance Version 9-22-2020 (Order 24665)*

Previously, the Commission directed Mr. Helms to prepare and present a revised gas capture policy for the Commission's consideration. Mr. Helms presented the requested revisions. He provided a longitudinal overview of estimated natural gas production in North Dakota, in which production is expected to peak in 2038 at 5.3 billion cubic ft per day. This is would be double the amount produced in 2019.

The current policy requires a capture rate of 88% and increases to 91% on November 1, 2020. The 88% capture rate has been met and the 91% rate was met in July. This is likely due to the current depressed economic conditions. The industry has invested a significant amount to get to the current capture rates. Last year alone \$2.8 billion was invested and since focusing on gas capture, approximately \$16 billion has been invested. However, to maintain the desired capture rates, it is estimated that over the next 18 years an average of \$1 billion per year will need to be invested. Mr. Helms stated the proposed revisions will help encourage investment but will need to be re-evaluated every 2-3 years. Policies were relaxed in some areas and strengthened in other areas.

Mr. Helms reviewed the changes. The Jim Creek and Killdeer Fields were removed from the core area while the Sanish Field was added. Timelines were streamlined to avoid confusion. Batch drilling processes are allowed, which should lead to capacity buildout to capture stranded gas. The formula was simplified with the mathematical equation published so everyone does it the same. The length of time allowed for flaring was cut by 25%. Difficulty obtaining a Right of Way is addressed by allowing for a variance. However, the effort to get the Right of Way needs to be documented. Capacity curtailments now must be considered at a hearing. Transparency will be increased by requiring well numbers to be documented on a sundry form which will then be put in the well file.

Discussion was held regarding the proposed changes, noting that the goal has been to reduce flaring, not curtail production. Mr. Helms stated that when the original policy was developed in 2014 it was restrictive but successful. When there were market complications, the policy was relaxed in order to attract investment. There has been a significant amount of dialogue with industry to develop the proposed revisions and gas capture plans are being shared between operators and the midstream. Other states' policies were reviewed as well. Mr. Helms stated he believes this is a good compromise that will push industry to invest without stopping drilling and completions. Currently natural gas is marketed at a net negative.

In response to a question, Mr. Helms indicated that the policy regarding firm capacity has been very successful. The new gas plant that Outrigger is building west of Williston can be attributed to firm capacity. It is likely too early to look at modifying it, but it should be revisited in the future. Mr. Helms indicated that this is a good step forward to encourage the allowance for excess capacity when building.

Attorney General Stenehjem noted that this is a North Dakota centric plan because we differ from other states. The end goal is to incentivize investment in infrastructure and the plan can continue to be revised accordingly. He thanked Mr. Helms and the staff at DMR for their efforts.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem to approve amendments to the November 20, 2018 Guidance Policy in relation to North Dakota Industrial Commission Order 24665 regarding Gas Capture and restate as follows:**

**North Dakota Industrial Commission Order 24665 Policy/Guidance Version 09-22-2020**  
**The following fields fall within the Core Area referenced in the North Dakota Industrial Commission Order 24665 Policy/Guidance Version 09-22-2020:**

Alger	Ellsworth	Pembroke
Alkali Creek	Elm Tree	Pershing
Antelope	Epping	Phelps Bay
Arnegard	Fancy Buttes	Pleasant Hill
Avoca	Four Bears	Poe
Bailey	Garden	Rattlesnake Point
Baker Banks	Grail	Reunion Bay
Bear Creek	Grinnell	Robinson Lake
Bear Den	Hawkeye	Sakakawea
Beaver Lodge	Haystack Butte	Sand Creek
Big Bend	Heart Butte	Sandrock
Big Gulch	Hofflund	Sanish
Blue Buttes	Johnson Corner	Siverston
Brooklyn	Juniper	South Fork
Bully	Keene	South Tobacco Garden
Camel Butte	Last Chance	Spotted Horn
Camp	Lone Butte	Spring Creek
Capa	Lost Bridge	Springbrook
Catwalk	Mandaree	Squaw Creek
Cedar Coulee	Manitou	Stanley
Charlson	McGregory Buttes	Stockyard Creek
Cherry Creek	Missouri Ridge	Stony Creek
Chimney Butte	Moccasin Creek	Timber Creek
Clarks Creek	North Fork	Tobacco Garden
Clear Creek	North Tobacco Garden	Todd
Corral Creek	Oakdale	Truax
Cow Creek	Parshall	Twin buttes
Crazy Man Creek	Patent Gate	Union Center
Croff		Van Hook
Dimmick Lake		West Capa
Dollar Joe		Westberg
Eagle Nest		Williston
Edge		Willow Creek
Elidah		Wolf Bay

**North Dakota Industrial Commission Order 24665 Policy/Guidance Version 09-22-2020**  
**Policy Goals:**

- 1) Increase the volume of captured gas and reduce the percentage of flared gas
- 2) Incentivize investment in gas capture infrastructure

**Action items:**

- 1) Require a sworn affidavit that operator has provided Gas Production Forecast data to midstream gas gathering companies and developed a Gas Capture Plan for increased density, temporary spacing, and proper spacing cases
- 2) Require Gas Capture Plans for all applications for a permit to drill filed by an operator who has failed to meet gas capture goals in any of the most recent three months
- 3) Semi-annual meetings with midstream gas gathering companies
- 4) Semi-annual Gas Capture Improvement Plan meetings with operators who have failed to meet gas capture goals three or more of the most recent six months
- 5) Annual review of gas capture goals, gas capture progress, and extenuating circumstances to be presented by Department of Mineral Resources each December
- 6) Track flaring on/off the Fort Berthold Indian Reservation
- 7) Report capture status versus goals
- 8) Support federal efforts to streamline right-of-way process
- 9) Support efforts to encourage investment in value-added projects

The initial horizontal well drilled in each spacing unit should be allowed to produce at its maximum efficient rate, regardless if the well is connected to a gas gathering system.

All infill horizontal wells, including overlapping spacing unit wells, completed in a Bakken, Bakken/Three Forks, Sanish, and/or Three Forks Pool are allowed to produce at a maximum efficient rate for 90 days.

An operator may submit a sundry notice and attachments to designate gas produced from up to five horizontal wells drilled in a spacing unit with no drilling activity in the previous five years or in a spacing unit outside the Bakken core area as stranded gas. Wells designated as producing stranded gas should be allowed to produce at maximum efficient rate and the operator should be allowed to remove the first twelve months of gas production from each stranded gas well from the total monthly volume calculation. Allowing such wells to produce at a maximum efficient rate will allow valuable information to be obtained in order to make decisions regarding future well and infrastructure requirements in the spacing unit.

Commission production records indicate the majority of gas flared in North Dakota is from wells already connected to a gas gathering system. Such wells should not be excluded from gas capture goals adopted by the Commission.

Well payout and economics should not be used to determine production restrictions.

Some flared gas contains components that if improperly combusted could cause air quality degradation and health issues.

On the Fort Berthold Indian Reservation, many Bakken Pools are also within the jurisdiction of the Mandan Hidatsa and Arikara (MHA) Nation and Bureau of Land Management (BLM). In some cases, companies must comply with MHA Nation, BLM, and Commission rules. The Commission should work with federal and tribal authorities to ensure that restrictions imposed herein minimize duplication, provide clarity, and protect the correlative rights of all owners in the respective jurisdictions.

The Commission establishes the following gas capture goals:

- 74% October 1, 2014 through December 31, 2014
- 77% January 1, 2015 through March 31, 2016
- 80% April 1, 2016 through October 31, 2016
- 85% November 1, 2016 through October 31, 2018
- 88% November 1, 2018 through October 31, 2020
- 91% beginning November 1, 2020

**The Commission recognizes that due to operational, maintenance, and safety challenges the maximum actual capture percentage will average 96% of nameplate capacity.**

**The gas capture percentage is calculated by dividing the total monthly volume of gas flared minus the total monthly volume of variances by the total monthly volume of associated gas produced, subtracting the result from one, and multiplying by one-hundred.**

**$(1 - ((\text{total monthly volume of gas flared} - \text{total monthly volume of variances}) / \text{total monthly volume of associated gas produced})) \times 100$**

**In order to allow operators the maximum flexibility to manage their drilling, operation, and gas capture plans within the gas capture goals established by the Commission, the Commission will evaluate compliance with the gas capture goals statewide, by county, by field, then by well for each operator.**

- 1) The operator is allowed a variance for the initial 14 days of flowback gas if properly documented on a sundry notice with attachments.**
- 2) The operator is allowed a variance for 31 days of initial production test gas (subsequent to the initial 14 days of flowback gas) if properly documented on a sundry notice with attachments.**
- 3) The operator is allowed a variance for gas volumes flared from wells already drilled and completed on the date a force majeure event occurs if the event is properly documented on a sundry notice with attachments from the gas gathering company.**
- 4) The operator is allowed a variance for gas volumes flared from wells already drilled and completed if temporary midstream down-time for system upgrades and/or maintenance is properly documented on a sundry notice with attachments.**
- 5) The operator is allowed a variance for gas volumes flared from wells already drilled and completed if properly documented on a sundry notice with attachments that such gas flaring was the result of newly completed wells being connected to the same gas infrastructure system.**
- 6) The operator is allowed a variance for gas volumes flared from wells already drilled and completed if the following circumstances are properly documented on a sundry notice with attachments:**
  - a. surface landowner right-of way delays in excess of 180 days, or**
  - b. tribal, or federal government right-of-way delays in excess of 365 days, or**
  - c. federal regulatory restrictions or delays.**
- 7) After notice and hearing the operator shall be allowed a variance for gas volumes flared from wells already drilled and completed if the following circumstances are properly documented:**
  - a. safety issues, or**
  - b. possible reservoir damage, or**
  - c. a gas gathering capacity curtailment documented as follows:**
    - the well is connected to a gas gathering system**
    - the operator has provided a gas production forecast to the midstream gas gathering company**
    - the operator or midstream gas gathering company provides the reason for the curtailment and proposed remedies and timelines**
    - the operator identifies alternate development opportunities and midstream gas gathering capacity**

- the operator or midstream gas gathering company provides an estimate of investments made and required to increase gas gathering capacity in the area.
- 8) The operator is allowed a variance for gas volumes placed into geologic storage or utilized in an enhanced oil recovery project if properly documented on a sundry notice with attachments.
  - 9) An operator is allowed to accumulate variance credits for LNG utilization, CNG utilization, and volumes of gas captured during the most recent twelve months in excess of the current gas capture goal if properly documented on a sundry notice with attachments.
    - a. The Commission may apply all or a portion of the credit to a month in which the operator cannot meet the current gas capture goal upon application by the operator.
    - b. Credits cannot be transferred to another operator.
    - c. Unused credits expire after twelve months.
  - 10) The Commission recognizes the following variances as surplus gas being utilized in a beneficial manner that may be considered as captured gas:
    - a. Equipping the well(s) with an electrical generator that consumes surplus gas
    - b. Equipping the well(s) with a system that intakes the surplus gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting the propane and heavier hydrocarbons.
    - c. Equipping the well(s) with other value-added processes as approved by the Director which reduce the volume or intensity of the flare by more than 60%.

If an operator is unable to attain the Commission's gas capture goals at maximum efficient rate, well(s) will be restricted to 200 barrels of oil per day if at least 60% of the monthly volume of associated gas produced from the well is captured, otherwise oil production from such wells shall not exceed 100 barrels of oil per day.

Flexibility in the form of temporary exemptions from production restrictions may be considered for other types of extenuating circumstances after notice and hearing if the effect of such flexibility is a significant net increase in gas capture within one year of the date such relief is granted.

**Penalty provisions:**

Production and flaring data is two months old when filed (Example: Jan 2014 data filed Mar 2014) and data is frequently amended.

Timely communication between operators and midstream companies as well as with the Commission is of the essence. Lack of compliance with the following requirements will be considered violations:

- 1) Failure to file an application for a hearing with the Commission within the month following the month in which the operator was unable to attain the Commission's gas capture goals and oil production exceeded production restrictions may result in a civil penalty of \$1,000 per month up to a maximum of \$12,500 per month beginning at \$1,000 the first month and doubling each additional month that the operator is in violation.

Failure to implement production restrictions within the month following the month in which the operator was notified by Commission staff that gas capture goals were not attained and oil production from listed well(s) is to be restricted will result in a verbal notice of violation. The Commission will issue a written notice of violation with a compliance deadline if an operator fails to implement production restrictions for a second month. A third month in violation of production restrictions may result in a civil penalty of up to \$12,500 per well for each day the well has been in violation.

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

Mr. Helms presented Order 31104 as an addendum to Order 29129 for consideration. This order relates to the delineation of the ordinary high-water mark (OHWM) of the US Army Corps of Engineers Survey Segments. The OHWM of the historical Missouri River was determined in September 2018. Since that time, follow up work has been done by North Dakota Trust Lands to update property boundaries and areas as a result of the OHWM determination. The Land Board sent a request on June 30, 2020 to the Commission to complete some additional work on the OHWM study. Mr. Helms introduced Mr. Jordan Shuck and Mr. Joel Toso, Wenck Engineering, to present on the additional work that was done.

Mr. Shuck noted that the eastern project boundary is defined by the northern border of the Fort Berthold Indian Reservation. Different datasets show this boundary at different locations. The boundary for the 2018 OHWM determination referenced information on the State of North Dakota GIS system base at the time. More current information shows the boundary approximately 400-feet farther south.

The western project boundary is defined by the southern line of Section 33 and 34, T153N, R102W. The 2018 determination ends the OHWM mark at the section line as required. The end point on the west bank is in an accretion zone (area where the river has deposited sediment). Surveyors currently determining property boundaries as a result of the 2018 OHWM determination require a point of zero accretion. To accommodate this, the OHWM line was extended upstream on the west bank so that a point of zero accretion may be determined. General Land Office (GLO) maps were used to identify areas of zero accretion in comparison with the OHWM.

Maps were provided that presented additional detail.

Governor Burgum clarified that this is the completion of the original intent of the survey. There is no movement or amending of the MHA boundary and nothing has physically moved or changed. There was a layer on the State GIS hub that was digitized incorrectly. Because of this, KLJ went back to the original 1905 and 1910 GLO surveys and discovered the error. BIA has created a new layer that matches with the GLO surveys. This is the line that has been used and it would just note the line that is being used.

Discussion was held regarding whether “extension” is the right terminology. Concern was expressed it may give the impression of going beyond what the legislature wanted the Commission to do. The consensus was that the word “complete” should be used instead.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that effective September 22, 2020, Order 31104 be approved providing an addendum to Order 29129 as follows:**

- 1) To complete the Wenck Study determination of the Ordinary High Water Mark for the US Army Corps of Engineers segment V as outlined in the 9/15/2020 Wenck Technical Memo and Figure 1 (East End Extension)**
- 2) To complete the Wenck Study determination of the Ordinary High Water Mark for the United States Army Corps of Engineers segment KK as outlined in the 9/15/2020 Wenck Technical Memo and Figures 2A and 2B (West End Extension).**

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

Mr. Helms reported on the Bakken Restart Plugging and Reclamation project. He noted the following activity: 237 wells confiscated, 154 wells with confiscation pending, and 58 wells put back in production or plugged by the operator. Over \$45 million has been committed with \$42.3 million contracted for plugging and \$2.6 million contracted for reclamation. Another \$8.6 million is estimated for reclamation activities out for bid. There have been 66 wells plugged at a cost of \$7.1 million with over 27,000 man-hours. Mr. Helms stated that he doesn't believe all of the reclamation work will be able to be completed before winter.

Mr. Helms estimated that an additional 1,000 people will be back to work doing reclamation in the coming week. The Medora Grazing Association has identified four wells that will be converted as livestock wells. Additionally, four private landowners have indicated interest in acquiring wells. There are 15 counties that will be impacted by the project.

Mr. Helms indicated that it is estimated that \$15 million of reclamation funds will be turned back as they will not be able to be utilized by December 31, 2020. DMR may ask for some of it to be repurposed.

Mr. Helms noted that the older wells cost more. Wells that were drilled 60-70 years ago didn't have enough requirements about casing depths, cement strength, etc.

Mr. Hicks presented the Oil and Gas Division Quarterly Report. Mr. Hicks noted that permits received are down ~60% and permits issued are down ~50% from a year ago. The rig count has dropped significantly. Producing wells have started to rebound. Prices did not do well in the second quarter.

DMR received three permit applications within Areas of Interest. Mr. Hicks noted that of the eight most recently received applications within an Area of Interest, seven were located near Lake Sakakawea. This trend is expected to continue.

Regarding complaints, Mr. Hicks noted that Administrative Law judge hearings have been scheduled in October for the Apollo case and December for the Blue Appaloosa case. Missouri Breaks signed a consent agreement, paid ~\$77,000 and the site will be reclaimed by November 1<sup>st</sup>. Two additional complaints were served for Filco, Inc. and Drawings, Inc. Orders were signed and the Filco wells were confiscated and CARES Act funds will be used. A determination will be made at the end of the year as to whether to try and obtain funds from the operator. Drawings has until October 1<sup>st</sup> to get their wells into compliance.

Mr. Helms noted that the deadline for objections regarding the USFS Final Oil and Gas EIS is in a few days and he did not recommend providing an objection. He has received feedback from industry indicating approval of the EIS. Earlier concerns have been adequately addressed.

Mr. Helms also provided an update on Supreme Court Case No. 20190203/Case No. 09-2018-cv-00089/Sorum, et al vs. State of North Dakota, et al., noting that the Supreme Court denied the plaintiff's motion for a rehearing. The only avenue for the plaintiff would be an appeal to the Federal Supreme Court.

### **PIPELINE AUTHORITY**

Mr. Justin Kringstad, Pipeline Authority Director, and Ms. Beth Kurz, Energy and Environmental Research Center (EERC), provided a report on the Assessment of Bakken Petroleum System Produced Gas Compositions study. Mr. Kringstad noted that nine years ago a study was completed on gas-oil ratios. The results of that study changed how gas production is forecasted. This is a similar study. The topic has not been widely studied, especially on a nonconventional field. The data came from industry partners. The purpose of this study was to assess how the chemical composition of natural gas liquids (NGLs) produced



from the Bakken and Three Forks Formations varies spatially across the play and temporally through the life of a typical well. Better understanding of the NGL content of produced gas and how NGL content varies spatially and over time across the play is essential to forecasting future NGL production. This information is fundamental for planning and optimization of gas pipelines and gas-processing facilities, as well as for evaluation of future petrochemical development opportunities in North Dakota.

The study found that gas initially produced from the more thermally mature areas of the core Bakken areas has a higher methane content than the less thermally mature areas (outskirts). In general, methane content increases and NGL content decreases in the first five years of well production. It is difficult to determine long term trends because they are based on a very limited data set. However, the trends from wells located in McKenzie and Williams Counties are similar and show a decrease in methane and an increase in gas wetness after about 11 years of production.

Conclusions of the study included the following:

*Short Term*

- Temporal changes in the measured gas composition from wells tend to follow the trend of increasing methane and decreasing NGL content, especially during the first five years of production.
- Observed changes in various gas components are typically in the range of 2 to 5 mol%.
- The simulation results support the short-term temporal trends seen in the measured data.

*Long Term*

- Both observed data and simulation scenarios suggest that after ~ten years of production the NGL content of produced gas may increase.
- The 20- and 30-year simulation scenarios suggest significant declines in methane content and increases in NGL content.
- The predicted changes are strongly influenced by production rate and reservoir pressure, with more aggressive production resulting in more significant changes in gas composition.

Mr. Kringstad indicated that the next steps would be to take the information and apply it to the forecasting model. It will need to be more complex to include the factors found in the study.

Governor Burgum thanked Mr. Kringstad and Ms. Kurz for their work on the study, as well as the industry partners for providing the data.

### **OIL AND GAS RESEARCH PROGRAM**

Ms. Karlene Fine, Industrial Commission Executive Director, presented a budget modification request of Contract G-041-082, Effects of Cropping Sequence, Ripping and Manure on Pipeline Reclamation in Western North Dakota, for consideration.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission grant the budget modification no increased cost request from the North Dakota State University and authorize the Industrial Commission Executive Director/Secretary to amend Contract No. G-041-82 “Effects of Cropping Sequence, Ripping and Manure on Pipeline Reclamation in Western North Dakota” as follows:**

<b>Increase Personnel Expense</b>	<b>+16,360.00</b>
<b>Increase Travel Expense</b>	<b>+ 7,000.00</b>
<b>Decrease Printing</b>	<b>- 1,000.00</b>
<b>Decrease Professional Fees &amp; Services</b>	<b>- 22,360.00</b>
	<b>0.00</b>

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

### **TRANSMISSION AUTHORITY**

Mr. John Weeda, Transmission Authority Director, presented the annual report. The report noted that the electric transmission system in North Dakota is operating well and serving the load reliably with the current generation. However, transmission congestion is increasing and in parallel with that the wholesale prices are more volatile. The events of 2020 resulted in demand destruction both in the Bakken area and the surrounding markets. The reduced size of the queues at MISO, MPC and SPP is evidence of the transmission issues that exist outside of ND as well. Many projects that received their allocated transmission interconnect cost were cancelled due to the high costs.

The Direct Current Transmission line from Coal Creek Station to Minnesota will be a good demonstration case as all or portions of that line capacity become available on a subscription basis. If renewable generation interests subscribe to the available capacity on the line as the future of the concept of subscription-based transmission, it will be a signal for financing of future transmission capacity. The uncertainty created by to potential closure of Coal Creek Station and the resulting uncertainty of the future of the DC transmission line associated with the plant has raised the stakes for long term planning of transmission capacity for North Dakota as a method of keeping the generation of both lignite based electricity and renewable generation robust. With much of the transmission requirements occurring outside of North Dakota, it is a good time to evaluate long term visions, ways to partner with others, and alternatives to reaching additional markets.

Mr. Weeda had the following conclusions:

- Transmission owners are addressing internal ND needs.
- Transmission to out-of-state markets is not keeping up with generation.
- Retaining use of the DC line from Coal Creek Station to Minnesota is extremely important in all scenarios.
- An aggressive long-term vision for transmission is needed.

Ms. Fine presented the financial report. (A copy of the report is available in the Commission files.)

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

Mr. David Flohr, HFA Executive Director, presented a resolution authorizing the issuance of multifamily revenue bonds for Boulevard Apartments in Bismarck for consideration. This project will provide 120 units. The planned closing date is October 15, 2020. Community Works ND is the developer. This is the former Ruth Meiers House and the timeline for completion is 26 months. Work will begin right after closing.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem to approve the following resolution.**

**RESOLUTION AUTHORIZING A BORROWING, AND REPAYMENT THEREOF, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$10,000,000; APPROVING A FUNDING LOAN AGREEMENT, A PROJECT LOAN AGREEMENT; AND OTHER RELATED DOCUMENTS; AUTHORIZING THE EXECUTION OF SUCH DOCUMENTS; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.**

**WHEREAS, the Industrial Commission of North Dakota (the "Commission") acting in its capacity as the North Dakota Housing Finance Agency (the "Agency"), is empowered by the provisions of the North Dakota Century Code Chapter 54-17 (the "Act") to provide financing, directly or indirectly, of construction,**

permanent and combined construction and permanent mortgage loans for the acquisition, construction, refurbishing, reconstruction, rehabilitation or improvement of multifamily residential housing in which at least twenty percent of the units are held for occupancy by persons or families of low and moderate income; and

WHEREAS, the Agency intends to borrow on a non-recourse limited obligation basis from PNC Bank, National Association (or such other financial institution as is approved by the Executive Director, the Director of Planning and Housing Development or the Chief Financial Officer of the Agency) (the “Lender”) an aggregate principal amount not to exceed \$10,000,000, the proceeds of which will be used to finance a mortgage loan for the acquisition, rehabilitation and equipping of the Boulevard Avenue Apartments, a 120-unit affordable housing development located in Bismarck, North Dakota (the “Project”); and

WHEREAS, the borrowing by the Agency will be pursuant to a Funding Loan Agreement among the Agency, the Lender and Wilmington Trust, National Association, as fiscal agent (the “Fiscal Agent”) (the “Funding Loan Agreement”), and the agreement to repay such borrowings shall be reflected in non-recourse revenue debt obligations (collectively, the “Obligations”) to be issued to the Lender pursuant thereto, which Funding Loan Agreement and Obligations will be in substantially the forms attached hereto as Attachment A, subject to the terms, conditions and limitations established herein and in the Funding Loan Agreement; and

WHEREAS, the proceeds of the borrowing will be used to finance a loan (the “Loan”) to CWND Bismarck LLLP, a North Dakota limited liability limited partnership, or a similar affiliate of Community Works North Dakota, a North Dakota nonprofit corporation, (the “Borrower”), pursuant to a Project Loan Agreement, by and among the Agency, the Borrower and the Lender (the “Project Loan Agreement”) in substantially the form attached hereto as Attachment B; and

WHEREAS, the interest on the Obligations is intended to qualify for a federal tax exemption under Section 142 of the Internal Revenue Code of 1986 (the “Code”), and to ensure that the Obligations maintains their tax exempt status, the Borrower will enter into a Regulatory Agreement and Declaration of Restrictive Covenants (the “Regulatory Agreement”), which will be in substantially the form attached hereto as Attachment C.

**NOW, THEREFORE, BE IT RESOLVED:**

**Section 1. Findings.** The Commission hereby finds and determines that:

- (a) the Project financed through the issuance of the Obligations constitutes “multifamily housing facility” within the meaning of Sections 54-17-07.2 and 54-17-07.3(3) of the Act; and
- (b) the Loan will provide the Borrower with financing for the acquisition, construction, refurbishing, reconstruction, rehabilitation or improvement of the Project; and
- (c) that the Project will be of public use and will provide a public benefit.

**Section 2. Approval of Funding Loan Agreement.** The Funding Loan Agreement is hereby approved in the form hereinabove described, and the Executive Director, the Director of Planning and Housing Development or the Chief Financial Officer of the Agency (each, including any individual authorized to act on his or her behalf, an “Authorized Officer”) is hereby authorized and directed to execute and deliver the Funding Loan Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Funding Loan Agreement, and any other Authorized Officer is hereby authorized and directed to attest thereto.

**Section 3. Authorization of Obligations.** The issuance, execution and delivery of the Obligations to the Lender is hereby authorized and approved. The final principal amount and terms of the Obligations shall be determined by any Authorized Officer, subject to the following conditions:

- (a) The Obligations shall not be general obligations of the Commission or the Agency but shall be limited obligations payable solely and only from Loan payments and any other moneys pledged under the Funding Loan Agreement as required by the Project Loan Agreement.
- (b) The Obligations shall: mature no later than 50 years from their date of issuance, each bear interest at a fixed rate no greater than 6.00%, be in an aggregate principal amount not to exceed \$10,000,000 and have the other terms and provisions (including provisions with respect to prepayment prior to maturity, if any) as described to the Commission and definitively set forth in the Funding Loan Agreement upon execution and delivery as aforesaid in Section 2 hereof.

(c) The Obligations shall be executed and delivered substantially in the respective forms set forth in the Funding Loan Agreement, with such additions, omissions and changes as are required or permitted by the Funding Loan Agreement.

(d) The Obligations shall be executed in the name of the Commission by the manual or facsimile signature of any of the members of the Commission, with the official seal of the Commission (or a facsimile thereof) impressed, imprinted or otherwise reproduced thereon, and attested by the manual or facsimile signature of any Authorized Officer, and their execution shall evidence their approval of the final terms thereof. Such Obligations shall not be valid or obligatory for any purpose until authenticated by the manual signature of an authorized officer of the Fiscal Agent.

**Section 4. Approval of Project Loan Agreement.** The Project Loan Agreement is hereby approved in the form hereinabove described, and any Authorized Officer is hereby authorized to execute and deliver the Project Loan Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Project Loan Agreement.

**Section 5. Approval of Regulatory Agreement.** The Regulatory Agreement is hereby approved in the form hereinabove described, and any Authorized Officer is hereby authorized to execute and deliver the Regulatory Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Regulatory Agreement.

**Section 6. Ratification of Prior Actions.** All action previously taken by the officers, members or staff of the Agency within the authority granted herein, with respect to the Funding Loan Agreement, the Project Loan Agreement, the Regulatory Agreement, the Obligations and a public hearing with respect to the issuance of the Obligations is hereby approved, confirmed and ratified.

**Section 7. Execution of Tax Documents.** Any Authorized Officer is hereby authorized to execute certifications as to the Agency's reasonable expectations regarding the amount and use of the proceeds of the Obligations, to file related forms with the Internal Revenue Service and to execute appropriate land use restriction agreements to comply with the Internal Revenue Code of 1986, as amended, particularly Sections 142 and 148 thereof.

**Section 8. Additional Actions Authorized.** Any Authorized Officer and any other officer, employee or agent of the Agency, acting alone or acting with others, are each hereby authorized and directed to execute and deliver any or all other documents which may be required under the terms of the Funding Loan Agreement or the Project Loan Agreement and to take such other action as may be required or appropriate for the performance of the duties imposed thereby or to carry out the purposes thereof.

**Section 9. Authorization of Authorized Officers.** Any Authorized Officer is hereby authorized to deliver an Agency Certificate at the time of issuance of the Obligations which cures ambiguities, defects or omissions herein, corrects or supplements any provision herein, lessens the obligations of the Agency hereunder, or adds to the rights or options of the Agency, all in furtherance of the purposes and Programs of the Agency.

**Section 10. Effective Date.** This Resolution shall become effective immediately.

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

Mr. Flohr presented the Strategic Plan for consideration. Employee chosen values have been integrated into the plan, including: Service, Teamwork, Integrity, and Compassion. The Strategic Plan was built on five core priorities: Homeownership, Multifamily Financing and Development, Compliance Monitoring, Collaboration, and Staff Development.

A question was raised regarding homelessness and the data available. Mr. Flohr indicated that as HFA has taken over Homeless Continuum of Care program, they are working on increasing partnerships with metropolitan areas and increasing participant reporting to improve the data.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the North Dakota Housing Finance Agency Strategic Plan 2020-2025 as follows.

***PRIORITY 1: HOMEOWNERSHIP***

NDHFA helps North Dakotans achieve successful homeownership with homebuyer education, down payment and closing cost assistance, and affordable mortgage loans. More than 40,000 North Dakota households have achieved their homeownership dreams with the Agency's support.

- **Goal 1: Create and support access to affordable single-family housing and expand housing choices for low- and moderate-income individuals and families.**
  - **Strategy 1: Build on the success of the homeownership programs by increasing staff to manage current loan volumes and expanding services for housing purchases and rehabilitation.**
  - **Strategy 2: Explore the development of the Loan Guarantee Pilot Program (LGP) to reduce mortgage insurance/guarantee costs for homebuyers. The LGP could also target special populations and property types that are underserved by the primary mortgage markets.**
  - **Strategy 3: Leverage the Federal Home Loan Bank warehouse line of credit. Continue to utilize Bank of North Dakota line of credit for financing.**
  - **Strategy 4: Expand use of the Federal Loan Bank's Mortgage Partnership Finance program with the goal of creating better loan pricing options under the ND Roots program and target special populations underserved by the primary mortgage markets.**
  - **Strategy 5: Strengthen relationships with current and new private sector lender partners and real estate agents through multifaceted training platforms providing continuing education of Agency programs.**
- **Goal 2: Enhance the client and partner experience of homebuying through technological updates that will improve program performance.**
  - **Strategy 1: Update the loan servicing system.**
  - **Strategy 2: Update website incorporating borrower feedback to provide online documents for borrowers to access, document upload service, and expand self-education information.**
  - **Strategy 3: Analyze methods of contacting and interacting with borrowers through text messaging, chat bots, and other forms of communications.**
- **Goal 3: Proactively pursue strategic partnerships to support investment in affordable housing across the state.**
  - **Strategy 1: In partnership with private-sector lenders, explore methods to encourage rehabilitation of existing one to four-unit single-family homes by targeting Opportunity Zones and/or community revitalization areas.**
  - **Strategy 2: Continue partnerships with Community Land Trusts to expand local capacity building by purchasing mortgages and financing. Improve efficiencies by analyzing underwriting, document requirements, and financing methods.**

***PRIORITY 2: MULTIFAMILY DEVELOPMENT AND FINANCING***

NDHFA is charged with addressing the state's changing housing needs, including a shortage of housing for the state's workforce and low- to moderate-income households, and providing technical assistance to North Dakota communities struggling to address their housing needs. The Division is committed to providing financing for affordable rental housing and preserving existing affordable rental housing stock by supporting property improvements and extensions of rental assistance.

- **Goal 1: Create and support access to affordable multifamily to expand housing choices for low- and moderate-income individuals and families.**
  - **Strategy 1: Preserve existing multifamily housing stock in urban and rural communities. Develop a priority list based on feasibility and need.**
  - **Strategy 2: Design federal and state funding allocation plans to support the production of new affordable housing units where the market deems needed while also prioritizing infill development.**
  - **Strategy 3: Stabilize the Housing Incentive Fund working with elected officials and community partners to establish a long-term financing mechanism.**

- Strategy 4: Support the unique needs of rural communities by reviewing allocation plans to assess accessibility for rural communities and determine if rural loan programmatic changes are necessary.
- Strategy 5: Assess the value and cost-effectiveness of integrating additional state and federal funding programs into the Agency's portfolio.
- Goal 2: Cultivate strong, multisector partnerships to increase access to affordable housing for vulnerable populations.
  - Strategy 1: Leverage partnerships with state agencies to unify housing and support services to stabilize vulnerable populations in rural and urban communities.
  - Strategy 2: Improve the Agency's multifamily affordable housing online database, empowering service providers and future tenants to make individual housing choices.
  - Strategy 3: Strengthen relationships with current and new partners through multifaceted training platforms providing continuing education of Agency programs and tools.
- Goal 3: Support community and economic development, ensuring feasibility and long-term success to address the needs of vulnerable populations.
  - Strategy 1: Partner with MainStreet Initiative and community leaders to identify needs and action plans for affordable housing solutions.
  - Strategy 2: Assess the value and effectiveness of agency funded grant programs and modify as needed based on utilization and feedback from communities and individuals.

***PRIORITY 3: COMPLIANCE MONITORING***

NDHFA provides regulatory oversight of privately-owned properties for thousands of individuals and families designed to provide modestly priced housing opportunities for low-income families, seniors, and individuals with disabilities. Working closely with federal agencies, NDHFA ensures that these rental housing options are safe, clean and accessible.

- Goal 1: Manage the multifamily portfolio for physical and financial conditions and fulfillment of regulatory guidelines.

Strategy 1: Early and ongoing communication with housing partners that have the ability to opt-out of federal housing programs discussing options to preserve budget authority for other applicable properties in the state.

Strategy 2: Expand internal staffing capacity to fulfill new IRS compliance monitoring regulations and educate partners of increased monitoring requirements.

Strategy 3: Streamline compliance monitoring requirements for federal and state programs as permissible by regulatory requirements.

- Goal 2: Create and improve training and technical assistance to strengthen multifamily housing monitoring and compliance practices while improving the customer and partner experience.
  - Strategy 1: Streamline compliance monitoring requirements for federal and state programs as permissible by regulatory requirements.
  - Strategy 2: Strengthen relationships with current and new partners through multifaceted training platforms providing continuing education of Agency programs and tools.
  - Strategy 3: Explore integrated property management software options.

***PRIORITY 4: COLLABORATION***

NDHFA leverages partnerships with local, state, federal and tribal entities, and the private and nonprofit sector to create and sustain affordable housing. Collaboration is essential to reach the public about services offered and to develop strategies for providing housing for the state's vulnerable populations.

- Goal 1: Improve marketing and outreach efforts to raise brand awareness of NDHFA to encourage public engagement in the creation and preservation of affordable housing.
  - Strategy 1: Collaborate with state agencies on housing initiatives and housing-related services to maximize state and federal resources and improve connectivity with non-government entities.
  - Strategy 2: Participate in community and economic development initiatives to better understand local housing needs and educate the public on Agency programs and tools.
  - Strategy 3: Explore non-traditional marketing and outreach opportunities.
- Goal 2: Take action on critical housing issues to address vulnerable population needs.

- **Strategy 1: Assume the role as the collaborative applicant for the federal Homelessness Continuum of Care Program to ensure federal funding stability for the North Dakota Coalition of Homeless People.**
- **Strategy 2: Work with communities on local initiatives and determine the success of such initiatives and measure scalability for other communities that want to replicate the programs.**
- **Strategy 3: Update the North Dakota Statewide Housing Needs Assessment after the 2020 Census data is available.**

***PRIORITY 5: STAFF DEVELOPMENT***

NDHFA's greatest resource are the people that come to work every day to administer our housing programs or provide the operational support to make the Agency run smoothly. Ensuring that employees understand the importance of their role in the housing system and to create a culture of inclusivity and constant personal and professional improvement is vital to the success of the Agency's mission.

- **Goal 1: Identify and provide training and development opportunities that are tailored to strengthen employee skills and encourage personal and professional growth.**
  - **Strategy 1: Encourage professional development utilizing state offered and external training opportunities.**
  - **Strategy 2: Optimize employee performance to deliver quality customer service across all business sectors.**
  - **Strategy 3: Update NDHFA classification system and develop internal progression pay scale steps for employees to grow and develop within our Agency.**
  - **Strategy 4: Create a formal onboarding process to integrate new employees into their position and division and reinforce the Agency's culture.**
- **Goal 2: Create a succession plan to develop a pool of trained employees to be able to fill key roles.**
  - **Strategy 1: Identify positions where upcoming retirement(s) could have the most significant impact to business operations.**
  - **Strategy 2: Implement a formal knowledge transfer process that encompasses policy and procedures documentation and cross-training.**
- **Goal 3: Create a culture of employee engagement.**
  - **Strategy 1: Leverage multiplatform communication channels to engage employees and consistently provide them with current information.**
  - **Strategy 2: Increase employee involvement in business operations.**
  - **Strategy 3: Continue to support the Employee Appreciation Committee to plan new and ongoing activities.**

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

**PUBLIC FINANCE AUHORITY (PFA)**

Ms. DeAnn Ament, PFA Executive Director, presented the following Clean Water loan application for consideration:

*City of Dickinson - \$1,500,000*

This project will install approximately 7,000 linear feet of 16" reclaimed water main and associated appurtenances. The requested term for the Clean Water State Revolving Fund (CWSRF) loan is 30 years. The City of Dickinson will issue revenue bonds payable with the 50% of the 1% city sales tax dedicated to infrastructure. Additionally, oil and gas gross production tax (GPT) will be a secondary source of security. The average annual payment for the revenue bonds will be \$62,422. The reserve requirement will be \$67,925 and the 120% coverage requirement will be \$74,906. The total project cost is \$1.5 million.

It was noted that GPT will be significantly decreased, and a question was raised as to whether that had been included in the analysis. Ms. Ament indicated that this had been considered. The GPT through August 2020 was \$7 million. The Clean Water SRF payments, including this loan, would be \$4.8 million. There

would still be an excess of almost \$2.5 million. The Treasurer's Office was also consulted on the expected income. Based on that information the city appears well positioned to make payments.

Ms. Ament clarified that the project involves a watermain for reclaimed water. A depot will eventually be installed so that reclaimed water can be sold when a lower level of purification is suitable.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem to approve the following resolution.**

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

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

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

**WHEREAS, the City of Dickinson (the "Political Subdivision") has requested a loan in the amount of \$1,500,000 from the Program to install approximately 7,000 linear feet of 16 inch reclaimed water main and associated appurtenances; and**

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

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

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

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

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

Mr. Ament reported on loans approved by the Public Finance Authority Advisory Committee to the following entities:

*City of Stanton - \$650,000 (Clean Water State Revolving Fund)*

This project will televise the sanitary sewer system and replace deteriorated lines. The total project cost is \$1,060,000. There will be \$210,000 of special assessments and \$200,000 will be provided by cash on hand. The requested term is 30 years for the CWSRF loan. The City will issue revenue bonds payable with sewer user fees.



*North Prairie Regional Water District - \$383,000 (Drinking Water State Revolving Fund)*

This project will construct a water distribution system in the City of Benedict, upgrading them from their current bulk use system. The total project cost is \$450,000. The State Water Commission will provide a \$67,000 grant. The project is eligible for \$287,500 of loan forgiveness, so the net loan will be \$95,750. The requested loan term is 20 years. The District will issue revenue bonds payable with user fees.

**WESTERN AREA WATER SUPPLY (WAWS)**

Ms. Fine presented the quarterly financial report and debt reduction report for June – August 2020. No debt service payments were made for the month of August 2020 on the BND loan. The Bank has deferred P&I payments for six months (April through September.) P&I payments have also been deferred for the Water Commission loans. During June – August, there were capital improvement expenditures \$67,965.32 as approved by the Commission. The net income on a monthly basis during this time period, exclusive of capital expenditures and no P&I payments, was \$231.19; \$35,432.36; and \$93,468.51.

The 2020 overall Debt Service breakeven sales monthly number is \$1,131,811. WAWS sales did not reach that level during June, July or August.

Ms. Tami Madsen, WAWS Executive Director, and Mr. Cory Chorne, AE2S, provided an update on sales activities. Ms. Madsen noted that WAWS is refraining from capital improvements unless absolutely needed. There has been one frack completed that will provide ~\$116,00 of revenue.

Mr. Chorne reported that the YTD revenue of \$6.9 million is below the projected revenue for the year of \$8.63 million and well below the breakeven of \$14.1 million.

The average sale price is \$.59 per barrel and the average production and delivery cost is \$.19 per barrel. Based on this, the projected net revenue for the year is \$4.8 million.

Industrial water demand has significantly decreased, dropping to 500,000 gallons in May. It is now at ~1 million gallons a day, largely due to maintenance water demands, and is expected to remain flat for the rest of the year.

In response to a question, Ms. Madsen indicated that the staff size has decreased by ~50%. This has cut salary expenses by ~\$1 million. She noted that while industrial sales are down there are still domestic sales. Employees are taking on new responsibilities which is decreasing contractor expenses.

Ms. Madsen reported that oil companies are splitting demand among water service companies which means that they are no longer coming to WAWS for excess capacity.

**BANK OF NORTH DAKOTA (BND)**

Mr. Kirby Evanger, BND Chief Credit Officer, provided an update on pandemic and disaster loan activity as follows:

- CPR I – 145 loans totaling \$126 million
- SELF – 722 loans totaling \$24.5 million
- Farm Disaster – 291 loans totaling \$143 million
- ERP – 3 loans totaling \$16 million

Activity is winding down for both CPR and SELF, which closes on November 30<sup>th</sup>. The buy down used for CPR I is ~\$18 million. There are 237 industry classifications represented with the SELF program. The Farm Disaster expires on September 30<sup>th</sup>.

Mr. Eric Hardmeyer, BND President and CEO, and Mr. Todd Steinwand, BND Chief Business Development Officer, presented the COVID PACE Recovery II Program (CPR II) for consideration.

It was noted that two individuals voted against the funding for this program when considered by the Budget Section because they felt \$50 million was too high.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the COVID-19 PACE Recovery II (CPR 2) Interest Rate Buy Down Program as follows to assist in the financial recovery of North Dakota businesses impacted by the COVID-19 pandemic and the Bank of North Dakota be authorized to repurpose and distribute a portion of the Coronavirus Relief Fund (CARES Funding) dollars previously approved up to \$50,000,000 for the CPR2 Program, retaining \$30,000,000 for CPR I and further that the Bank of North Dakota return the authorization of \$120,00,000 of CARES Funding to the State :**

#### **Purpose**

**This program is intended to assist in the financial recovery of North Dakota businesses impacted by the Covid-19 pandemic. The program will provide a buydown on interest paid on certain debt from April 1, 2020 to September 30, 2020.**

#### **Methodology for Buydown Distribution**

- **Applications will be received from October 1 to October 30, 2020.**
- **On November 1, 2020 all eligible applications will be ranked by Bank of North Dakota from highest to lowest percentage loss in gross revenues from April 1, 2020 to September 30, 2020 as compared to the gross revenues from April 1, 2019 to September 30, 2019.**
- **BND will provide buydown to those applicants with the largest losses first and continue down the rankings until the up to \$50,000,000 is exhausted. It is possible not all applicants will receive buydown.**

#### **Eligibility**

- **The applicant must be a North Dakota business or have a physical location in the state.**
- **The applicant must currently be operating and was in operation prior to March 13, 2020.**
- **The applicant was current on all term debt, working capital loans, and operating lines of credit as of March 13, 2020.**
- **To be eligible an applicant must have sustained a minimum loss of 20% of gross revenue.**
- **A chartered financial institution will certify to BND that the applicant's business has incurred the minimum economic injury as a result of the Covid-19 Pandemic.**

#### **Determining Eligible Amount**

**The formula for determining the eligible amount is:**

1. **Determine total gross revenues for the time period of April 1 to September 30, 2019.**
2. **Determine gross revenues for the time period of April 1 to September 30, 2020.**
3. **Subtract 2020 Gross Revenues from 2019 Gross Revenues**
4. **Divide the Loss in Revenues by the Gross 2019 Revenues for year-over-year percentage loss.**
5. **Determine total interest expense (incurred and /or accrued) from April 1, 2020 to September 30, 2020 which is the eligible amount.**

#### **Use of Proceeds**

- **Proceeds shall be used to buy down interest paid by a qualifying business from April 1, 2020 to September 30, 2020 on term debt, working capital loans and operating lines of credit.**
- **The maximum amount of buy down is \$50,000.**
- **Interest paid and/or accrued on shareholder or owner debt is excluded from eligibility.**

- **When separate borrowers with common ownership amounts of 51% or more apply for multiple loans, these borrowers must be labeled as and considered to have common ownership. The maximum buy down on all loans for entities designated as common ownership is \$50,000**

**How to Apply**

- **BND will offer this buy down program by partnering with local lenders. The originating lender must complete the application and certify a business is eligible to participate in the program.**

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

Mr. Hardmeyer presented the BND Advisory Board July 2, 16 & 28, 2020 non-confidential meeting minutes.

Mr. Hardmeyer reported that he will attend the next State Investment Board meeting to ask for an increase in funding of the MATCH program from \$300 million to \$400 million. There has been significant interest in the program. It was suggested that if the request is denied, the Bank may want to do an economic study on the impact of investing in North Dakota projects.

Pursuant to N.D.C.C. 6-09-35 the Industrial Commission entered into executive session. Governor Burgum reminded Commission members and those present in the executive session that the discussion must be limited to those items listed on the agenda which was anticipated to last between 30 and 45 minutes. Governor Burgum noted that any formal action by the Commission on the loan application would occur after reconvening in open session.

Commission members, their staff, WAWS Executive Director, PFA Executive Director, and BND staff were asked to join the executive session at this time and the public was asked to leave the room.

The BND executive session began at 3:49 p.m. to discuss the following items:

- Problem Loans
- Consideration of a loan application
- Presentation of Approved CPR Loans Report
- Presentation of Bank of North Dakota Advisory Board July 2 and 16, 2020 confidential meeting minutes.
- Other Bank of North Dakota confidential (as defined under N.D.C.C. 6-09-35) business

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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)  
Kelvin Hullet      Bank of North Dakota  
Kylee Merkel      Bank of North Dakota

**Others in Attendance:**

Leslie Bakken Oliver      Governor's Office

Reice Haase	Governor's Office
John Schneider	Department of Agriculture
DeAnn Ament	Public Finance Authority (Phone) (portion of meeting)
Tami Madsen	Western Area Water Supply (portion of meeting)
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

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The BND executive session ended at 4:46 p.m. and the public was invited to return to the room. Governor Burgum noted that during Executive Session the Commission made a motion regarding a loan request. **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 to direct the WAWS Executive Director to prepare financial information and data regarding WAWS cash flows, reimbursements, all debt payments, and revenue streams. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

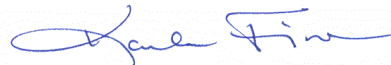
#### ADMINISTRATION

Ms. Fine presented the July 27 and August 20, 2020 Industrial Commission non-confidential minutes for consideration.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the July 27 and August 20, 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 4:48 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary