

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on October 19, 2021 beginning at 1:00 p.m.
Governor's Conference Room - State Capitol

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

Also Present: This meeting was open through Microsoft Teams 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 Housing Finance Agency business.

HOUSING FINANCE AGENCY (HFA)

Mr. Dave Flohr, HFA Executive Director, introduced Mr. Alex Kalliokoski from Brady Martz. Mr. Kalliokoski presented the results of the HFA June 30, 2021 Independent Audit and the Housing Incentive Fund June 30, 2021 Independent Audit. Both audits were clean with an unmodified opinion and no internal control deficiencies were identified.

Mr. Flohr presented the HFA Home Mortgage Finance Program Supplemental General Bond Resolution for the issuance of the 2021 Series B – Not to Exceed \$140,000,000 and 2021 Series C – Not to Exceed \$20,000,000 Bonds for consideration.

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

**STATE OF NORTH DAKOTA
NORTH DAKOTA HOUSING FINANCE AGENCY
HOUSING FINANCE PROGRAM BONDS
HOME MORTGAGE FINANCE PROGRAM
2021 Series B – Not to exceed \$140,000,000
2021 Series c – not to exceed \$20,000,000**

**SUPPLEMENTAL
GENERAL AUTHORIZATION RESOLUTION**

WHEREAS, the Industrial Commission of North Dakota (the “Commission”), acting in its capacity as a state housing finance agency, i.e., the North Dakota Housing Finance Agency (the “Agency”), is empowered by the provisions of the North Dakota Century Code Chapter 54-17 (the “Act”) to establish and has established a home mortgage finance program to contract to purchase from lenders mortgage loans made to persons or families of low or moderate income to finance the purchase or substantial rehabilitation of owner occupied, residential dwelling units; and

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

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

WHEREAS, the Commission acting as the Agency, pursuant to that 2021 General Authorization Resolution adopted by the Commission on February 16, 2021 (the “General Authorization Resolution”), regarding the authorization of and the negotiation and sale of the Bonds, appointed as its agents the Executive Director, the Director of Homeownership Programs, and the Chief Financial Officer of the Agency for the purpose of negotiation of the terms of sale of the Bonds, subject to the limitations set out in the General Authorization Resolution, and to sign such agreements as are required for the issuance of the Bonds on behalf of the Commission after such terms of sale had been negotiated and to sign such certificates and other documents as are necessary and customary to complete the sale of the Bonds and to enter into agreements for their sale by the Agency and purchase by the Underwriters (as hereinafter defined, and which are so designated by an Authorized Officer); and

WHEREAS, the Agency wishes to authorize the issuance of not to exceed \$160,000,000 in aggregate principal amount of the Bonds upon the terms stated herein and in the 2021 Series B/C Bond Resolution (as defined below) and to use the proceeds thereof in furtherance of the purposes of the Program; and WHEREAS, in furtherance of the above stated objectives, the Commission, the Agency and RBC Capital Markets, LLC, with such co-managers and selling group members as an Authorized Officer may specify, as the purchasers of the Bonds (the “Underwriters”) have caused to be prepared and presented to the Commission the proposed forms of the following documents (unless otherwise indicated) (collectively, the “Bond Documents”):

- A. 2021 Series B/C Bond Resolution, in substantially final form, attached hereto as Attachment A;
- B. 2021 Series B/C Purchase Contract by and between the Commission and the Underwriters, attached hereto as Attachment B; and
- C. Preliminary Official Statement, with respect to the Bonds attached hereto as Attachment C; and

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

NOW BE IT HEREWITH RESOLVED:

1. The Agency is hereby authorized to issue, execute, sell and deliver the Bonds, in substance as provided in the 2021 Series B/C Bond Resolution and in the final forms of the Bond Documents as approved by an Authorized Officer, provided that the Bonds meet the following conditions:
 - A. The Bonds: (i) shall be sold, issued, executed and delivered at such time as an Authorized Officer shall determine, in one or more series, in an aggregate principal amount not to exceed the amount set forth in the preambles to this Resolution; (ii) shall bear interest at fixed rates determined by an Authorized Officer, provided, however that such rates shall not exceed 4.50% per annum; (iii) shall be subject to redemption prior to maturity, at prices and otherwise as determined by an Authorized Officer to be in the best interests of the Agency; (iv) shall have long term ratings no lower than the long term rating on the bonds outstanding under the General Resolution immediately prior to the issuance of the Bonds; and (v) shall mature not later than January 1, 2054.
 - B. The Bonds shall be issued as bonds the interest on which is exempt from federal income taxation, unless otherwise determined by an Authorized Officer.
 - C. The Bonds shall not constitute debt of the State or any political subdivision thereof. Neither the faith and credit nor the taxing powers of the State or any political subdivision thereof may be pledged to the payment of the principal of or interest on the Bonds.
 - D. The Bonds shall be special limited obligation revenue bonds of the State payable solely from the revenues and assets pledged therefore under the General Resolution and the 2021 Series B/C Bond Resolution.

2. **The forms and substance of the Bond Documents and any other documents that an Authorized Officer deems necessary or desirable to effect the issuance of the Bonds are hereby approved, with such changes, variations, omissions and insertions as an Authorized Officer shall approve. The execution of the applicable Bond Document by such Authorized Officer shall constitute conclusive evidence of such approval.**
3. **The Preliminary Official Statement, in substantially the form submitted to this meeting, with such changes, omissions, insertions and revisions as an Authorized Officer shall deem advisable, is hereby authorized, and the furnishing of the information in the Preliminary Official Statement and in a final Official Statement for the Bonds, and the use of such Preliminary Official Statement and final Official Statement by the Underwriters in connection with the offering of the Bonds to the public, are hereby approved. Any Authorized Officer is hereby authorized to execute and deliver to the Underwriters the final Official Statement for the Bonds in substantially the form of the Preliminary Official Statement submitted to this meeting, with such changes therein as are approved by such Authorized Officer. The execution of one or more copies of the final Official Statement by an Authorized Officer shall constitute conclusive evidence of such approval.**
4. **All prior acts of the officers, agents and employees of the Commission and the Agency which are in conformity with the purpose and intent of the General Resolution, the General Authorization Resolution and this Supplemental General Authorization Resolution in furtherance of the issuance and sale of the Bonds shall be and the same hereby are in all respects approved, ratified and confirmed.**

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

Mr. Flohr introduced Ms. Kayla Axtman, the new Assistant Chief Financial Officer (CFO). She will be training under Mr. Pat Nagel, CFO as part of HFA's succession planning. The Commission expressed appreciation to Mr. Nagel for his years of service, and the foresight of HFA leadership to train employees.

OUTDOOR HERITAGE FUND

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, provided a financial report, indicating that as of August 31, 2021, the uncommitted cash on hand was \$2.9 million.

Mr. Randy Bina, OHF Chair, reported that seven applications were received for Grant Round 19 totaling \$2,779,310. Of the seven, four were recommended for funding by the OHF Advisory Board in the total amount of \$1,666,000.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendations of the Outdoor Heritage Fund Advisory Board and approves funding of the following four projects in the total amount of \$1,666,000 and authorizes the Industrial Commission Executive Director and Secretary to enter into contracts with the applicants as noted below:

1. **City of Coleharbor: Playground Equipment Replacement, \$10,000**
2. **North Dakota Natural Resources Trust: Working Grassland Partnership 5, \$985,000**
3. **North Dakota Petroleum Foundation: North Dakota Petroleum Foundation Planting for the Future, \$371,000**
4. **North Dakota Department of Agriculture: North Dakota Department of Agriculture's Soil Health Cover Crop Grant Program, \$300,000**

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

Ms. Pfennig presented the OHF Advisory Board policy amendment recommendation for consideration. NDCC 54-17.8-03.3 requires that if OHF funds are used for a building, the building must be part of a comprehensive conservation plan for a new or expanded recreational project unless there is a finding of exceptional circumstance by the Industrial Commission. Currently, a comprehensive conservation plan is defined as follows:

A detailed plan that has been formally adopted by the governing board which includes goals and objectives--both short and long term, must show how this building will enhance the overall conservation goals of the project and the protection or preservation of wildlife and fish habitat or natural areas.

The Outdoor Heritage Fund Advisory Board has provided a recommendation that the definition be revised to provide clarity to applicants as typically buildings are associated with recreation projects, not fish and wildlife habitat.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendations of the Outdoor Heritage Fund Advisory Board and approves the following revisions to the definition of a Comprehensive Conservation Plan.

A detailed plan that has been formally adopted by the governing board which includes goals and objectives--both short and long term, must show how this building will enhance the overall conservation goals of the project and the protection or preservation of ~~wildlife and fish habitat or~~ natural areas and outdoor recreation.

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

PUBLIC FINANCE AUTHORITY (PFA)

Ms. Ament, PFA Executive Director, presented a Series Resolution for up to \$175,000,000 North Dakota Public Finance Authority State Revolving Fund Program Bonds for consideration. Because of the federal funds becoming available, it is likely that the full amount being authorized will not be issued.

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

SERIES RESOLUTION FOR UP TO \$175,000,000 NORTH DAKOTA PUBLIC FINANCE AUTHORITY STATE REVOLVING FUND PROGRAM BONDS

WHEREAS, the North Dakota Public Finance Authority (the "Authority") is duly constituted as an instrumentality of the State of North Dakota exercising public and governmental functions under the operation, management and control of the Industrial Commission of North Dakota (the "Industrial Commission"), pursuant to Chapter 6-09.4, North Dakota Century Code (the "Act");

WHEREAS, pursuant to the Act, the Authority is authorized to issue bonds and to make loans to political subdivisions of the State of North Dakota and certain other entities through the purchase of municipal securities and other obligations;

WHEREAS, the Legislative Assembly of North Dakota has established a revolving loan fund (the “Clean Water State Revolving Fund” or “Clean Water SRF”) pursuant to Chapter 61-28.2, North Dakota Century Code (the “Clean Water SRF Act”) to be maintained and operated by the North Dakota Department of Environmental Quality (the “Department”) to provide for loans for the design, construction and rehabilitation of wastewater treatment facilities and certain other activities in accordance with Title VI of the Clean Water Act (the “Clean Water Program”);

WHEREAS, the Legislative Assembly of North Dakota has established a revolving loan fund (the “Drinking Water State Revolving Fund” or “Drinking Water SRF”) pursuant to Chapter 61-28.1, North Dakota Century Code (the “Drinking Water SRF Act”) to be maintained and operated by the Department to provide for loans for expenditures on public water systems and certain other activities in accordance with the Safe Drinking Water Act (the “Drinking Water Program”);

WHEREAS, the Authority has previously issued and there are outstanding under the Drinking Water SRF and Clean Water SRF the State Revolving Fund Program Bonds, Series 2011A, Series 2012A, Series 2015A, Series 2016A and Series 2018A (together, the “Outstanding Bonds”);

WHEREAS, the Authority’s outstanding State Revolving Fund Program Bonds, Series 2011A (the “Series 2011A Bonds”) are subject to redemption and prior payment at the option of the Authority on any date at par plus accrued interest;

WHEREAS, the Outstanding Bonds are secured by an Amended and Restated Master Trust Indenture dated as of July 1, 2011, as amended by a First Supplemental Master Trust Indenture dated as of July 1, 2015 (the “Master Trust Indenture”), as provided therein;

WHEREAS, the Master Trust Indenture authorizes the issuance of bonds in one or more series pursuant to a Series Resolution authorizing each series;

WHEREAS, the Industrial Commission has determined that, subject to the conditions described herein, it is necessary and expedient that the Authority issue at this time a series of tax-exempt bonds to be designated “North Dakota Public Finance Authority State Revolving Fund Program Bonds, Series 2021A ” (the “Series 2021A Bonds”) to refund the outstanding Series 2011A Bonds and to provide additional funds for the Clean Water Program and Drinking Water Program to provide financing for loans made or to be made to various political subdivisions of the State of North Dakota and other eligible borrowers whose applications may be approved from time to time (together the “Borrowers”) through the purchase of debt obligations issued by such Borrowers (the “Municipal Securities”); and

WHEREAS, the Series 2021A Bonds are sometimes referred to herein as the “Bonds”; and

WHEREAS, there have been presented to this Commission, or are on file in the office of the Executive Director of the Authority, copies of the following documents: (i) the Master Trust Indenture; (ii) the form of Undertaking to Provide Continuing Disclosure (the “Continuing Disclosure Undertaking”) to be executed by the Executive Director; and (iii) forms of Loan Agreements (the “Loan Agreements”) between the Authority and the Borrowers;

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

ARTICLE I
Authority and Definitions

Section 1.01. Series Resolution. This Series Resolution is adopted in accordance with the provisions of Sections 2.01 and 2.03 of the Master Trust Indenture and pursuant to the authority contained in the Act, the Clean Water SRF Act and the Drinking Water SRF Act. It is hereby determined pursuant to the Act that the reason for the issuance of the Series 2021A Bonds and the purposes thereof are, with respect to the Series 2021A Bonds, to provide financing for loans to Borrowers through the purchase of Municipal Securities for essential projects at borrowing costs substantially below the costs available to the Borrowers in the private bond markets.

Section 1.02. Definitions. All terms defined in Article I of the Master Trust Indenture or in the Act shall have the same meanings, respectively, in this Series Resolution and with respect to the Series 2021A Bonds as such terms are given in said Article I of the Master Trust Indenture or the Act.

ARTICLE II
Authorization of Series 2021A Bonds

Section 2.01. Authorization of Series 2021A Bonds. Pursuant to the Master Trust Indenture, a Series of State Revolving Fund Program Bonds to be designated as the “Series 2021A Bonds” is hereby created and authorized to be issued in such aggregate principal amount as the Executive Director may determine, but not to exceed \$175,000,000.

Section 2.02. Purposes. The Series 2021A Bonds are being issued to (a) refund the Series 2011A Bonds, (b) provide funds to be loaned to Borrowers by purchasing the Municipal Securities issued or to be issued by Borrowers, (c) pay costs of issuance, and (d) reimburse funds previously allocated for the purpose of making loans.

Section 2.03. Date, Payment Dates and Series 2021A Maturities. The Series 2021A Bonds shall be dated as of the date of delivery, or such other date as the Executive Director may determine, except that Series 2021A Bonds issued on or subsequent to the first interest payment date shall be dated as of the most recent date to which interest has been duly paid or provided for.

The Series 2021A Bonds shall bear interest payable semiannually on April 1 and October 1 in each year, commencing April 1, 2022.

The Series 2021A Bonds shall mature on October 1 in each of the years and in the principal amounts as the Executive Director may determine, provided that the final maturity shall not be later than October 1, 2041.

Section 2.04. Sinking Fund Installments. The Series 2021A Bonds maturing on any date or dates (the “Term Bonds”) may be subject to mandatory redemption prior to their stated maturity by payment of Sinking Fund Installments, upon notice as provided in Article III of the Master Trust Indenture, on October 1 in each of the years and amounts as follows, in each case at a redemption price of 100% of the principal amount of such Term Bonds or portions thereof to be so redeemed, together with accrued interest to the redemption date on such mandatory redemption dates and in such amounts as the Executive Director may determine.

Section 2.05. Optional Redemption. The Series 2021A Bonds identified by the Executive Director shall be subject to redemption and prior payment at the option of the Authority on October 1 of the year designated by the Executive Director and on any date thereafter in whole or in part in such amounts from such maturities as the Authority may determine and by lot within a maturity at the redemption prices determined by the Executive Director together with accrued interest to the redemption date.

Section 2.06. Interest Rates. The Series 2021A Bonds shall bear interest at the rates per annum determined by the Executive Director, but not to exceed a true interest cost of 5.00%.

Section 2.07. Denominations, Numbers and Letters. Each Series 2021A Bond shall be in an integral multiple of \$5,000 and shall be numbered separately from R-1 consecutively upwards in order of issuance.

Section 2.08. Sale of Bonds; Acceptance of Offer. The Series 2021A Bonds shall be sold on the basis of competitive bids. Upon receipt of an offer for the purchase of Series 2021A Bonds which she determines to be acceptable, the Executive Director is authorized to execute a bond purchase agreement with the successful bidder.

Section 2.09. Official Statement. The Executive Director shall prepare a Preliminary Official Statement of the Authority in respect to the Series 2021A Bonds, in substantially the form of the draft Preliminary Official Statement on file in the office of the Executive Director, and a final Official Statement shall be distributed with such changes, omissions, insertions and revisions as the Executive Director shall deem advisable in order to make such Official Statement a complete and accurate disclosure of all material facts to prospective purchasers of the Series 2021A Bonds.

Section 2.10. Loan Agreements. The forms of Loan Agreements proposed to be entered into between the Authority and the Borrowers are hereby approved in substantially the forms 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.

Section 2.11. Letter of Representations. The form of Blanket Letter of Representation heretofore executed by the Authority to Depository Trust Company is hereby confirmed and said Blanket Letter of Representation shall be applicable to the Series 2021A Bonds.

Section 2.12. Continuing Disclosure. The form of Continuing Disclosure Undertaking in substantially the form on file is approved and shall be executed by the Executive Director in substantially the form on file with all such changes as the Executive Director may approve, which approval shall be conclusively evidenced by the execution thereof. The Continuing Disclosure Undertaking shall constitute a contractual obligation of the Authority as provided therein.

Section 2.13. Mandatory Redemption. The Series 2021A Bonds shall be subject to mandatory redemption to the extent that the Executive Director determines such a provision to be necessary to comply with the provisions of Section 149(f) of the Internal Revenue Code.

ARTICLE III

Use of Proceeds of Bonds; Allocations

Section 3.01. Allocations. Pursuant to Section 4.01 of the Master Trust Indenture, the Commission specifies that the Clean Water Portions and the Drinking Water Portions of each scheduled payment of principal and interest on each maturity of the Series 2021A Bonds shall be as determined by the Executive Director to reflect (i) that the Series 2021A Bonds issued for the Clean Water Program loans are allocated to the Clean Water Portion as provided in the Master Trust Indenture, and (ii) that the Series 2021A Bonds issued for Drinking Water Program loans are allocated to the Drinking Water Portion as provided in the Master Trust Indenture. Within each of the Drinking Water Portions and Clean Water Portions of principal and interest payments on the Series 2021A Bonds, the Executive Director shall determine the State Match Portion and Leveraged Portion as provided in the Master Trust Indenture. The final percentages, based on the sale results and federal regulations, shall be certified by the Executive Director to the Trustee, subject to modification pursuant to an Allocation Order under the Master Trust Indenture.

Section 3.02. Application of Proceeds. The proceeds of the Series 2021A Bonds shall initially be deposited in the Funds and Accounts established under the Master Trust Indenture as follows:

(a) A portion of the accrued interest, if any, on the Series 2021A Bonds shall be deposited in the Leveraged Bond Accounts of the Drinking Water Bond Fund and Clean Water Bond Fund, and any remainder of the accrued interest on the Series 2021A Bonds shall be deposited as determined by the Executive Director. The amounts shall be determined by the Executive Director.

(b) The amount required to refund the Authority's outstanding Series 2011A Bonds as determined by the Executive Director shall be applied to such purpose.

(c) Amounts determined by the Executive Director shall be deposited in the Clean Water Administration Fund and Drinking Water Administration Fund for payment of the Costs of Issuance of the Series 2021A Bonds and other authorized purposes as allocated by the Executive Director.

(d) The remaining proceeds of the Series 2021A Bonds shall be deposited in the State Match and Leveraged Loan Accounts of the Drinking Water Loan Fund and the State Match and Leveraged Loan Accounts of the Clean Water Loan Fund and to reimburse other Funds and Accounts for amounts drawn to fund loans, all as determined by the Executive Director.

(e) The Executive Director may on behalf of the Authority issue such instructions to the Trustee as she may deem necessary or appropriate to adjust the balances on deposit in the Funds and Accounts under the Master Trust Indenture to reflect the proper loan sources and other accounting matters consistent with the Master Trust Indenture and federal regulations and to determine the appropriate amounts in each of the Funds and Accounts at the time of delivery of the Series 2021A Bonds. All such instructions shall be reported to this Commission.

It is hereby determined that, because a reserve fund is not reasonably required for the Series 2021A Bonds under Section 148 of the Internal Revenue Code, investment of additional deposits to the Reserve Funds under the Master Trust Indenture would be restricted as to yield, the Series 2021A Bonds shall not be Covered Bonds under the Master Trust Indenture and no deposits shall be made to the Clean Water Reserve Fund or Drinking Water Reserve Fund. The procedures for requesting funds from the Legislature under Sections 5.06 and 6.06 of the Master Trust Indenture do not apply to the Series 2021A Bonds.

ARTICLE IV

Form, Execution and Other Details of Bonds

Section 4.01. Form of Bond. The Series 2021A Bonds, the Registrar's Authentication Certificate, and the form of assignment shall be in substantially the form set forth in Exhibit A to the Master Trust Indenture, with all such insertions as may be consistent with this Series Resolution.

Section 4.02. Execution and Delivery. The Series 2021A Bonds shall be executed and delivered as provided in the Master Trust Indenture.

Section 4.03. Uses of Securities Depository; Book-Entry Only System. The provisions of this Section shall take precedence over the provisions of the Master Trust Indenture to the extent they are inconsistent therewith.

(a) The Depository Trust Company ("DTC") has agreed to act as securities depository for the Series 2021A Bonds, and to provide a Book-Entry Only System for registering the ownership interests of the financial institutions for which it holds the Series 2021A Bonds (the "DTC Participants"), and for distributing to such DTC Participants such amount of the principal and interest payments on the Series 2021A Bonds as they are entitled to receive, for redistribution to the beneficial owners of the Series 2021A Bonds as reflected in their records (the "Beneficial Owners").

(b) Initially, and so long as DTC or another qualified entity continues to act as securities depository, the Series 2021A Bonds shall be issued in typewritten form, one for each maturity in a principal amount equal to the aggregate principal amount of each maturity, shall be registered in the name of the securities depository or its nominee, and shall be subject to the provisions of this Section. While DTC is acting as the securities depository, the Series 2021A Bonds shall be registered in the name of DTC's nominee, CEDE & CO; provided that upon delivery by DTC to the Authority and the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of CEDE & CO., the words "CEDE & CO." in this Resolution shall refer to such new nominee of DTC.

With respect to Series 2021A Bonds registered in the name of a securities depository or its nominee, the Authority and the Trustee shall have no responsibility or obligation to any DTC Participant or other person with respect to the following: (i) the accuracy of the records of any securities depository or its nominee with respect to any ownership interest in the Series 2021A Bonds, (ii) the delivery to any DTC Participant or any other person, other than DTC, of any notice with respect to the Series 2021A Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than DTC, of any amount with respect to the principal or interest on the Series 2021A Bonds. The Trustee shall pay all principal of and interest on the Series 2021A Bonds only to or upon the order of DTC, and all such payments shall be valid and effective to fully satisfy and discharge the Authority's obligations with respect to the principal and interest on the Series 2021A Bonds to the extent of the sum or sums so paid. So long as the Book-Entry Only System described in this Section is in effect, no person other than DTC shall receive an authenticated Series 2021A Bond.

(c) Upon receipt by the Authority and the Trustee of written notice from the securities depository to the effect that it is unable or unwilling to discharge its responsibilities under the Book-Entry Only System, the Trustee shall issue, transfer and exchange Series 2021A Bonds of the initial series as requested by the securities depository in appropriate amounts, and whenever the securities depository requests the Authority and the Trustee to do so, the Authority and the Trustee shall cooperate with the securities depository in taking appropriate action after reasonable notice (i) to arrange for a substitute depository willing and able, upon reasonable and customary terms, to maintain custody of the Series 2021A Bonds, or (ii) to make available Series 2021A Bonds registered in whatever name or names the Beneficial Owner registering ownership, transferring or exchanging

such Series 2021A Bonds shall designate, in accordance with clause (f) or clause (g) below, whichever is applicable.

(d) In the event the Authority determines that it is in the best interests of the Beneficial Owners that they be able to obtain printed Series 2021A Bonds, the Authority may so notify the securities depository and the Trustee, whereupon the securities depository shall notify the Beneficial Owners of the availability through the securities depository of such printed Series 2021A Bonds. In such event, the Authority shall cause to be prepared and the Trustee shall issue, transfer and exchange printed Series 2021A Bonds, fully executed and authenticated, as requested by the securities depository in appropriate amounts and, whenever the securities depository requests, the Authority and the Trustee shall cooperate with the securities depository in taking appropriate action after reasonable notice to make available printed Series 2021A Bonds registered on the Bond Register in whatever name or names the Beneficial Owners entitled to receive Series 2021A Bonds shall designate, in accordance with clause (f) or clause (g) below, whichever is applicable.

(e) Notwithstanding any other provisions of this Resolution to the contrary, so long as any Series 2021A Bond is registered in the name of a securities depository or its nominee, all payments of principal and interest on the Series 2021A Bond and all notices with respect to the Series 2021A Bond shall be made and given, respectively, to the securities depository as provided in the Blanket Representation Letter given to it by the Authority.

(f) In the event that the Book-Entry Only System established pursuant to this Section is discontinued, except as provided in clause (g), the Series 2021A Bonds shall be issued through the securities depository to the Beneficial Owners.

(g) In the event of termination of the Book-Entry Only System, the Authority shall have the right to terminate, and shall take all steps necessary to terminate, all arrangements with the securities depository described herein, and thereafter shall issue, register ownership of, transfer and exchange all Series 2021A Bonds as provided in Article II hereof. Upon receipt by the securities depository of notice from the Authority, the securities depository shall take all actions necessary to assist the Authority and the Trustee in terminating all arrangements for the issuance of documents evidencing ownership interests in the Series 2021A Bonds through the securities depository. Nothing herein shall affect the securities depository's rights under clause (e) above.

ARTICLE V **Special Covenants**

The Commission and the Authority covenant and agree with the persons who at any time are Holders and Owners of the Series 2021A Bonds that so long as any Series 2021A Bonds remain outstanding and unpaid:

Section 5.01. Observe Master Trust Indenture, Series Resolution and Loan Agreements. The Commission and the Authority will faithfully keep and observe all the terms, provisions and covenants contained in the Master Trust Indenture, this Series Resolution and the Loan Agreements.

Section 5.02. Maintenance of Tax-Exempt Status. Neither the Commission nor the Authority shall take, or permit the Political Subdivision to take, any action that would cause the Series 2021A Bonds to be "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended. The Commission and the Authority shall comply with all the rebate requirements imposed under Section 148(f) of the Internal Revenue Code of 1986, as amended, and regulations thereunder, which are necessary to preserve the tax exempt status of the Series 2021A Bonds, including (if applicable) the requirement to make periodic calculations of the amount subject to rebate thereunder and the requirement to make all required rebates to the United States. The Authority agrees to use any moneys on deposit in any Fund or Account maintained under the Master Trust Indenture to pay any such rebate (or penalty in lieu thereof) when due to the extent permitted by the Master Trust Indenture. In addition, the Authority shall make no investment of funds or take or permit the Political Subdivision to take any action that would cause the Series 2021A Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations thereunder. The Executive Director is hereby authorized to make on behalf of the Authority any elections under the provisions of Section 148 of the Internal Revenue Code of 1986 and regulations thereunder as she may deem appropriate. All terms used in this Section 5.02 shall have the meanings provided in the Internal

Revenue Code of 1986, as amended, and regulations thereunder. The Executive Director shall execute any certificates as may be necessary or appropriate to establish the tax exempt status of the Series 2021A Bonds.

Section 5.03. Redemption of Series 2011A Bonds. The Executive Director shall provide notice of the redemption of the Series 2011A Bonds on such date not later than 90 days after issuance of the Series 2021A Bonds as she shall determine and shall take such other action as may be necessary to effect the redemption of the Series 2011A Bonds.

ARTICLE VI

Miscellaneous

Section 6.01. Amendments. This Series Resolution may be amended as provided in the Master Trust Indenture.

Section 6.02. Determinations. All determinations of the Executive Director required or permitted to be made hereunder shall be in writing, and the Executive Director shall file a copy thereof with the Trustee and the Secretary of the Industrial Commission.

Section 6.03. Effective Date. This Series Resolution is effective immediately.

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

Ms. Ament provided an update on the issuance of the North Dakota Legacy Fund Infrastructure Program Bonds. Work is underway to prepare documents for the bond issuance. The goal is to have a resolution authorizing the issuance of bonds in the minimum amount of \$250 million for the Commission's consideration at the November 29th meeting. The bonds would be sold December 8th or 9th with the bond closing taking place on December 21st or 22nd. Ms. Ament clarified that these bonds are related to legislative actions this past spring.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission enter into executive session for the purpose of reviewing a confidentiality request under the authority of North Dakota Century Code 17-05-14 and 44-04-19.2(1). On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum stated that the Commission was meeting in executive session regarding the Transmission Authority to consider a confidentiality request and noted that any formal action by the Commission would occur after reconvening in open session. Only Commission members, their staff, Transmission Authority Authorized Officers, and counsel with the Attorney General staff participated.

Governor Burgum noted that following the Transmission Authority executive session, the Industrial Commission would enter into executive session regarding Bank of North Dakota (BND) business pursuant to N.D.C.C. 6-09-35 to consider the items listed on the agenda under BND confidential business. Only Commission members, their staff, and BND staff participated.

Governor Burgum reminded the Commission members and those present in the executive sessions that the discussion must be limited to the announced purpose for entering into executive session which is anticipated to last between 5 – 10 minutes for Transmission Authority and 30 – 40 minutes for BND.

The executive session for Transmission Authority began at 1:33 p.m.

TRANSMISSION AUTHORITY EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

Others in Attendance:

Reice Haase	Governor's Office
Dutch Bialke	Department of Agriculture
John Weeda	Transmission Authority
DeAnn Ament	Public Finance Authority (remote)
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

The Transmission Authority executive session ended at 1:40 p.m.

The BND executive session began at 1:41 p.m. to discuss the following items:

- Consideration of a loan application
- Non-Accrual Loans Quarterly Recap/Detail
- Problem Loans – Adversely Classified Quarterly Recap
- Loan Charge-Offs and Recoveries Y.T.D. 09/30/2021
- Presentation of Bank of North Dakota Advisory Board August 19, 2021 confidential meeting minutes.
- Other Bank of North Dakota confidential (as defined under N.D.C.C. 6-09-35) business

BND EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Bank of North Dakota Personnel:

Todd Steinwand
Kirby Evanger
Craig Hanson
Kelvin Hullet

Others in Attendance:

Reice Haase	Governor's Office
Dutch Bialke	Department of Agriculture
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

The BND executive session ended at 2:10 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 Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of Karlene Fine, Industrial Commission Executive Director, and pursuant to section 17-05-14, section 44-04-17.1, 44-04-18.4 and 47-25.1-01 grant the confidentiality request and the procedures outlined therein and determine that the request is confidential and the information described in the request is a trade secret or proprietary information and is confidential. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

BANK OF NORTH DAKOTA (BND)

Mr. Todd Steinwand, BND President, presented the Bank of North Dakota Advisory Board August 19, 2021 nonconfidential meeting minutes.

Mr. Steinwand presented the proposed 2022 Bank of North Dakota Holiday Schedule which included the Federal Reserve's recognition of Juneteenth as a federal holiday. Juneteenth is not one of the 10 State approved holidays. As a result, approximately 50 employees would have no work to do that day because no transactions would be taking place. The Commission has the authority to approve additional holidays.

In the past, the Bank has had employees work on Good Friday and not on Columbus Day which has allowed them to match up with the Federal Reserve recognized holidays calendar while staying within the amount of State approved holidays. This will be discussed at the Advisory Board level. The BND Executive Committee would like to stick with the Federal Reserve schedule. It was noted in discussion that the Bank is backed by the State of North Dakota, not the Federal Reserve. There may be other options for employees, such as training. Bank management was asked to do more research on this issue.

WESTERN AREA WATER SUPPLY AUTHORITY (WAWSA)

Ms. Karlene Fine, Industrial Commission Executive Director, presented the WAWSA financial report and debt reduction report for the timeframe of April 2021 – September 2021. Ms. Fine noted that the Bank deferred Principal & Interest (P&I) payments from April 2020 through March 2021. P&I payments were also deferred for the Water Commission loans. WAWSA began making P&I payments in April 2021. There were no capital improvement expenditures. The monthly net income, including P&I payments, ranged from a loss of \$389,329 to a high of \$553,801. Revenues over the past six months ranged from a high of \$1,660,179 in July to a low of \$616,131 in April. The average was \$956,057.

Ms. Tami Madsen, WAWSA Executive Director, provided an update on sales activities. It is anticipated that revenues will fall short of the breakeven point for the year which is not surprising considering current economic conditions. A comparison of the budgeted industrial revenues and actual industrial revenues was provided. Ms. Madsen clarified that there was a spike in revenues in July due to a prepay contract that came due during that month.

Domestic water demands were reviewed and compared to industrial water demand. Raw water providers have built out their systems so that WAWSA is a supplemental water source. While WAWSA does still have industrial water sales, they are no longer the primary provider. There have been two promising Request for Proposals (RFPs) for economic development which are both oil and gas projects. WAWSA has 23 million gallons per day (MGD) and cannot meet the demands of the RFPs with current capacity. Projects like this would have an impact on domestic water rates by providing off sets. If the governance study were to pass through as written and the business lines were combined, then meeting industry needs, outside of fracking, should be considered. One frac generally uses 250,000 barrels of water.

Discussion was held regarding the importance of utilizing natural gas to avoid capping oil production. It was noted that the Williston plant was designed to be doubled in capacity. The design phase to get the plant up to 35 MGD is at 60% and construction could begin when funds are secured. The plan has always been to get the plant to 50 MGD. However, any plans to expand the plant capacity would not be able to be completed in time with the current RFPs for water. This had been approved for State Water Commission funding prior to Covid, however, it was de-obligated as funds were not available.

PIPELINE AUTHORITY

Mr. Justin Kringstad, Pipeline Authority Director, provided the 2021 Pipeline Authority Annual Report. The Commission thanked Mr. Kringstad for his work on the report.

Mr. Kringstad provided a Pipeline Authority Update. Rig efficiency has continued to slowly increase. Mr. Kringstad noted that as the number of three-mile laterals increase, a different metric may need to be used. The current price point is attracting activity. The Energy Information Administration (EIA) is forecasting oil prices ranging at approximately \$60 for the near term through 2026. Mr. Kringstad discussed oil production forecasts ranging from a low case scenario with flat production and a high case scenario with production back to 90% of pre-Covid activity.

Mr. Kringstad reviewed prior forecasting. Production historically has quickly outpaced the forecasting models, and it has been attributed to technology advancements and pricing. However, it is important to recognize the importance of gas-oil ratios (GORs) as well. Not only are new wells producing more gas, but existing wells' GOR are also increasing. A study was completed in 2012 regarding oil and gas production, however the data has proved to be inaccurate. Gas production is a ratio in relation to oil production. Gas production is back to pre-pandemic levels, while oil production is not. Currently wells are producing 30% more gas on less oil production. The current GOR is 2.67. Oil production from a well decreases more quickly than gas production. Pressure depletion drives GOR. As pressure decreases, there is an increase in gas.

GOR research by Conoco Philips released in July predicted significantly higher GOR sustained at higher levels with the newer technology on oil well completions. This has shifted how midstream companies are thinking about the needs of North Dakota. GOR of 3.8 had been determined previously. Now it is expected to go higher on a statewide basis. Even at low oil production, gas production will increase. Gas flaring is going down. Processing and transmission will be a challenge. Solutions will be needed in the next 2-3 years. It was noted that Northern Border, North Dakota's largest pipeline, currently has capacity restrictions for maintenance.

Mr. Kringstad discussed the residue gas vs. field gas noting that residue gas compounds as it works its way back to the field. An event such as restrictions on Northern Border can have an impact on 132,000 bopd at 2.67 GOR.

Currently here is not a big push by Northern Border to restrict gas specifications coming out of the state. It is anticipated that North Dakota production will utilize all of the pipeline capacity sometime between 2023 – 2026.

The WBI Energy North Bakken project is expected to be in operation by end of the year and will increase incremental capacity from wells north of Lake Sakakawea.

Gas transmission is expected to limit oil production – flaring is not an option. Because gas limitations will be reached, production will have to decline. In an unconstrained environment, North Dakota has decades

worth of drilling. Constrained production would result in significant amounts of potential lost taxes of up to \$4 billion over time. Residue gas does not have a backup transportation option—rail is not an option.

Natural Gas Liquids (NGL) production also continues to ramp up. In the next 10-12 years it is anticipated that North Dakota will produce more NGLs than crude oil. It is important to position for NGL transmission options.

Discussion was held regarding the Legislature's potential appetite for using ARPA funding for natural gas infrastructure. There is an indication of interest from members of the Legislature. The cost of new pipe from the western to the eastern part of the state has been challenging for private companies. A map of pipelines showing space in northeastern North Dakota was reviewed.

A question was raised regarding whether Mr. Kringstad has the tools needed to be able to participate in some of the ideas being discussed regarding natural gas usage across the state. Mr. Kringstad indicated that the Pipeline Authority has broad authority under its current statute to do the work that is being considered.

Ms. Fine presented the FY 2021 Pipeline Authority Financial Report.

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. Representatives from Red Trail Energy, the Energy and Environmental Research Center (EERC) and Steve Fried from the Department of Mineral Resources staff joined the meeting at this time.

Case 28848, Order 31453 – geological storage of carbon dioxide from Red Trail Energy

Case 28849, Order 31454 – amalgamation of the storage reservoir pore space/Red Trail Energy

Case 28850, Order 31455 – determination of financial responsibility/Red Trail Energy

Mr. Helms noted that North Dakota is the first state to have primacy over Class VI wells and the only state with a complete statutory and regulatory process in place. If approved today, this will be the first permit issued for geological storage of carbon dioxide. The hearing lasted over 6 hours as they went through the application and took testimony and discussed all the information. There was a letter from a resident that had a list of questions regarding the storage facility. Staff felt that the questions on geology and engineering were all addressed. The application provided adequate data to show that the Broon Creek Formation is suitable for permanent CO₂ storage. There is a tremendous amount of 3D modeling as part of the process to anticipate geologically where the CO₂ plume would go and ensure that the area around the plume is adequately captured.

A question was raised regarding the possibility of blocking potential future mineral development because of this CO₂ permanent storage. Mr. Helms indicated that this would not impede future mineral development. There are no hydrocarbons in the Broon Creek Formation. The gross thickness of the Formation is 300 feet and is 10 times thicker than the Bakken and the permeability is 10,000 times greater. This storage is an abundant resource with sandstone.

All the pipelines are within the storage facility area and under the Industrial Commission's jurisdiction. There is no transmission line to bring CO₂ to this area. It will be equipped with state-of-the-art fiber optic cables for leak detection. There will be an injection well and a monitoring well with both wells meeting the requirements to be Class VI injector wells. The CO₂ coming from the ethanol plant is 99.9% pure. The water has high salinity and is not useful for other uses. Water and soil sampling was completed for the

storage facility area. There are no faults or fractures or wellbore penetrations that might create a leak point. The geochemical attributes are strong with no detrimental effects on cap rock above or below. Well bores will also have fiber optic cables for leak detection and monitoring pressure. The staff recommends approval of the storage facility.

Commissioner Goehring disclosed that he owns shares in Red Trail Energy. The Commission did not have any concerns regarding his voting on these orders.

In response to a question regarding whether Red Trail would be limited on how much can be stored, Mr. Helms clarified that the amount is unlimited. However, the permit will be reviewed every five years so the amount allowed can grow or shrink as needed. Growth could be addressed in a storage permit review rather than going through the whole permitting process again. Estimated storage is 180,000 tons per year at current plant production levels. The state has 252 billion tons of storage capacity, so this is a very small amount.

It was noted that the lifecycle/longevity of an ethanol plant is usually 30 years on a tax basis and the capital investment is based on a 30-year life. DMR is planning for 50 years and longer of injection into the storage area.

This will be the first Class VI storage facility in the country.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order No. 31453 issued in Case No. 28848 granting Red Trail Energy, LLC's request for the geologic storage of carbon dioxide in the Broom Creek Formation from the Red Trail Energy, LLC ethanol facility in Sections 9, 10, 11, 12, 13, 14, 15, 22 and 23, Township 139 North, Range 92 West, Stark County, ND pursuant to NDAC Section 43-05-01 be approved this 19th day of October, 2021. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

It was noted that the actions today would not have been possible without years of work on this issue. Mr. Helms stated PCOR began evaluating this resource 18 years ago and the state started the statutory and regulatory framework 12 years ago in 2009 and the Oil and Gas Division spent 6 years working with the Environmental Protection Agency to get primacy. North Dakota is the only state that has this statute and these regulations in place to take the next step and consider an Order for the amalgamation of pore space. Order No. 31454 involves the amalgamation of the surface and pore space owners and neighbors of the area and will compensate people throughout the life of the project so that seismic surveys, etc. will be able to be conducted to keep the project on track. There is currently 67% signed up and it is anticipated to reach over 90%. They are above the 60% required by statute. This is essential to ensure everyone is treated fairly.

Compensation was determined by the Red Trail Board and leases were privately negotiated. Everyone's leases were adjusted if a price changed, and it is based on acreage. The science is new enough that this is the best way to ensure everyone is treated fairly. This includes the storage area and a buffer area.

In response to a question about pressure changes, Mr. Helms indicated that 3D simulator models were utilized. No one outside of the amalgamated area should be able to claim that their pore space is being affected by the project. In the future, pressure will need to be addressed with cooperative agreements between project operators to ensure all pore space is utilized efficiently.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order No. 31454 issued in Case No. 28849 granting Red Trail Energy, LLC's request for the amalgamation of the storage reservoir pore space within the Broom Creek Formation, for all tracts of land located

in Sections 10, 11, 14, and 15, the E/2 SE/4 and SE/4 NE/4 of Section 9, the W/2 SW/4 of Section 12, the W/2 W/2 of Section 13, the NE/4 and N/2 NW/4 of Section 22, and the N/2 of Section 23, Township 139 North, Range 92 West, Stark County, ND pursuant to NDCC 38-22-10 be approved this 19th day of October, 2021. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

The Commission congratulated Red Trail and thanked them for their efforts on this project. Attorney General Stenehjem commended Red Trail for working with all the individual landowners.

Mr. Helms noted that there is a change regarding “personally serving an owner” that should be pursued in a future legislative session. There are many instances where personally serving pore space owners will be quite a challenge.

Mr. Helms reviewed the third order which deals with financial responsibility. There is a three part requirement—1) plugging and reclamation single well bond for each well, \$125,000 per well; 2) post injection site care and facility closure financial requirement in the amount of \$1,760,000 which is covered by an insurance policy (this is for monitoring of the CO₂ plume, maintaining of the site care for the 10 years following the last injection into the storage facility) and 3) an emergency and remedial response insurance requirement in the amount of \$16,000,000 for the geologic storage in case there were a leak. The single well bonds can be purchased by a surety or deposited in BND for a cash bond. In this case Red Trail is using insurance products to meet their financial responsibilities. This will also be included in the 5-year review. It is likely that the current literature overestimates the risk of remedial response.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order No. 31455 issued in Case No. 28850 requiring a \$125,000 single-well bond per well, financial responsibility instruments for post injection site care and facility closure in the amount of \$1,760,000, and emergency and remedial response in the amount of \$16,000,000 for the geologic storage of carbon dioxide in the Broom Creek Formation covering the Red Trail Richardton Ethanol Broom Creek Storage Facility #1, Stark County, ND pursuant to NDAC 43-05-01-09.1 be approved this 19th day of October, 2021. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Case 28914, Order 31462 – spacing in Robinson Lake or Sanish-Bakken Pool

This case involves lease line spacing on a township line. The two operators could not agree on how to develop the area and both companies provided a proposal. The Hess proposal includes two 2-mile laterals and a laydown 1280 with no lease line well between the 2 sections to the north. Whiting’s proposal includes two 3840s each with a 3-mile section line lateral. Staff determined Whiting’s proposal uses less well bores, prevents waste and protects correlative rights the best with a few adjustments.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order No. 31462 issued in Case No. 28914 approving two 3840-acre spacing units in the Robinson Lake or Sanish-Bakken Pool, consisting of Sections 1, 12, and 13, Township 154 North, Range 93 West and Sections 6, 7, and 18, Township 154 North, Range 92 West, allowing one 3-mile horizontal section line well and requiring the wellbore between Section 7 and Section 12 to be located in Section 7; and Sections 24, 25, and 36, Township 154 North, Range 93 West and Sections 19, 30, and 31, Township 154 North, Range 92 West, allowing up to two 3-mile horizontal section line wells, Mountrail County, ND, be approved this 19th day of October, 2021. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Case 28963, Order 31514 – request to rework the Buddy 1-27H and Domindgo 1-22H wells

Continental Resources would like to test Bakken enhanced oil recovery (EOR) on a huff and puff basis. There are 21 spacing units, each has only one well. The operator feels that they can do the test, contain the natural gas, and determine if it is possible to repressure 2008-2009 spacing units all the way back to original reservoir pressure by injecting one Bcf of gas into each spacing unit. Continental Resources would like to do it as long as they are getting economic results and have it reviewed by the Commission on an annual basis. There is a WBI transmission line that will bring residue gas which will be mixed with produced gas of the wells. This does not mean that the spacing units will not be fully developed, it just means there will be an opportunity to truly test confined natural gas injection for EOR. This process has been successful in oil fields in other states. The order includes significant monitoring requirements.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order No. 31514 issued in Case No. 28963 authorizing the rework of the Buddy 1-27H well, located in a spacing unit comprised of Sections 27 and 34, Township 156 North, Range 99 West, and the Domindgo 1-22H well, located in a spacing unit comprised of Sections 15 and 22, Township 156 North, Range 99 West, Williams County, ND, for the temporary injection of natural gas and other fluids in the East Fork-Bakken Pool pursuant to NDAC Chapter 43-02-05 and Section 43-02-03-88.1 with the requirement of specific monitoring and reporting and a hearing for project review be approved this 19th day of October, 2021. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Helms reported that DMR completed the hearings for administrative rules on October 11th and 12th with a total of six people attending. The hearings were held in Bismarck, Minot, Williston, and Dickinson. Written comments may be submitted through October 22nd.

Mr. Helms reported that Ms. Katie Haarsager, DMR Public Information Officer, received an IOGCC Chairman Stewardship Award for her work in public education on the CARES Act project. The Commission congratulated Ms. Haarsager and thanked her for her efforts.

Mr. Helms reported that two requests were presented to Appropriations for consideration in the special session. The first would convert orphan wells to livestock supply wells for drought relief. The second would use artificial intelligence engines to map out right-of-way corridors and perhaps allow for the pre-permitting of right-of-ways. The benefit would be to avoid causing delays for projects that want to apply for 45Q tax credits. Wyoming has already done this. The right-of-way will still need to be acquired, but the corridor would be approved. There are many industries that could benefit from this information.

CLEAN SUSTAINABLE ENERGY AUTHORITY (CSEA)

Ms. Fine presented a proposed amendment to the CSEA guidelines of a provisional determination of confidentiality on proprietary, trade secret or financial information provided in CSEA applications. At the September 27, 2021 meeting, the Commission directed staff to draft language that would grant provisional confidentiality until the Commission is able to meet and take formal action on the confidentiality requests.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission amend the Clean Sustainable Energy Authority guidelines as follows:

***CSEA – 6.01 Application ownership.* Information contained in unsuccessful applications will remain the property of the applicant, but the Commission will retain file copies of all successful applications, findings, and reports. With the exception of information that has been deemed confidential by the Commission, applications are public information and are available to the public upon request and payment of copying charges.**

CSEA – 6.05 Designation of Confidential Material. A person or entity may file a request with the Commission to have material(s) designated as confidential ~~as noted under CSEA 6-01~~. The request for confidentiality should be strictly limited to information that meets the criteria to be identified as trade secrets or commercial, financial, or proprietary information. The Commission shall examine the request and determine whether the information is relevant to the matter at hand and is a trade secret under the definitions in N.D.C.C. Sections 47-25.1-01 or 44-04-18.4. The request is confidential and must contain any information required by the Commission and must include at least the following:

- a. A general description of the nature of the information sought to be protected.
- b. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.
- c. An explanation of why the information is not readily ascertainable by proper means of other persons.
- d. A general description of any person that may obtain economic value from disclosure or use of the information, and how the person may obtain this value.
- e. A description of the efforts used to maintain the secrecy of the information.

If the Commission determines the information is either not relevant or not a trade secret, the Commission shall notify the requester and the requester may ask for the return of the information and the request within ten days of the notice. If no return is sought, the information and request are public record. Until such time as the Commission meets and reviews the request for confidentiality, the portions of the application for which confidentiality is being requested shall be held, on a provisional basis, as confidential.

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

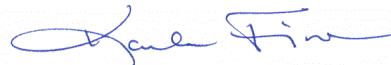
ADMINISTRATION

Ms. Fine presented the September 24, 2021 non-confidential meeting minutes for consideration.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the September 24, 2021 non-confidential meeting minutes be approved. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 4:16 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary