

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on September 27, 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 Renewable Energy Program business.

RENEWABLE ENERGY PROGRAM

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, provided a financial report, indicating that the current uncommitted cash on hand is \$1.3 million.

Mr. James Leiman, Commerce Commissioner and Renewable Energy Council Chairman, presented the Renewable Energy Council's recommendations as follows.

R-048-B – Renewable Hydrogen Microgrid; Submitted by BWR Innovations LLC; Total Project Costs: \$665,909, Recommended funding: \$332,159

BWR Innovations ("BWR") proposes a turn-key sustainable electrical generation system, integrating renewable energy resources (wind and solar) with an electrolyzer (that produces hydrogen) and a hydrogen fuel cell system accompanied with a hydrogen storage system. This will provide the first industrial level "closed loop" microgrid, fully powered by renewable energy. BWR's design is a scalable and modular design that will demonstrate the production and storage of energy efficiently, with zero carbon emissions, minimal maintenance, and no operating expense.

This system will be demonstrated at Grand Farm. BWR expects to demonstrate an electrical system capable of providing the entire electrical demands for a site, store sufficient energy to provide a buffer during periods of time when the sun isn't shining and the wind isn't blowing, and the capability for providing energy as a revenue source.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendation of the Renewable Energy Council to fund the grant application "Renewable Hydrogen Microgrid" and authorizes the Industrial Commission Executive Director/Secretary to execute a contract with BWR Innovations LLC in an amount not to exceed \$332,159 with the following conditions:

- Letter of commitment indicating value of Grand Farm match is provided prior to contract.
- Letter of support from NDSU is provided prior to contract.

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

R-048-E – Grand Forks Green Ag-Park; Submitted by Quintessence Partners LLC; Total Project Costs: \$4,290,000; Recommended funding: \$500,000

The Red River Biorefinery is ultimately proposing a low carbon value added Ag-Park with four components: a wheat gluten facility, a plant-based protein production facility, an anaerobic digester/wastewater treatment facility and a biomass based combined heat and power (CHP) facility to power the park. The scope of the proposal is to conduct the next level of analysis for the wheat gluten facility which requires:

- a more specific design for the site,
- detailed mass and energy balances,
- construction cost,
- timelines,
- permitting details, and
- market access for feedstock and end products.

If successful, this would increase the economic viability of agriculture and energy in North Dakota.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Renewable Energy Council to fund the grant application “Grand Forks Green Ag-Park” and authorizes the Industrial Commission Executive Director/Secretary to execute a contract with Quintessence Partners LLC in an amount not to exceed \$500,000. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

CLEAN SUSTAINABLE ENERGY AUTHORITY (CSEA)

In consultation with the CSEA Chairman, Lt. Governor Sanford, Ms. Fine and Ms. Andrea Pfennig, Industrial Commission Deputy Executive Director, recommended the appointment of Mr. Al Anderson to serve as the Clean Sustainable Energy Authority Director. Mr. Anderson served as the North Dakota Commerce Commissioner from 2011 to 2016. In that role, he served as Chair of the Renewable Energy Council and Chair of the EmPower Commission. His service on the EmPower Commission gave him an opportunity to work with representatives from all North Dakota energy sectors including agriculture, oil and gas, lignite, wind and other renewable resources. His experience as Commerce Commissioner also provides a background in assisting the private sector in the commercialization of their companies and development of their technology. Prior to his State service Mr. Anderson was President/Refinery Manager for the Northern Great Plains Region and Mandan Refinery Manager for Tesoro Refining and Marketing Company. He has extensive experience coordinating multi-million dollar projects involving people and activities. A North Dakota native, he graduated from Underwood High School and the University of North Dakota with a B.S. in Geological Engineering. He also has a Master of Business Administration from the University of Utah. He served in the United States Marine Corps from 1973-1977.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Al Anderson be named as the Director of the Clean Sustainable Energy Authority program effective immediately. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Anderson stated that he is thankful for the opportunity to serve North Dakota in a new capacity.

Mr. Anderson presented for consideration the draft CSEA guidelines that had been developed by staff, revised by the CSEA Technical Committee and then reviewed and recommended for approval by the CSEA. He noted that there was an opportunity for public comment on the proposed guidelines. The only comments received were from staff, BND, and EERC. It is anticipated that there will be significant interest in the

program, and it will quickly be oversubscribed. He provided a graphic which showed how this program fits in with other state financial support for driving energy innovation in the state. CSEA follows the early research programs.

The proposed guidelines include a cost share of up to 50% of the project cost for grants and loans. The minimum proposed grant amount is \$1,000,000 and the maximum amount is \$10,000,000. Regarding loans, the minimum proposed loan or guarantee is \$10,000,000. The proposed application deadlines are November 1st, 2021, March 1st, 2022, and July 1st, 2022.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Clean Sustainable Energy Authority and approve the program guidelines/process as presented. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

The Commission expressed appreciation to Mr. Anderson for stepping into this role.

Ms. Fine discussed confidentiality and asked for guidance regarding how to proceed. Currently, the Commission would need to grant confidentiality to each request prior to going through the review process. Attorney General Stenehjem indicated that an option may be to provisionally grant confidentiality until the next Commission meeting. This way, the request would still come to the Commission for final approval. Long term, it may be beneficial to try to get the statute amended, but this would be a solution for the short term. This information would be confidential if it was directly provided to the Bank as part of a loan request. It is important to be clear that “provisional” does not mean that the information is at risk of being released. Applicants will have an opportunity to take the information back if the Commission would not grant confidentiality. Ms. Fine will draft a motion for the next meeting.

Regarding staff authority, language will be prepared clarifying that the Industrial Commission staff and Mr. Anderson will be the individuals that are representing the Commission when the guidelines refer to Commission designees.

Governor Burgum noted that there should be language tied to the size of the grant or loan for budget modifications. The current authority for staff of \$5,000 is too small. Staff is to work on an option to find a balance between a percentage of the funding award or a certain dollar amount. One option may include wording such as non-substantive changes.

HOUSING FINANCE AGENCY (HFA)

Mr. Dave Flohr, HFA Executive Director, provided a report on HFA’s issuance of a Declaration of “Official Intent” to issue Multifamily Revenue Bonds in an amount not to exceed \$13,300,000. The proceeds of the bonds will be used for the acquisition and rehabilitation of the Grand Forks Portfolio, which consists of three Section 8 projects: University Square, Columbia Square East and Columbia Square South.

Schuett Companies, Inc. is proposing to acquire and rehabilitate the 182-unit portfolio preserving the Section 8 project-based rental assistance contracts (HAP contracts). University Square, located at 505 N 47th Street, is comprised of 60 units all with rental assistance. The project is currently in default of its HAP contract and needs significant capital improvements. Columbia Square South, located at 2500 Knight Drive, is a 72-unit complex and Columbia Square East, located at 2505 13th Avenue South, is a 50-unit complex. Both properties are in need of capital improvements. Each building will have replacement of exterior siding and brick tuckpointing, windows, and extensive unit upgrades. Each property will have the community

amenities upgraded including conversion of a basketball court to an outdoor gathering space with grills, addition of a clubhouse at University Square, and addition of a clubroom at Columbia East. Total cost of the project is \$22,891,969.

Mr. Flohr noted this does not obligate HFA to issue bonds, it just states the intent so the developer can go for 4% in tax credits. HIF and other financing sources will also be reviewed.

Mr. Flohr reported that HFA will be starting to work on the issuance of an RFP for bond underwriters. The engagement with the current team of underwriters will be expiring in 2022. In the meantime, a new single family bond issue is expected in November for approximately \$150 million using the current underwriting team.

Mr. Flohr reported that HFA received a grant through HUD for \$1.975 million to work on youth homelessness throughout the state. The HOME program has a separate award of \$7.7 million from the American Rescue Plan. HFA will go through a planning process for the funds in the coming months. This will be done in conjunction with the planning for the state HIF appropriation of \$950,000 for homeless issues. Mr. Flohr clarified that the \$7.7 million comes directly to HFA and is not part of the funding the State has already received. The funding is in HUD's accounts until reimbursement is requested.

PUBLIC FINANCE AUTHORITY (PFA)

Ms. DeAnn Ament, PFA Executive Director, presented the following State Revolving loan applications for consideration.

City of Kindred – Increase of \$2,500,000 for a total loan of \$3,900,000

Funds will be used for the rehabilitation and expansion of wastewater stabilization ponds. The requested term for the Clean Water State Revolving Fund (CWSRF) loan is 30 years. The City of Kindred will issue revenue bonds payable with sewer user fees. The net average annual payment for the revenue bonds will be \$144,833. The reserve requirement will be \$162,400 and the 120% coverage requirement will be \$173,799. This project initially received a loan in the amount of \$1.4 million and also qualifies for loan forgiveness of \$420,000. Taking this into consideration, the total loan amount will be \$3,480,000.

Kindred has 374 users that pay a monthly base rate of \$5.31 flat base charge for the first 2,000 gallons of sewer, and then \$0.31/1,000 gallons for the amount over 2,000 gallons. Currently a monthly sewer bill for 4,000 gallons is \$5.93. Some of the non-residential and multi-unit residential users were assigned an "equivalency factor" and pay the equivalency factor multiplied by the base charge for their sewer in addition to the volume over 2,000 gallons per equivalent assigned. Kindred estimates increasing the base charge to \$50.18 (without including any volume) and the volume charge would be \$2.30/1,000 gallons. Average monthly residential rates would be \$59.38/month at 4,000 gallons per month which annually would generate an additional \$230,338.

The Army Corps of Engineers is providing a grant for approximately half the project costs. Ms. Ament noted that the seller for the original location backed out of the purchase agreement so now everything needs to be moved, which is significantly increasing the costs.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem to adopt 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 Kindred (the "Political Subdivision") has requested a \$2,500,000 increase to a previously approved \$1,400,000 loan (total \$3,900,000) from the Program to rehabilitate and expand wastewater stabilization ponds; 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.

City of Stanley – Clean Water - \$1,322,000 and Drinking Water - \$2,253,000

Funds will be used for 21 blocks of street improvements with 7 ½ blocks that will include new sanitary sewer main, manholes and services, and 9 ½ blocks that will include a new water main and services.

The requested term for both bonds is 30 years. Improvement bonds will be issued for \$330,500 of the CWSRF project with an average annual payment of \$14,099. Improvement bonds will be issued for \$563,250 of the Drinking Water State Revolving Fund (DWSRF) project with an average annual payment of \$24,077. The City will issue improvement bonds payable with special assessments. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City will levy a general deficiency tax in the event that the revenues from the collection of special assessments are not sufficient to pay the debt service on the improvement bonds.

For the CWSRF project, the City will issue \$991,500 revenue bonds payable with sewer user fees. The net average annual payment for the revenue bonds will be \$41,813. The reserve requirement will be \$50,750 and the 120% coverage requirement will be \$50,175. The City has 960 residential connections and 165 commercial connections which all pay a base rate of \$15 per connection per month. In anticipation of future

capital projects, the monthly base rate was increased \$10 per user on January 1, 2020 and is estimated to annually generate \$135,000.

For the DWSRF project, the City will issue \$1,689,750 revenue bonds payable with water user fees. The net average annual payment for the revenue bonds will be \$71,051. The reserve requirement will be \$75,250 and the 120% coverage requirement will be \$85,262. The City has 960 residential connections which each pay a base rate of \$18.50 per month and 165 commercial connections which each pay a base rate of \$21.25 per connection per month for water. In anticipation of future capital projects, the monthly base rate was increased \$10 per user starting January 1, 2020. This increase should generate an additional \$135,000 annually.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring to adopt 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 Stanley (the "Political Subdivision") has requested a loan in the amount of \$1,322,000 from the Program to construct 21 blocks of street improvements with 7 ½ blocks of new sanitary sewer main, manholes and services and 9 ½ blocks of new water main and services; 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.

It was moved by Attorney General Stenejem and seconded by Commissioner Goehring to adopt the following resolution.

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

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

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

WHEREAS, the City of Stanley (the "Political Subdivision") has requested a loan in the amount of \$2,253,000 from the Program to construct 21 blocks of street improvements with 7 ½ blocks of new sanitary sewer main, manholes and services and 9 ½ blocks of new water main and services; and

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

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

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

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

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

Ms. Ament reported on PFA Advisory Committee SRF loan approvals as follows.

Hebron, Clean Water SRF – \$120,000

This project will replace water meters. The requested term for is 10 years. The City will issue revenue bonds payable with water user fees.

Barnes Rural Water District, Drinking Water SRF – \$507,000

The State Water Commission is providing a \$1,475,000 grant. This project will add four 100,000-gallon underground concrete storage reservoirs at existing pump stations/reservoirs, and tie into existing reservoirs with 8-inch PVC pipe. The requested term for the loan is 30 years. The District will issue revenue bonds payable with user fees for this loan.

Lakota, Drinking Water SRF – increase of \$161,500 for a total amount of \$475,000

This will provide a \$161,500 increase to a previously approved \$313,000 (total loan \$474,500) DWSRF loan from the City of Lakota towards a \$1,265,000 project. The State Water Commission is providing a \$481,000 grant and CDBG will provide a \$310,000 grant. This project will install a replacement 10” transmission line to restore sufficient domestic water flow rate to the City’s distribution and storage system after a sudden failure in 2020. The requested term for the loan is 30 years. The District will issue revenue bonds payable with water user fees.

Governor Burgum requested that maps be included with the memo in the future. Ms. Ament indicated that she would provide them for Kindred and Stanley as a follow up to this meeting.

Ms. Ament reported that PFA anticipates issuing State Revolving Fund bonds at year end, pending release of the federal guidelines. There is potential to receive over the next five years \$100 million for the Drinking Water program and \$50 million for the Clean Water program. Match is required on the funds received of 10% on the first two years and 20% for years 3-5 for each of the grants. Because of this, determining the bond amount is a challenge. North Dakota gets the minimum state grant amounts, so the estimate of those amounts is currently being used. Governor Burgum requested additional information on how the minimum amounts for each state are determined at the federal level.

BANK OF NORTH DAKOTA (BND)

Mr. Todd Steinwand, BND President, presented the BND Advisory Board recommendation on the appointment of Rob Pfennig as BND Chief Financial Officer/Senior Vice President. Mr. Pfennig has been with BND for three years. He is a CPA and previously worked with Eide Bailley, Westcon, and MDU.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Bank of North Dakota Advisory Board and appoint Rob Pfennig as the Bank of North Dakota Chief Financial Officer/Senior Vice President effective October 1, 2021. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Steinwand presented a COVID-19 Response white paper that BND has prepared. Some of the key highlights included the benefits of waiting until the federal response is determined to avoid duplication of resources. Once the federal response is known then BND could identify what further assistance is needed.

BND was in a good position as all employees were equipped with laptops prior to the pandemic. This enabled staff to work from home with little notice and minimal disruption to operations. Air handling equipment was installed. Keeping the facility clean and customers safe was a priority. BND had to move to debit cards because of the office closure.

One challenge is maintaining a strong culture with employees working remotely. Going forward approximately 50% of employees will work in a hybrid model and approximately 25% will continue to work from home. To stay connected, video conferencing and an all-team meeting is held monthly. Some roles can work from home with no interruption to operations. This is also being utilized as a retention tool.

Attorney General Stenehjem inquired if BND is obligated to follow OSHA requirements. Mr. Steinwand indicated that BND is investigating this question. BND has a federal grant program, so they may be considered a federal contractor. BND has asked employees for information on how many have been vaccinated which is completely voluntary and confidential. The information is intended to give BND

leadership an idea of the number of currently vaccinated employees should it be determined that BND falls under the federal contractor requirements. BND is hopeful they will be exempt.
Mr. Steinwand presented the BND Advisory Board July 15, 2021, nonconfidential meeting minutes.

Mr. Steinwand provided an update on the drought program, noting that there have been seven applications received. The largest application was \$200,000. BND is waiting until the end of the year to determine next steps as there may be more demand around the end of November.

Pursuant to N.D.C.C. 6-09-35, the Commission entered into executive session at 2:09 p.m. to discuss the following items:

- Consideration of loan applications.
- Presentation of BND Advisory Board July 15, 2021, confidential meeting minutes.
- Other Bank of North Dakota confidential business (as defined under N.D.C.C. 6-09-35)

Only Commission members, their staff, and BND staff participated in the executive session.

BND EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Bank of North Dakota Personnel:

Todd Steinwand
Rob Pfennig
Tim Porter
Craig Hanson

Others in Attendance:

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|----------------------|------------------------------|
| Leslie Bakken Oliver | Governor's Office |
| Dutch Bialke | Department of Agriculture |
| Karlene Fine | Industrial Commission Office |
| Andrea Pfennig | Industrial Commission Office |

The BND executive session ended at 2:38 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 two loan requests.

Attachment 16: On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Attachment 17: On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Fine presented a resolution of appreciation for consideration.

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

Resolution of Appreciation

- Whereas, Tim Porter began his career at the Bank of North Dakota in 1990; and,**
- Whereas, Over his 31-year career with the Bank, Tim has been a valued employee serving as an Investment Coordinator, Investment Manager and for the last 11 years as the Bank's Chief Financial Officer; and,**
- Whereas, Tim also took on additional leadership responsibilities while serving as the Bank's Investment Manager and was appointed by the Commission to serve as the Public Finance Authority Executive Director from August 2001 through April 2010; and,**
- Whereas, Tim has been an instrumental member of the Bank's executive team and been committed to fulfilling the mission of the Bank to promote agriculture, commerce and industry; and,**
- Whereas, Tim has decided to retire and spend more time with his family and friends, pursuing outdoor activities like hunting, relaxing at the family lake cabin and traveling.**

Now, therefore, the Industrial Commission hereby expresses its deepest gratitude to Tim Porter for his 31 years of dedicated service to the Bank of North Dakota and the citizens of North Dakota and wishes him the very best in his retirement.

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

Mr. Porter stated that it has been a privilege to work for the Bank for the last 31 years serving North Dakota. He feels that the Bank is in a good place with employees.

DEPARTMENT OF MINERAL RESOURCES (DMR)

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

Case 28845, Order 31488 – application for a 320-acre spacing unit
Case 28846, Order 31489 – application for a 320-acre spacing unit

This area in question is spaced for 1280 horizontal development, which is economic. The application would put vertical wells in the horizontal well spacing units. There is no increased incremental recovery by the proposed vertical wells. The recommendation is to deny the application based on the addition of new risks and reserve problems. The investment would result in taking reserves from the horizontal spacing unit and would not be fair to the operating partners or mineral owners.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order No. 31488 issued in Case No. 28845 denying a request from NP Resources, LLC to amend the applicable orders for the Bicentennial-Bakken Pool to establish a 320-acre spacing unit authorizing one vertical well consisting of the S/2 of Section 28, T.144N., R.103W., Golden Valley County, ND be approved this 27th day of September, 2021. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order No. 31489 issued in Case No. 28846 denying a request from NP Resources, LLC to amend the applicable orders for the Beaver Creek-Bakken Pool to establish a 320-acre spacing unit authorizing one vertical well consisting of the N/2 of Section 6, T.142N., R.102W., Billings County, ND be approved this 27th day of September, 2021. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Case 28888, Order 31434 – saltwater disposal well for a fracture slurry injection

Case 28889, Order 31435 – determination of bond amount

These cases involve a fracture slurry injection project. The adjacent business owner and the landowner where the plant is to be located indicated their support for the project. A local township officer and the housing developer opposed the application because the road will be shared by school buses and homeowners in the nearby housing development. There's only one access road into the housing development. GMJS has indicated it can prohibit trucks from coming and going during school bus hours. The company has the appropriate expertise and owns the trademark on slurry injection. Trucks will not impede traffic. This would be the second fracture slurry injection well and would have an ability to take TENORM waste.

The operator believes a \$100,000 standard bond is appropriate. However, there is potential for higher plugging costs, etc. so a \$200,000 bond is recommended.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order No. 31434 issued in Case No. 28888 granting the GMJS Services LLC request to drill a saltwater disposal well to be utilized for fracture injection into the Dakota Group in a well to be known as the McKenzie SFI 12-7 well, to be located in the NE/4 NW4 of Section 7, T.152N., R.101W., Indian Hill Field, McKenzie County, ND be approved this 27th day of September, 2021. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order No. 31435 issued in Case No. 28889 requiring GMJS Services LLC to provide a bond amount of \$200,000 for the McKenzie SFI 12-7 well to be drilled in the NE/4 NW/4 of Section 7, T.152N., R.101W., Indian Hill Field, McKenzie County, ND, to be utilized for fracture injection into the Dakota Group be approved this 27th day of September, 2021. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Case 27662, Order 31490 – dismissal with prejudice as to Jim Andersen (aka Anderson)

This proposed order dismisses, with prejudice, Mr. Andersen from a complaint case with Vast.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Commission approve, effective September 27, 2021, Order No. 31490 issued in Case No. 27662 dismissing Jim Andersen from this action with prejudice, as outlined in the consent agreement signed on August 27, 2021. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Hicks provided the Oil and Gas Division Quarterly Report. Permit numbers are still rebounding at approximately half of the normal amount. The rig count is suppressed. Well count is at a record high,

approaching 17,000 wells. Production is up for the quarter, but down from July. Gas is increasing and approaching a record high of almost 3 billion cubic feet.

State gas volumes are expected to rise substantially through the next few years. Flared volumes remain fairly low. Regarding gas plant expansions, the new Sanderson Outrigger plant is completed, which would take 80-90 million cubic feet a day, however, it has been idled. Other plant plans were also discussed. Bakken gas captured is approaching the 91% goal. Capacity could be exhausted in 2-3 years. Prices are good right now and there is no financial incentive to flare. Gas oil ratios were discussed, and it was noted that there is not enough data to determine the extent that gas production will increase. A 2010 study indicates that it does flatten out at 4000 and that level has not been reached yet.

Regarding complaints, Mr. Hicks noted that progress has been made on all current cases including a consent agreement with Jim Andersen which included a fine of \$25,000 and \$225,000 liens on five producing wells. Blue Appaloosa appealed in District Court which upheld the Commission's findings. Scout also signed a consent agreement to pay \$96,000 of fines and they will be monitored for the next two years. If there are additional complaints, there will be fines of an additional \$130,000.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2 the Industrial Commission enter into executive session for the purpose of attorney consultation on Department of Mineral Resources business. The purpose of the executive session will be to consult with the Commission's attorney(s) regarding current adversarial proceedings as follows and listed on the agenda:

- **Case No. 31-2020-CV-0018 - Northern Oil and Gas, Inc. vs. Continental Resources, Inc; Board of University and School Lands and ND Industrial Commission et al**
- **Case No. 08-2021-CV-00026 – Armstrong vs. North Dakota Industrial Commission**
- **Case No. 13-2021-CV-00036 - Blue Appaloosa vs. North Dakota Industrial Commission**
- **Case No. 05-2019-CV-00085 - Northwest Landowners Association vs. State of North Dakota, et al.**
- **North Dakota Industrial Commission & Divide County vs. Aaland**
- **Case No. 04-2021-CV-00011 Gallatin Oil, LLC vs. ND Industrial Commission, Attorney General Stenehjem and Lime Rock Resources III-A, L.P.**
- **Enable Midstream vs. North Dakota Industrial Commission**

And further move that upon conclusion of the DMR Executive Session the Industrial Commission under the authority of 17-05-14 and 54-63-02 enter into executive session for the purpose of considering a Transmission Authority confidentiality request and a Renewable Energy Program confidentiality request. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum noted that the Commission was meeting in executive session to consult with the Commission's attorney(s) regarding the current adversarial proceedings listed on the agenda. Following the DMR executive session, the Industrial Commission would enter executive session regarding the Transmission Authority and Renewable Energy Program confidentiality requests.

Only the Commission members, their staff and the attorneys were present in the three executive sessions. DMR staff was in the DMR session and the Transmission Authority Director was in the Transmission Authority session.

Governor Burgum reminded the Commission members and those present in the executive sessions that the discussion during these executive sessions must be limited to those items listed on the agenda. The executive sessions in total were anticipated to last 60 minutes. Any formal action by the Commission regarding the confidential items listed on the agenda would occur after it reconvenes in open session.

Commission members, their staff including attorneys, and DMR staff were asked to join the executive session at this time and the public was asked to leave the room. The DMR executive session began at 3:23 p.m.

DMR EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

DMR Personnel Present:

Lynn Helms
Bruce Hicks
Katie Haarsager

Others in Attendance:

| | |
|----------------------|--------------------------------------|
| Leslie Bakken Oliver | Governor's Office |
| Reice Haase | Governor's Office |
| Dutch Bialke | Department of Agriculture |
| David Phillips | Attorney General's Office (remotely) |
| Matt Sagsveen | Attorney General's Office (remotely) |
| Karlene Fine | Industrial Commission Office |
| Andrea Pfennig | Industrial Commission Office |

The DMR executive session ended at 3:51 p.m.

The executive session for Transmission Authority began at 3:52 p.m.

TRANSMISSION AUTHORITY EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

Others in Attendance:

| | |
|----------------------|------------------------------------|
| Leslie Bakken Oliver | Governor's Office |
| Dutch Bialke | Department of Agriculture |
| David Phillips | Attorney General's Office (remote) |
| John Weeda | Transmission Authority |
| Karlene Fine | Industrial Commission Office |
| Andrea Pfennig | Industrial Commission Office |

The Transmission Authority executive session ended at 3:53 p.m.

The executive session for the Renewable Energy Program began at 3:54 p.m.

RENEWABLE ENERGY PROGRAM EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

Others in Attendance:

| | |
|----------------------|------------------------------|
| Leslie Bakken Oliver | Governor's Office |
| Dutch Bialke | Department of Agriculture |
| Karlene Fine | Industrial Commission Office |
| Andrea Pfennig | Industrial Commission Office |

The Renewable Energy Program executive session ended at 3:55 p.m. and the Commission reconvened in open session.

Governor Burgum noted that during the DMR executive session, guidance was provided to the Commission's counsel regarding the matters listed on the agenda.

During the Transmission Authority session the Commission considered a request for confidentiality.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts 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 and the procedures outlined therein, determines that the request is confidential, and the information described in the request is proprietary information and is confidential. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

During the Renewable Energy Program executive session, the Commission considered a request for confidentiality.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendation of the Industrial Commission Deputy Executive Director and pursuant to section 54-63-02.2, grant the confidentiality request and determines that the information described in the request is a trade secret and confidential with the contingency that the applicant provides non-confidential reports with sufficient information to determine that the work outlined in the application is being completed. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

ADMINISTRATION

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

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the August 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.

Ms. Fine presented the 2022 Industrial Commission meeting schedule.

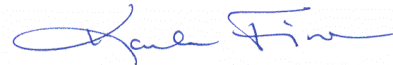
It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the 2022 Industrial Commission meeting schedule be approved as follows:

| | |
|----------------------------------|--|
| Monday, January 24, 2022: | Governor's Conference Room – 12:00 to 5:00 p.m. |
| Tuesday, February 22: | Governor's Conference Room - 12:00 to 5:00 p.m. |
| Tuesday, March 29: | Governor's Conference Room – 12:00 to 5:00 p.m. |
| Tuesday, April 26: | Governor's Conference Room – 12:00 to 5:00 p.m. |
| Tuesday, May 24: | Governor's Conference Room – 12:00 to 5:00 p.m. |
| Wednesday, June 29: | Governor's Conference Room – 12:00 to 5:00 p.m. |
| Tuesday, July 26: | Governor's Conference Room – 12:00 to 5:00 p.m. |
| Tuesday, August 30: | Governor's Conference Room – 12:00 to 5:00 p.m. |
| Friday, September 30: | Governor's Conference Room – 9:00 a.m. – 1:00 p.m. |
| Thursday, October 20: | Governor's Conference Room and Mill Celebration/Dinner in Grand Forks – 11:00 a.m. to 9:00 p.m. |
| Tuesday, November 29: | Governor's Conference Room – 12:00 to 5:00 p.m. |
| Tuesday, December 20: | Governor's Conference Room – 12:00 to 5:00 p.m. |

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 3:59 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary