

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on May 23, 2022 beginning at 12:00 noon
Governor's Conference Room – State Capitol

Present: Governor Doug Burgum, Chairman
Attorney General Drew H. Wrigley
Agriculture Commissioner Doug Goehring

Also Present: This meeting was open through Microsoft Teams so not all attendees are known
Agency representatives joined various portions of the meeting.

Governor Burgum called the meeting of the Industrial Commission to order at approximately 12:00 noon.

LIGNITE RESEARCH, DEVELOPMENT & MARKETING PROGRAM

Mr. Jason Bohrer, Chairman of the Lignite Research Council, and Mr. Mike Holmes, Lignite Research program Director and Industrial Commission Technical Advisor, joined the meeting.

Ms. Karlene Fine, Industrial Commission Executive Director, provided a financial report noting that there was a cash balance as of March 31, 2022, of \$21,079,235 with outstanding commitments of \$17,489,679. Not all the funding for the biennium has been received, but anticipate the \$10 million oil and gas allocation to be deposited in the next month or two. There is currently \$4.4 million available for projects in the small research/education/demonstration category and approximately \$9.6 million for advanced energy technology projects. She noted that the applications the Commission is considering today would come from the small research/education/demonstration category.

Mr. Holmes presented the Lignite Research Council recommendations regarding the Grant Round 100 applications for consideration.

This application is titled "Incorporation of Coal and Coal Waste into High-Value Materials" and was submitted by Semplastics. The project will be for 3 years and would further the ongoing effort led by Semplastics to integrate coal and coal ash into plastics to make safe and strong building materials. North American Coal and the Energy and Environmental Research Center are involved in this project. The project would include two efforts focused on 1) manufacturing with large 3D printers, and 2) assembling a partial building using coal-based material. The technological target is to provide new improved building materials out of lignite-based resources. The economic impact is to provide additional markets for lignite-based resources. The underlying benefit of the project is to create value-added coal-based products. The total budget is \$4,206,633 with \$850,000 being sought from the North Dakota Industrial Commission. Most of the matching funds would come from the U.S. Department of Energy with other funds coming from Semplastics as well as other research partners.

The Independent Technical Reviewers recommended 1 to fund and 2 to consider funding. The Lignite Research Council voted 14 to fund and 2 not to fund. The project received an average score of 178.6 out of 250. The project is a good fit for the Lignite Research Program, as a pursuit of emerging markets for building materials from lignite and ash and provides a strong leverage of state funding at roughly 5:1. Mr. Holmes stated it was his recommendation that the Commission fund the project with the following conditions:

- Technical advisor participates in project reviews
- Technical advisor reviews the project management plan with the project team, including a detailed review of the work scope
- Receipt of the industry and federal matching funds

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of the Lignite Research Council to fund the grant application “Incorporation of Coal and Coal Waste into High-Value Materials” and authorize the Industrial Commission Executive Director/Secretary to execute a contract with Semplastics to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$850,000 with the following contingencies:

- **Technical Advisor participates in project reviews,**
- **Technical Advisor reviews the project management plan with the project team, including a detailed review of the work scope,**
- **Receipt of the industry and federal matching funds.**

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

Mr. Holmes presented the second request titled “Amendment to Rare Earth Element Extraction and Concentration at Pilot-Scale from ND Coal-Related Feedstocks.” It was submitted by the Institute for Energy Studies at the University of North Dakota. The duration of the project would be an increase from 30 months to 42 months and would be an increase of new funding in the amount of \$175,000. The original award was for \$900,000 with the total project costs being \$7,158,555.

Mr. Holmes stated that the University of North Dakota (UND), in collaboration with Microbeam Technologies Inc. (MTI), Barr Engineering Co., Rare Earth Salts (RES) and MLJ Consulting continue to demonstrate novel technology for rare earth element recovery from North Dakota lignite coal feedstocks. The objectives of this project include:

- 1) Confirm coal seams found within active North Dakota mines have elevated REE content and collect a large sample (300-500 tons) for further processing,
- 2) Design and construct a pilot-scale facility for REE extraction and concentration with at least 0.25 tons/hr. coal feed,
- 3) Determine optimal operating conditions using existing bench-scale equipment and utilize these optimized parameters to process at least 100 tons of high REE coal, and
- 4), verify REE product quality with downstream REE refiners (RES) and reduce potential costs and time-to-market associated with coal-related REE materials.

The expected technical and economic impacts are the following:

- 1) Develop a low-cost, environmentally friendly REE concentrate from North Dakota lignite feedstocks,
- 2) Verify scalability of the process proven at the bench scale and develop a baseline for future commercial demonstration, and
- 3) Perform rigorous economic modeling equivalent to a preliminary Front End Engineering Design for evaluation of the technology at a potential commercial demonstration site.

The Independent Technical Reviewers had recommended 1 to fund and 2 to consider funding with an average score of 201 out of 250. Mr. Holmes stated it was his recommendation to fund and extend the schedule with the following three conditions:

- Technical Advisor continues to participate in project reviews
- Technical Advisor reviews the revised project management plan with the project team including, HAZOP considerations, and work / budget schedule breakout.
- Receipt of the industry and federal matching funds

The Lignite Research Council voted 16-0 to provide the additional funding and extend the schedule.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of the Lignite Research Council to amend the Rare Earth Element Extraction and Concentration at Pilot-Scale from ND Coal-Related Feedstocks Project – Contract FY20-XC-221 and authorize the Industrial Commission Executive Director/Secretary to execute an amendment with UND – Institute for Energy Studies to provide Industrial Commission Lignite Research Program funding in an additional amount not to exceed \$175,000 and change the project duration from 30 months to 42 months with the following contingencies:

- **Technical Advisor continues to participate in project reviews,**
- **Technical Advisor reviews the revised project management plan with the project team, including HAZOP considerations and work/budget schedule breakout, and**
- **Receipt of the industry and federal matching funds.**

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

The Commission thanked Mr. Holmes and Mr. Jason Bohrer for their work and bringing innovative projects to the Commission.

Due to technical difficulties the Housing Finance Agency agenda items were considered at this time.

HOUSING FINANCE AGENCY (HFA)

Mr. David Flohr, HFA Executive Director, and Brandon Dettlaff, HFA Home Ownership Director, presented the Housing Finance Agency Advisory Board recommendations regarding the establishment of income limits for the FirstHome, FirstHome Start, FirstHome DCA and HomeACCESS Programs. Mr. Dettlaff stated that the Department of Housing and Urban Development (HUD) published new median income numbers on April 18, 2022. These numbers are used to establish the Annual Income limits for the FirstHome, FirstHome Start, FirstHome DCA, and HomeAccess programs. Based on this information the new statewide median income for North Dakota increased \$6,700 (7.44%) to \$96,800 for 2022. This compares to the national median income increase of \$10,100 (12.64%) to \$90,000. Mortgage Revenue Bond (MRB) regulations allow the use of the greater of county or state median income. Those regulations and HFA policy limit household incomes as follows:

- FirstHome - 100% of median income - one and two member households by county (MRB regulation)
- FirstHome - 115% of median income - three or more member households by county (MRB regulation)
- DCA limits - 80% of median income by family size and county (HFA policy)

Mr. Dettlaff stated the HFA Advisory Board is recommending that the 2022 limits range from \$96,800 to \$128,685 depending on family size and county. The Industrial Commission would approve, in the form of Program Directive No. 119 per Exhibit 1, new Annual Income limits effective for loan reservations under the FirstHome (Standard/Start/HomeAccess) programs dated on or after June 1, 2022. The Advisory Board further recommends changes to the DCA Program limits per Exhibit 2 effective for loan reservations dated on or after June 1, 2022.

It was moved by Attorney General Wrigley and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Housing Finance Agency Advisory Board and approve Program Directive 119 and establish the following new Annual Income limits effective

for loan reservations under the FirstHome (Standard/Start/HomeAccess) Programs dated on or after June 1, 2022:

| County | Maximum Annual Income <u>FirstHome/Start/HomeAccess</u> | |
|------------------------|--|--------------------------|
| | Family Size Less than 3 | Family Size 3 or More |
| Williams | \$111,900 | \$128,685 |
| Mercer | \$108,800 | \$125,120 |
| Stark | \$106,800 | \$122,820 |
| Burleigh/Morton/Oliver | \$102,600 | \$117,990 |
| Cass | \$100,500 | \$115,575 |
| All Other Counties | \$96,800 | \$111,320 |

And further approve the changes to the DCA Program limits effective for loan reservations dated on or after June 1, 2022 as follows:

**DCA INCOME LIMITS
06/01/2022**

| COUNTY | FAMILY SIZE* | | | | | | | |
|------------------------|--------------|--------|--------|--------|--------|---------|---------|---------|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| Williams | 62,600 | 71,550 | 80,500 | 89,400 | 96,600 | 103,750 | 110,900 | 118,050 |
| Stark/Mercer | 59,850 | 68,400 | 76,950 | 85,450 | 92,300 | 99,150 | 106,000 | 112,800 |
| Burleigh/Morton/Oliver | 57,500 | 65,700 | 73,900 | 82,100 | 88,700 | 95,250 | 101,850 | 108,400 |
| Cass | 56,300 | 64,350 | 72,400 | 80,400 | 86,850 | 93,300 | 99,700 | 106,150 |
| McKenzie | 54,350 | 62,100 | 69,850 | 77,600 | 83,850 | 90,050 | 96,250 | 102,450 |
| All Others | 52,150 | 59,600 | 67,050 | 74,500 | 80,500 | 86,450 | 92,400 | 98,350 |

**Larger families, check with NDHFA for limits.*

In response to a question, Mr. Flohr stated that this would be close to the largest increase in income limits from one year to the next. There was also discussion on how this information is distributed to the public and to the private lenders.

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

Mr. Flohr and Mr. Detlaff presented the NDHFA Advisory Board recommendation to adjust the Acquisition Cost Limits for the FirstHome Standard, Start, HomeAccess, and DCA programs effective June 1, 2022.

Mr. Detlaff stated that the IRS issues a Revenue Procedure each year that provides the average area purchase price for counties in each state and a nationwide minimum. This is done by adjusting the FHA loan limits to consider the differences between average and median purchase prices. The IRS tax code then requires the Housing Finance Agency set its Acquisition Cost limits at no more than 90% of the applicable average area purchase price as provided in the Revenue Procedure.

He indicated that the current FirstHome acquisition limits for one-unit homes are as follows:

Previously Occupied and Unoccupied (1 unit only)

| | <u>1 Unit</u> | <u>2 Units</u> | <u>3 Units</u> | <u>4 Units</u> |
|--------------|---------------|----------------|----------------|----------------|
| All Counties | \$311,979 | \$399,448 | \$482,814 | \$600,037 |

Mr. Detlaff noted that the HFA Advisory Board recommendation would increase the limit by approximately \$38,000 for one-unit residences.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of the Housing Finance Agency Advisory Board and approve Program Directive 118 effective June 1, 2022 which adjusts the Acquisition Cost Limits for the FirstHome Standard, Start, HomeAccess, and DCA Programs as follows.

Previously Occupied

| | <u>1 Unit</u> | <u>2 Units</u> | <u>3 Units</u> | <u>4 Units</u> |
|--------------|---------------|----------------|----------------|----------------|
| All Counties | \$349,525 | \$447,542 | \$540,930 | \$672,290 |

Previously Unoccupied

| | <u>1 Unit Only</u> |
|--------------|--------------------|
| All Counties | \$349,525 |

Mr. Flohr stated that over the last 30-years this is the largest annual increase in the acquisition limits that he has seen.

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

Mr. Flohr and Ms. Jennifer Henderson, Planning & Housing Development Division Director, presented the North Dakota Housing Finance Agency Advisory Board's recommendation that the Industrial Commission approve the issuance of multifamily tax-exempt revenue obligations in an amount not to exceed \$25,000,000.

Ms. Henderson stated that the Schuett Companies, Inc. is proposing to acquire and rehabilitate the 182-unit portfolio preserving the Section 8 project based rental assistance contracts (HAP contracts). The Grand Forks Portfolio consists of : (i) University Square (60 units), located at 505 and 515 N 47th Street and 502, 506, and 516 North 48th Street, (project is currently in default of its HAP contract and needs significant capital improvements). (ii) Columbia Square South (72 units), located at 2500 Knight Drive, and (iii) Columbia Square East (50 units), located at 2505 13th Avenue South. 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.

Ms. Henderson noted that this project has changed significantly from the Intent Resolution the Commission had previously seen which had a cost of \$13,000,000. There has been a restructuring of how the transaction will be done as well as higher costs for the rehabilitation.

Ms. Henderson provided the following transaction summary:

The proposal is for an acquisition/rehabilitation of the three properties with total project cost, including acquisition, of approximately \$28,153,472. The developer intends the financing to be structured as a (i)

short-term cash collateralized tax-exempt bond transaction and (ii) a short-term tax-exempt bridge loan note. The developer, The Schuett Companies, Inc., received a conditional commitment from the Agency for \$894,465 in 4% federal Low-Income Housing Tax Credits to be used in conjunction with tax-exempt proceeds. Based on most recent total development budget, the current credit allocation anticipated is \$1,058,931. The final credit allocation will be determined based upon final cost certification and completion of final underwriting at project completion. The Agency will act as the conduit issuer on the above noted tax-exempt obligations. The developer will close on a HUD FHA 221 (d)(4) loan simultaneously with bond closing.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of the Housing Finance Agency Advisory Board and approve the issuance of multifamily tax-exempt revenue obligations in an amount not to exceed \$25,000,000 and adopt the following Resolution:

STATE OF NORTH DAKOTA
NORTH DAKOTA HOUSING FINANCE AGENCY
MULTIFAMILY REVENUE BONDS
(GRAND FORKS PORTFOLIO)
SERIES 2022

STATE OF NORTH DAKOTA
NORTH DAKOTA HOUSING FINANCE AGENCY
MULTIFAMILY REVENUE NOTE
(GRAND FORKS PORTFOLIO)
SUBORDINATE SERIES 2022

A RESOLUTION AUTHORIZING THE ABOVE CAPTIONED INDEBTEDNESS, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$25,000,000; APPROVING THE FORM OF CERTAIN FINANCING DOCUMENTS AND OTHER RELATED DOCUMENTS; AUTHORIZING THE EXECUTION OF SUCH DOCUMENTS; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

WHEREAS, the Industrial Commission of North Dakota (the “Commission”) acting in its capacity as the North Dakota Housing Finance Agency (the “Agency”), is empowered by the provisions of the North Dakota Century Code Chapter 54-17 (the “Act”) to provide financing, directly or indirectly, of construction, permanent and combined construction and permanent loans for the acquisition, construction, refurbishing, reconstruction, rehabilitation or improvement of multifamily residential housing in which at least twenty percent of the units are held for occupancy by persons or families of low and moderate income; and

WHEREAS, the Agency intends to issue its Multifamily Revenue Bonds (Grand Forks Portfolio), Series 2022 in an aggregate principal amount not to exceed \$15,000,000 (the “Bonds”), the proceeds of which will be used to finance a loan for the acquisition, rehabilitation and equipping of Grand Forks Portfolio, a 182-unit scattered-site multifamily residential rental portfolio consisting of a 60-unit project known as University Square, a 72-unit project known as Columbia Square South, and a 50-unit project known as Columbia Square East, all located in Grand Forks, North Dakota (collectively, the “Project”); and

WHEREAS, the Bonds will be issued pursuant to a Trust Indenture (the “Indenture”), between the Agency and Wilmington Trust, National Association, in its capacity as trustee (the “Trustee”), which will

be in substantially the form attached hereto as Attachment A, whereby the Agency would be authorized to issue the Bonds subject to the terms, conditions and limitations established herein and in the Indenture; and

WHEREAS, the proceeds of the Bonds will be used to finance a loan (the “Bond Loan”) to Schuett Grand Forks, LP, a Minnesota limited partnership, or another affiliate thereof (the “Borrower”), pursuant to a Loan Agreement, by and between the Agency and the Borrower (the “Loan Agreement”), which will be in substantially the form attached hereto as Attachment B; and

WHEREAS, the Bonds will be sold and delivered to Colliers Securities, LLC (the “Underwriter”) in the manner, at the purchase price and on the terms and conditions set forth in a bond purchase agreement by and among the Agency, the Borrower and the Underwriter (the “Bond Purchase Agreement”), which will be in substantially the form attached hereto as Attachment C; and

WHEREAS, to market the Bonds, there shall be prepared and delivered to the Underwriter a preliminary official statement (the “Preliminary Official Statement”), which will be in substantially the form attached hereto as Attachment D; and

WHEREAS, the Agency also intends to sell its Multifamily Revenue Note (Grand Forks Portfolio), Subordinate Series 2022 (the “Note” and together with the Bonds, the “Obligations”), which Note will be in substantially the form attached hereto as Attachment E, to Bridgewater Investment Management, Inc. (or such other financial institution as is approved by the Executive Director, the Director of Planning and Housing Development or the Chief Financial Officer of the Agency) (the “Lender”) in an aggregate principal amount not to exceed \$10,000,000,

WHEREAS, the proceeds of the Note will be used to finance a tax-exempt equity bridge loan (the “Bridge Loan”) for the acquisition, rehabilitation and equipping of the Project to the Borrower pursuant to a Loan Agreement, by and among the Agency, and the Borrower (the “Bridge Loan Agreement”) in substantially the form attached hereto as Attachment F; and

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

NOW, THEREFORE, BE IT RESOLVED:

Findings. The Commission hereby finds and determines that:

the Project financed through the issuance of the Obligations constitutes a “multifamily housing facility” within the meaning of Sections 54-17-07.2 and 54-17-07.3(3) of the Act; and

the Bond Loan and the Bridge Loan will provide the Borrower with financing for the acquisition, construction, refurbishing, reconstruction, rehabilitation or improvement of the Project; and

(c) that the Project will be of public use and will provide a public benefit.

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

conclusively by such execution of the Indenture, and any other Authorized Officer is hereby authorized and directed to attest thereto.

Authorization and Sale of Bonds. The issuance, sale and delivery of the Bonds to the Underwriter are hereby authorized and approved. The final principal amount and terms of the Bonds shall be determined by any Authorized Officer, subject to the following conditions:

The Bonds shall not be general obligations of the Commission or the Agency but shall be limited obligations payable solely and only from moneys pledged under the Indenture as required by the Loan Agreement.

The Bonds shall mature no later than August 1, 2025, bear interest at a fixed rate or rates not to exceed 6.0% per annum, be in an aggregate principal amount not to exceed \$15,000,000, be sold to the Underwriter at not less than 100% of the principal amount thereof and have the other terms and provisions (including provisions with respect to the redemption of the Bonds prior to maturity, if any) as described to the Commission and definitively set forth in the Indenture upon execution and delivery as aforesaid in Section 2 hereof.

The Bonds shall be executed and delivered substantially in the form set forth in the Indenture, with such additions, omissions and changes as are required or permitted by the Indenture.

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

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

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

Approval of Disclosure Materials. The preparation of the Preliminary Official Statement, in the form hereinabove described, is hereby approved. Any distribution or use of the Preliminary Official Statement by the Underwriter in connection with the offering of the Bonds is hereby authorized and ratified. The preparation and distribution of an Official Statement, subsequent to the execution of the Bond Purchase Agreement, and its use as contemplated by the Bond Purchase Agreement, is hereby authorized.

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

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

The Note shall not be a general obligation of the Commission or the Agency but shall be a limited obligation payable solely and only from Loan payments and any other moneys pledged under the Bridge Loan Agreement.

The Note shall: mature no later than 3 years from its date of issuance, bear interest at a variable rate as determined by an Authorized Officer, be in an aggregate principal amount not to exceed \$10,000,000 and have the other terms and provisions (including provisions with respect to prepayment prior to maturity, if any) as described to the Commission.

The Note shall be executed and delivered substantially in the form provided to the Commission.

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

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

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

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

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

Authorization of Authorized Officers. Any Authorized Officer is hereby authorized to deliver an Agency Certificate, or such other document as may be necessary or appropriate, at the time of issuance of the Obligations which cures ambiguities, defects or omissions herein, corrects or supplements any provision herein, lessens the obligations of the Agency hereunder, or adds to the rights or options of the Agency, all in furtherance of the purposes and programs of the Agency.

Effective Date. This Resolution shall become effective immediately.

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

Mr. Flohr, Mr. Pat Nagel, Chief Financial Officer and Kayla Axtman, Assistant Chief Financial Officer, updated the Commission on three Bond Sales that had taken place – MRB Series 2022A – tax exempt (\$125,000,000); Roots Series 2022BC – taxable (\$60,000,000); and Series 2022DE (\$75,000,000) - taxable.

Mr. Nagle noted that the Series BC and Series DE were sold six weeks apart and the rate when up 140 basis points during that time – the volatility in the market is significant. Because of the volatility the Agency is having to structure its transactions in a different manner. Detailed information on each of the bond sales are available in the Commission files. It was stated that the bond proceeds are being used up and the Agency will be back before the Commission in the not-too-distant future.

The Commission congratulated Mr. Nagel on being recently recognized with a Lifetime Achievement Award at the Smith’s Affordable Housing Finance Conference. It is well deserved.

NORTH DAKOTA MILL (Mill)

Ms. Cathy Dub, North Dakota Mill CFO, joined the meeting at this time and indicated that Mr. Vance Taylor was unable to attend the meeting because of a death in his family. Ms. Dub provided the Third Quarter Report as follows:

North Dakota Mill Review of Operations 3rd Quarter Ended 3/31/22

SUMMARY

Profits for the 3rd Quarter of the year were \$3,268,737 compared to \$3,594,396 last year. Operating activity for the nine months ending March resulted in a profit of \$9,660,882 compared to \$11,394,841 last year, a decrease of 15.2%.

| | <u>Quarter</u> | | <u>Year to date</u> | |
|-------------------------------|-------------------------|-------------------------|----------------------------|--------------------------|
| | <u>3/22</u> | <u>3/21</u> | <u>3/22</u> | <u>3/21</u> |
| Profits | \$ 3,268,737 | \$ 3,594,396 | \$ 9,660,882 | \$ 11,394,841 |
| Sales | 121,287,778 | 82,998,076 | 333,604,323 | 248,739,074 |
| Cwt. Shipped | | | | |
| Spring | 3,501,739 | 3,483,776 | 10,547,351 | 10,833,036 |
| % to Total | 91.8% | 91.5% | 91.9% | 92.0% |
| Durum | <u>314,674</u> | <u>323,975</u> | <u>932,990</u> | <u>944,985</u> |
| Total | <u>3,816,413</u> | <u>3,807,751</u> | <u>11,480,341</u> | <u>11,778,020</u> |
| Bulk Shipments | 3,210,351 | 3,243,189 | 9,607,900 | 9,854,342 |
| % to Total | 84.1% | 85.2% | 83.7% | 83.7% |
| Bag Shipments | 556,248 | 525,308 | 1,734,577 | 1,798,637 |
| % to Total | 14.6% | 13.8% | 15.1% | 15.3% |
| Tote Shipments | 49,813 | 39,253 | 137,865 | 125,041 |
| % to Total | 1.3% | 1.0% | 1.2% | 1.0% |
| Family Flour Shipments | 81,975 | 56,768 | 235,448 | 375,205 |
| % to Total | 2.2% | 1.5% | 2.1% | 3.2% |

| | | | | |
|-------------------------|-------------------------|-------------------------|--------------------------|--------------------------|
| Organic Flour Shipments | 29,997 | 32,284 | 91,740 | 117,933 |
| % to Total | .8% | .8% | .8% | 1.0% |
| Grain Purchased: | | | | |
| Spring | 8,006,784 | 7,121,701 | 22,860,660 | 22,873,232 |
| Durum | <u>804,563</u> | <u>626,264</u> | <u>2,239,015</u> | <u>1,869,879</u> |
| Total | <u>8,811,347</u> | <u>7,747,965</u> | <u>25,099,675</u> | <u>24,743,111</u> |

SALES

3rd Quarter

Sales for the 3rd Quarter were \$121,287,778 compared to \$82,998,076 last year. This was a record quarter. Shipments of 3,816,413 cwts. are 8,662 cwts. above last year. Bag shipments for the 3rd Quarter are 556,248 cwts., which is 30,940 cwts. above last year's 3rd Quarter. Tote shipments for the 3rd Quarter are 49,813 cwts., which is 10,560 cwts. above last year. Family flour shipments reached 81,975 cwts., which is 44.4% above last year's 3rd Quarter.

Year-to-Date

Sales for the nine months ended March were \$333,604,323 compared to \$248,739,074 last year, an increase of 34.1%. Shipments of 11,480,341 cwts. are 297,679 cwts. below last year, a decrease of 2.5%. The average settled price of grain purchased increased \$4.02 per bushel from last year. Year-to-date bag shipments are 1,734,577 cwts., a decrease of 64,061 from last year. Tote shipments for the year are 137,865 cwts., which is 12,824 cwts. above last year. Family flour shipments for the nine months ended are 235,448 cwts., a decrease of 37.3% from last year. Organic flour shipments were 91,740 cwts., a decrease of 26,194 cwts. from last year.

OPERATING COSTS

3rd Quarter

Operating costs for the 3rd Quarter were \$10,693,243 compared to \$11,168,483 last year, a decrease of \$475,240. Operating cost per cwt. of production was \$2.79 compared to \$2.90 last year, a decrease of 3.8%.

Year-to-Date

Year-to-date operating costs are \$30,954,900 compared to \$29,716,105 last year, an increase of 4.2%. Operating cost per cwt. of production for the nine months ended was \$2.68 compared to \$2.52 last year, change of 6.4%.

PROFITS

3rd Quarter

Profits for the 3rd Quarter were \$3,268,737 compared to \$ 3,594,365 last year. Gross margins as a percent of gross sales for the quarter were 11.9% compared to 18.1% last year.

Year-to-Date

Operating activity for the nine months ended March led to a profit of \$9,660,882 compared to \$11,394,841 last year, a decrease of 15.2%. Year-to-date gross margins are 12.6% compared to 16.9% last year.

RISK MANAGEMENT

Risk Management Position

The table below shows the hedge ratio by futures month going forward. A hedge ratio shows the relationship between our net cash position and our futures position. The mill does remain at risk for changes in the basis.

**Position Report
31-Mar-22**

| Period | Hedge Ratio |
|--------------|-------------|
| July-22 | 1.0 |
| Sept-22 | 1.1 |
| Dec-22 | 1.0 |
| Mar-23 | .8 |
| Net Position | 1.1 |

In response to a question regarding higher revenues with lower shipments and lower profits, Ms. Dub stated the revenues are driven by the increased wheat prices – currently the Mill is seeing wheat at \$3.85 a bushel higher this fiscal year than the prior year which results in the high sales number. Also because of inflation they are seeing higher shipping costs and utilities are also increasing that affect the gross margin.

Ms. Dub presented a request to amend the FY2022 Capital Projects Budget for the H, I, and D Mill Expansion Project by \$975,000. She stated that the D Mill is currently undergoing a conversion and expansion from 3,000 cwt per day durum capacity to 4,000 cwt per day spring wheat capacity which is the final phase of the project. Additional work is required to refurbish several roll stands, improve electrical infrastructure, replace sheet metal and pneumatic lines, and insulate several areas to insure reliable operation of the D Mill. The original project was approved on 10/22/2020 for \$23,500,000.

It was moved by Attorney General Wrigley and seconded by Commissioner Goehring that the Industrial Commission amend the North Dakota Mill FY 2022 Capital Budget and increase by \$975,000 the budget for the H, I and D Mill Expansion Project to complete the D Mill conversion and expansion from 3,000 cwt per day durum capacity to 4,000 cwt per day spring wheat capacity. On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Dub provided an update on the proposed Midds Storage and Handling Project and provided information on current midds sales. She indicated that Mill management anticipates bringing the Midds project to the Commission within the next two months for consideration.

NORTH DAKOTA PIPELINE AUTHORITY/NATURAL GAS PIPELINE GRANT PROGRAM

Mr. Justin Kringstad, Pipeline Authority Director, reported on the application that had been received from Viking Gas Transmission Company titled “Viking Gas Transmission Company and Fufeng USA Incorporated – Grand Forks Expansion.” The amount requested is \$10,000,000. Mr. Kringstad stated he has begun his review of the application and the next step that needed to be taken is staff review. That would then be followed by the Natural Gas Pipeline Review Committee meeting to review the application and then a recommendation is made to the Industrial Commission. He provided a map of the proposed pipeline.

In regard to the west-to-east natural gas pipeline Mr. Kringstad provided the Commission members with a letter from WBI Energy that stated in part:

Unfortunately based on work WBI Energy has done and due to a variety of factors discussed below, WBI Energy does not believe a large-scale natural gas pipeline project extending from the Bakken region in western North Dakota to communities in eastern North Dakota is commercially viable at this time, even with the possibility of a NGP Program grant. Accordingly, WBI Energy will not be submitting an application for a grant under the NGP Program.

Mr. Kringstad stated that WBI Energy was not the only company that had been looking at the grant program. There were a handful of companies that were exploring options and trying to find solutions. They came to the same conclusions in most cases – costs, inflation, distance of a greenfield project, lack of adequate customer support on the receipt end of the pipeline--make it cost prohibitive to move the project forward at this time. The need and the desire to build a pipeline has not gone away.

Mr. Kringstad stated that a question has arisen because of discussions with interested parties on whether an amount of less than \$10,000,000 could be awarded regarding the Grand Forks allocation. His analysis has been that if the review shows that less than \$10,000,000 should be awarded that would be the amount recommended to the Commission. Attorney General Wrigley stated that he had looked at the legislation in its entirety and there is a qualifier “or so much as may be necessary.” He did not believe the intent of the Legislature was to grant \$10,000,000 if what is determined that is needed is \$9,000,000. He indicated Mr. Kringstad could proceed on that basis in his review of the application.

Mr. Kringstad recommended that the Commission amend the Natural Gas Research Program Guidelines to include an August 15, 2022, application deadline.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Natural Gas Pipeline Guidelines be amended as follows to allow an August 15, 2022 application deadline for natural gas pipeline grant funding:

NGP – 3.02 Application Deadlines. Applications must be delivered to the Industrial Commission or postmarked on or before May 1, 2022, for consideration of the \$10 million pool of funds established for Grand Forks County and on or before ~~May 1~~ August 15, 2022, for consideration of the remaining \$140 ~~million~~ pool of funds.

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

It was moved by Attorney General Wrigley and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 17-05-14, 54-63.1-06, 44-04-18.4, 44-04-19.2 and Natural Gas Pipeline Guidelines enter into executive session for the purpose of considering Clean Sustainable Energy Authority confidential information and two confidentiality requests related to the North Dakota Transmission Authority and the Natural Gas Pipeline Program. On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum stated the Commission is meeting in executive session to consider two confidentiality requests under the Natural Gas Pipeline Program and the North Dakota Transmission Authority and a presentation of Clean Sustainable Energy Authority (CSEA) applicants’ confidential information. Only the Commission members, their staff, Industrial Commission staff, and the Pipeline Authority Director will be in the Natural Gas Pipeline session and only the Commission members, their staff, Industrial Commission staff, Clean Sustainable Energy Authority Director, and Bank of North Dakota staff will be in the CSEA session. Only the Commission members, their staff, and Industrial Commission staff will be in the Transmission Authority session.

Following the Clean Sustainable Energy Authority executive session, the Industrial Commission will enter into executive session regarding Bank of North Dakota business pursuant to N.D.C.C. 6-09-35 to consider those items listed on the agenda under Bank of North Dakota confidential business. Only Commission members, their staff, Department of Financial Institutions staff (for a portion of the meeting), and BND staff will participate in that executive session.

Any formal action by the Commission will occur after it reconvenes in open session.

Governor Burgum reminded the Commission members and those present in the executive sessions that the discussion must be limited to the announced purposes which is anticipated to last approximately one hour.

Commissioner Goehring left the meeting at this time.

The executive session for North Dakota Pipeline Authority/Natural Gas Pipeline Grant Program began at 1:02 p.m.

NORTH DAKOTA PIPELINE AUTHORITY/NATURAL GAS PIPELINE GRANT PROGRAM EXECUTIVE SESSION

Industrial Commission Members Present:

Governor Doug Burgum
Attorney General Drew H. Wrigley

Others in Attendance:

| | |
|------------------|---------------------------------|
| Justin Kringstad | North Dakota Pipeline Authority |
| Reice Haase | Governor's Office |
| Ryan Nordell | Governor's Office |
| Karlene Fine | Industrial Commission Office |

The Commission concluded the Pipeline Authority executive session and went into executive session regarding Transmission Authority business at 1:18 p.m.

NORTH DAKOTA TRANSMISSION AUTHORITY EXECUTIVE SESSION

Industrial Commission Members Present:

Governor Doug Burgum
Attorney General Drew H. Wrigley

Others in Attendance:

| | |
|--------------|------------------------------|
| Reice Haase | Governor's Office |
| Ryan Nordell | Governor's Office |
| Karlene Fine | Industrial Commission Office |

The Commission concluded the Transmission Authority executive session and went into executive session regarding the Clean Sustainable Energy Authority business at 1:20 p.m.

CLEAN SUSTAINABLE ENERGY AUTHORITY EXECUTIVE SESSION

Industrial Commission Members Present:

Governor Doug Burgum
Attorney General Drew H. Wrigley

Others in Attendance:

| | |
|----------------|---|
| Al Anderson | Clean Sustainable Energy Authority Director |
| Todd Steinwand | Clean Sustainable Energy Authority/Bank of North Dakota |
| Kelvin Hullett | Bank of North Dakota |
| Reice Haase | Governor's Office |
| Ryan Nordell | Governor's Office |
| Karlene Fine | Industrial Commission Office |

The Commission concluded the Clean Sustainable Energy Authority executive session and went into Bank of North Dakota executive session at 1:50 p.m.

BND EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Drew H. Wrigley
Commissioner Doug Goehring rejoined the meeting during this executive session

Bank of North Dakota Personnel:

Todd Steinwand
Kelvin Hullett
Kirby Evanger
Craig Hanson

Others in Attendance:

| | |
|--------------|--|
| Lise Kruse | Department of Financial Institutions (for DFI exam portion of meeting) |
| Ryan Spah | Department of Financial Institutions (for DFI exam portion of meeting) |
| Corey Krebs | Department of Financial Institutions (for DFI exam portion of meeting) |
| Reice Haase | Governor's Office |
| Ryan Nordell | Governor's Office |
| Karlene Fine | Industrial Commission Office |

During the BND Executive Session, the Commission took up the following Bank of North Dakota agenda items:

- A. Presentation of Department of Financial Institutions (DFI) Report of Examination – *Ryan Spah, Lise Kruse, Corey Krebs*
 - B. **Consideration of loan requests**
 - C. Presentation of the Concentrations of Credit Report as of 3/31/2022 (this agenda item was postponed until a future meeting)
 - D. Presentation of Bank of North Dakota Advisory Board March 24, 2022 confidential meeting minutes.
-

The BND executive session ended at 2:58 p.m. and the public was invited to return to the room.

Governor Burgum stated that during the Clean Sustainable Energy Authority executive session, the Commission considered confidential information.

Governor Burgum stated that during the Bank of North Dakota executive session the Commission made two motions regarding two loan requests. **On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye on both motions. The motions carried unanimously.**

Governor Burgum stated that during the Transmission Authority executive session the Commission considered a request for confidentiality. **It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of Karlene Fine, Industrial Commission Executive Director, and pursuant to section 17-05-14, 44-04-19.2 and 44-04-18.4 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, financial or proprietary information and is confidential. On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

Governor Burgum stated that during the Natural Gas Pipeline Grant Program executive session the Commission considered a confidentiality request. **It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of Karlene Fine, Industrial Commission Executive Director, and pursuant to N.D.C.C. 44-04-19.2 and 44-04-18.4 and the Natural Gas Pipeline Guidelines 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, financial or proprietary information and is confidential. On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

CLEAN SUSTAINABLE ENERGY AUTHORITY (CSEA)

Ms. Karlene Fine presented the Clean Sustainable Energy Authority (CSEA) financial report. She noted that the cash balance as of March 31, 2022, was \$23,834,294.07. The funding that is uncommitted at this time is \$7,000,000 from the General Fund grant funding, \$10,000,000 of hydrogen grant funding from federal dollars, and \$115,000,000 of loan funding.

Mr. Al Anderson, Clean Sustainable Energy Authority Director, presented the CSEA recommendations. He stated that the CSEA had received ten applications for Grant Round 2 requesting \$40 million in grants and \$227,000,000 in loans. Two applicants withdrew their applications after the review by the Independent Technical Reviewers and prior to the CSEA Technical Committee review, and one applicant withdrew after the CSEA Technical Committee review. The CSEA reviewed seven projects and is recommending that the Commission provide financial assistance to three Grant Round 2 applicants. Mr. Anderson noted that all the projects were good projects, but the challenge the CSEA had was prioritizing the limited funding. The CSEA selected the projects that showed the most significant emission reduction and, also, the most innovative.

The first application is **“Commercial Deployment of Carbon Dioxide Capture & Geological Sequestration in McLean County”**; Submitted by Carbon America Developments, LLC. and Midwest AgEnergy Group; Total Project Costs: \$68,934,121; Amount Requested: \$34,467,061 (loan); CSEA recommendation: \$15,000,000 (loan). Duration is 18 months. This project will bring a CO2 capture and sequestration project into commercial operations in central North Dakota. This project will capture emissions from the Blue Flint Ethanol facility and permanently store them underground within secure saline formations. The successful completion of this project will demonstrate that CO2 can safely and efficiently be stored in McLean County. Once this is demonstrated the project will enable larger scale projects in the future, both locally and globally. This project will also enhance the financial viability of ethanol production and other associated businesses in the region. This project will reduce CO2 emissions by 200,000 tons per year. The Technical Reviewers rated this project as “good” with a score of 249 out of 315; the BND determined it was economically feasible; and the CSEA Technical Committee average score was 40. Although the amount being recommended was less than what was requested the applicant has indicated they will continue to move forward with the project.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the Clean Sustainable Energy Authority recommendation and provide financial assistance for the Commercial Deployment of Carbon Dioxide Capture & Geological Sequestration in McLean County project submitted by Carbon America Developments, LLC and Midwest AgEnergy Group, as a loan in the amount of \$15,000,000 with the following terms:

- **An interest rate of 2% for a maximum term of 20-years. Other financial covenants to be negotiated with the Bank of North Dakota**

and further authorizes the Bank of North Dakota to negotiate and administer the loan to and Midwest AgEnergy Group. On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Anderson stated the second recommendation is for the project titled “**Internal Combustion Engine Carbon Capture and Sequestration**” Submitted by Enerplus Resources (USA) Corporation; Duration: 38 months; Total Project Costs: \$18,110,000; Amount Requested: \$9,055,000 (grant); CSEA recommendation: \$1,000,000 (grant). Mr. Anderson stated that this proposed project is the implementation of a fieldwide carbon capture and sequestration project to reduce Greenhouse Gas (GHG) emissions on a field wide basis to be completed in three phases. Enerplus is partnering with a technology provider, who has designed, engineered, and will construct portable, scalable carbon capture facilities that use proprietary technology to collect exhaust gas emitted from stationary internal combustion engine. The Technical Reviewers rated this project with 2 “good” and 1 “questionable” with a score of 212 out of 315; the BND determined that it was economically feasible; and the CSEA Technical Committee average score was 35 with conditions. Although the amount being recommended was less than what was requested the applicant has indicated they will continue to move forward with the first phases of this pilot project.

It was moved by Attorney General Wrigley and seconded by Commissioner Goehring that the Industrial Commission accept the Clean Sustainable Energy Authority recommendation and provide financial assistance for the Internal Combustion Engine Carbon Capture and Sequestration project submitted by Enerplus Resources (USA) Corporation as a grant in the amount of \$1,000,000 and further authorizes the Industrial Commission Executive Director to execute a contract with Enerplus Resources (USA) Corporation regarding the grant funding. On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Anderson stated that the third recommendation is for the project titled “**Project Tundra**” Submitted by Minnkota Power Cooperative; Total Project Costs: \$1.45 billion; Amount Requested: \$150 million (loan); CSEA recommendation: \$100 million (loan). Project Duration: 4 years. Mr. Anderson stated that the goal of Project Tundra is to demonstrate post combustion carbon capture (PCCC) and storage in North Dakota, preserving the use of lignite and the associated jobs, ensuring enough reliable and dispatchable power is on the grid, and moving North Dakota closer to its carbon neutral goal. If successful it would capture 4 million metric tons per year and it would be the largest single-train PCCC in the world that will feature a “station” approach to carbon dioxide emissions control as opposed to the “dedicated unit” configuration being proposed by the rest of the industry. He noted that the Technical Reviewers had given it a rating of “good” with an average score of 270 out of 315; BND had determined that it was economically feasible and the CSEA Technical Committee had given it an average score of 44. Mr. Anderson stated this amount would utilize the remaining amount of funding available for loans. The applicant has indicated that if more funding is provided to the CSEA they anticipate coming back for additional funding.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the Clean Sustainable Energy Authority recommendation and provide financial assistance for the Project Tundra project submitted by Minnkota Power Cooperative as a loan in the amount of \$100,000,000 with the following terms:

- **An interest rate of 2% with a term equal to the term of the 45Q tax credits. Other financial covenants to be negotiated with the Bank of North Dakota.**

and further authorizes the Bank of North Dakota to negotiate and administer the loan to Minnkota Power Cooperative. On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Commissioner Goehring left the meeting at this time.

BANK OF NORTH DAKOTA

Mr. Todd Steinwand, Bank of North Dakota President, introduced Darrell Lingle from Eide Bailly to present the Beginning Farmer Revolving Loan Fund, Guaranteed Student Loan Program, and Bank of North Dakota as of December 31, 2021 audits.

Mr. Lingle stated their firm had issued an unmodified or clean opinion on the financial statements of the Beginning Farmer Revolving Loan Fund – December 31, 2021. He noted that they had identified a certain significant deficiency in internal control. The deficiency involved an error in the interest buydown recorded for one borrower resulting in a passed adjustment of approximately \$32,000 between cash and prepaid interest. The cause of the error was that the internal control process of the loan boarding process failed to identify the incorrect interest buydown calculated on this individual loan. The auditor's recommendation was that a recalculation of interest buydown be performed during the loan boarding process which is then reviewed by someone independent of the individual boarding the loan. Management agreed with the finding. Buydown interest will be adjusted to transfer additional buydowns to the prepaid interest account and amortized out for the remainder of the buydown period. Going forward, additional checks will be added to the Beginning Farmer worksheet to verify the funded buydown interest amount and a field will be added to the board sheet to verify interest buydown is correct based on the factor.

He noted that this finding was not significant enough to be material to the financial statements so the statements had to be adjusted, but significant enough for the auditors to track. The auditors are comfortable with the response from management and the controls that are being put in place.

Mr. Lingle stated their firm had issued an unmodified or clean opinion on the financial statements of the North Dakota Guaranteed Student Loan Program – December 31, 2021. No items on internal control over financial reporting were identified. In regard to Compliance and Other Matters no instances of non-compliance were identified-clean audit for the North Dakota Guaranteed Student Loan Program.

In response to a question, Mr. Lingle stated their risk assessment relates only to the financial statements and not to other factors that may impact the entire student loan industry.

Mr. Lingle presented the Independent Auditor's Report and Financial Statement – December 31, 2021 in accordance with the Financial Accounting Standards Board (FASB) standards). These are the types of standards the public would see for community banks. He noted that because the Bank of North Dakota is a government agency its primary standards are the government standards (GASB). This results in the auditor having to give an adverse opinion on the FASB audit because the differences between the FASB and the GASB standards are very significant so it would be a material difference between those two standards.

It was noted that a copy of the GASB audit is also available in the Commission files. The Bank needs to have a GASB audit because their audit is part of the State's Annual Comprehensive Financial Report (ACFR). Mr. Lingle provided information on the differences between the GASB and the FASB statements.

He highlighted specific parts of the audit – Balance Sheet, Statement of Income – Net Income for 2021 is \$144,171,000 approximately a \$3,000,000 increase from 2020.

(Because of the constraints on time the presentation on Stress Testing Results was delayed until the next Commission meeting.)

Mr. Steinwand presented the 2021 Bank of North Dakota Annual Report titled Evolving. He highlighted the following:

- Net income of \$144.2 million
- Assets are over \$10 billion
- Deposits are at \$8.1 billion
- Investments are at \$2.6 billion
- Largest reduction in loan loss reserves from year to year primarily related to the pandemic
- Review of loan portfolio – agricultural, business, home, student loan, and legislative-directed programs
- Recognition of Attorney General Wayne Stenehjem
- Recognition of Eric Hardmeyer – over 20 years as President of the Bank of North Dakota
- Measuring what the Bank of North Dakota does – Creating Efficiencies in Government, Measuring the Impact of BND loans (using the Regional Economic Modeling Incorporated (REMI) model
- BND’s Strong Partnership with Financial Institutions
- Summary of BND Strategic Plan 2022-2024
- Employee-Driven Innovation – 243 innovations were identified with 42 being completed during the year
- The Emerging Leaders Program
- Ten-Year Summary

The Commission congratulated the Bank staff on a great year and all the work that had been accomplished.

Mr. Steinwand provided the Commission with a copy of the Bank of North Dakota Advisory Board March 23 & 24, 2022, non-confidential meeting minutes.

DEPARTMENT OF MINERAL RESOURCES (DMR)

Mr. Ed Murphy, State Geologist presented the Geological Survey quarterly Report. The report included information on the following:

- Wilson M. Laird Core and Sample Library – number of feet of core studied during the quarter, and the number of feet photographed. Noted the work that had been done by Francis Nwachukwu over eight years in the core library while pursuing his Master’s and PhD degrees at UND.
- Pine Salt Maps – depicts the extent, thickness, and depth of the Pine Sal (Spearfish Formation)
- 2021 Geologic Reviews – 167 which include road and bridge work; oil and gas pipeline corridors and pads, wind farms, water projects, general, and transmission line corridors. They are seeing a significant increase in these reviews. In 2004 it was 39 and in 2021 it was 167.
- Phase III Landslide Mapping Program – reviewed sample maps and what is reflected on the maps and in the photographs that are included in the program of the areas that are being mapped. He discussed the different phases of the programs and how the information is being updated from Phase 1 to Phase II and ultimately to Phase III. He provided some mapping that had been done on a dam in the northeastern part of the state. It was stressed the importance of this information and providing the maps to the appropriate people responsible for the maintenance of dams.
- Regulatory Programs
- Publications this Quarter

- Presentations this Quarter. The Commission commended the staff on the work they are doing in meeting with students.

Mr. Hicks provided an update on outstanding litigation for the following cases:

- 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 – *Discovery is still ongoing and has been extended into the third quarter of the year.*
- Case No. 05-2019-CV-00085 - Northwest Landowners Association vs. State of North Dakota, et al. – *Waiting on a Supreme Court decision.*
- Case No. 04-2021-CV-00011 Gallatin Oil, LLC vs. ND Industrial Commission, Attorney General Stenehjem and Lime Rock Resources III-A, L.P. – *District Court upheld the Commission's decision and the appeal deadline to the Supreme Court is May 26.*
- Case No. 13-2021-CV-00036 - Blue Appaloosa vs. North Dakota Industrial Commission – *Waiting on a decision from the Supreme Court.*
- Case No. 27-2022-CV-00305 - Blue Steel Oil and Gas, LLC v. North Dakota Industrial Commission, Slawson Exploration Company, Inc and White Butte Oil Operations, LLC – *Waiting on a brief from Blue Steel that is due at the end of the month and approximately 30 days the State will respond.*
- North Dakota Industrial Commission v. U.S. Department of Interior – *The Department of Interior needs to complete the administrative record.*

Under other business, Mr. Hicks stated a hearing had been held on drill backs and also surface locations outside the spacing unit. The industry provided limited input at that hearing. Subsequently the staff posted a draft order on May 20th and asked for comments until June 15th with another hearing on June 16th. He explained what is being proposed in the draft order. After the hearing in June, the staff will report on the hearing and bring an order to the Commission for its consideration.

Mr. Hicks stated that during the special session the Legislature had appropriated \$3.2 million to convert abandoned wells to freshwater wells. There were eight cases on a recent docket and orders will be acted on soon.

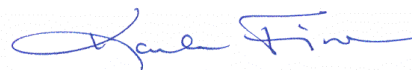
INDUSTRIAL COMMISSION ADMINISTRATIVE BUSINESS

Ms. Fine provided the February 22, 2022, Industrial Commission meeting minutes.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the February 22, 2022 meeting minutes be approved as presented. On a roll call vote Governor Burgum and Attorney General Wrigley voted aye. Commissioner Goehring was absent. The motion carried.

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 4:20 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary