

Minutes of a Meeting of the Industrial Commission of North Dakota

Held on March 6, 2023 beginning at 12:30 p.m.

Governor's Conference Room – State Capitol

Present: Governor Doug Burgum, Chairman

Attorney General Drew. H. Wrigley

Absent: 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.

OFFICE OF THE INDUSTRIAL COMMISSION

Governor Burgum called the meeting to order at 12:34 p.m.

Ms. Karen Tyler presented for consideration of approval the January 24th and February 6th, 2023 Industrial Commission meeting minutes.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission accept the recommendation of the Industrial Commission Interim Executive Director/Secretary and approve the Industrial Commission meeting minutes from January 24th, 2023 and February 6, 2023.

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

Mr. Reice Haase gave a report on the 68th Legislative Session Bills tracked by the Industrial Commission.

NORTH DAKOTA PUBLIC FINANCE AUTHORITY

Ms. DeAnn Ament gave a presentation of the State Revolving Fund loans approved by the Advisory Committee.

- i. City of Fairmount – Clean Water - \$1,330,000
- ii. City of Center – \$5,430,000 (increase of \$730,000)
- iii. City of Glen Ullin – Drinking Water - \$2,000,000 (increase of previously approved loan)

Ms. Ament presented for consideration of approval a resolution providing for reimbursement of certain costs for the State Revolving Fund Programs.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission accept the recommendation of the North Dakota Public Finance Authority providing for reimbursement of certain costs for the State Revolving Fund Programs.

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

A RESOLUTION WAS MADE PROVIDING FOR REIMBURSEMENT OF CERTAIN COSTS FOR THE STATE REVOLVING FUND PROGRAMS

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

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

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

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

WHEREAS, the Industrial Commission, acting pursuant to provisions of the Act, the Clean Water SRF Act, and the Drinking Water SRF Act, and pursuant to the Amended and Restated Master Trust Indenture dated as of July 1, 2011, between the Authority and the Bank of North Dakota, as Trustee, as amended (the “Master Trust Indenture”) expects to authorize and direct the issuance by the Authority of a future series of its State Revolving Fund Program Bonds (the “Bonds”);

WHEREAS, the Authority desires to fund additional projects pursuant to the Clean Water Program and the Drinking Water Program with amounts on deposit in the Federally Capitalized Loan Accounts and Unrestricted Cumulative Excess Subaccounts (the “Accounts”) and, at a later date as determined in the discretion of the Executive Director, and in compliance with Treas. Reg. §1.150-2, reimburse those Accounts of the Clean Water Program and the Drinking Water Program from the proceeds of Bonds subsequently issued pursuant to the Master Trust Indenture;

NOW THEREFORE, BE IT RESOLVED BY THE INDUSTRIAL COMMISSION OF NORTH DAKOTA, AS FOLLOWS:

Section 1. Definitions. All terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Master Trust Indenture.

Section 2. Purpose and Expectations. The Industrial Commission declares that pursuant to a plan of finance it intends for the Authority to undertake the making of Loans pursuant to the Clean Water Program and the Drinking Water Program with amounts on deposit in the Accounts and to reimburse the Accounts for expenditures made pursuant to the Loans out of the

proceeds of the Bonds. This declaration is a declaration of official intent adopted pursuant to Treas. Reg. §1.150-2.

Section 3. Timing and Amount of Reimbursement. Reimbursement allocations made under the provisions of this resolution shall be made within 18 months of the date hereof and shall not exceed \$130,000,000 in aggregate principal amount consisting of up to \$120,000,000 for the Clean Water Program and up to \$10,000,000 for the Drinking Water Program. The Executive Director shall be responsible for the timing and amount of the reimbursement allocations. Each allocation shall be evidenced by an entry on the official books and records of the Authority maintained with respect to the Bonds.

Adopted: March 6, 2023

Ms. Ament gave a Public Finance Authority Legislative Update.

NORTH DAKOTA MILL AND ELEVATOR

Mr. Vance Taylor gave a report on the Second Quarter Fiscal Year 2023 Results. Profits were at \$4,175,161 for the quarter compared to \$3,036,257 last year, and sales for quarter two were \$141,753,635. A full financial summary is available upon request.

Mr. Taylor gave an update on Midds Storage and Handling Phase I. The components for Phase I involve various equipment, structural pieces, site work, mechanical work, and an alternate for freight elevator amounting to \$34,000,000.

Mr. Taylor presented for consideration of approval two capital projects:

- i. Phase II Midds Storage and Handling Facility - \$3,200,000
- ii. Backup Power Generation Project - \$3,500,000

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approve the Midds Storage and Handling System Phase II capital project expenditure of \$3,200,000 to cover the owner furnished equipment, long lead time electrical components and engineering.

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

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approve the Electrical Generation capital project expenditure of \$3,500,000 to relocate the existing diesel powered 2250 kW generator to provide backup power to the newly constructed Midds Storage and Handling Facility and purchase two additional diesel powered 2250 kW used generators which will be placed in service to be backup power to the remainder of the plant facilities.

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

Mr. Taylor gave a North Dakota Mill and Elevator Legislative Update.

WESTERN AREA WATER SUPPLY PROJECT

Ms. Tami Madsen presented for consideration of approval the 2023 planned industrial system improvements. These improvements include Repairs to 2nd Street Depot (\$15,000), Depot Lane Cameras (\$10,000), Depot Roof Replacements (\$30,000), Depot Signage (\$10,000), New Meter Trailer (\$46,000), and Repairs/Maintenance for Meter Trailers (\$10,000).

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approves payment from Capital Reserve Trust Account during the 2023 financial period for the following projects: Repairs to 2nd Street Depot (\$15,000), Depot Lane Cameras (\$10,000), Depot Roof Replacements (\$30,000), Depot Signage (\$10,000), New Meter Trailer (\$46,000), and Repairs/Maintenance for Meter Trailers (\$10,000)- totaling \$121,000.

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

Ms. Madsen presented for consideration of approval the 2023 Industrial Budget. The Western Area Water Supply Authority budget included the profits and expenses with the City of Williston, McKenzie City Water Resource District, Northwest Rural Water District, and R&T Water Supply Association. They have gross profits at \$10,216,000, and total expenses listed at \$11,968,000, leaving a net ordinary income of \$-1,752,000. After other income and expenses, the Industrial Budget is at a net income of \$-1,696,000. The full budget report is available upon request.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approves the 2023 Western Area Water Supply Authority Industrial Budget.

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

Ms. Madsen presented for consideration of approval the 2023 Industrial Reimbursement Rates for the Member entities. The WAWSA Volumetric Rate to Williston is \$2.26/kgal, WAWSA Volumetric Rate to South is \$4.12/kgal, and the WAWSA Volumetric Rate to North is \$3.90/kgal.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approves the Western Area Water Supply Authority Board's recommended 2023 base reimbursement rates as follows: Rate to Williston: \$2.26/kgal, Rate to South: \$4.12/kgal, Rate to North: \$3.90/kgal.

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

Governor Burgum thanked Ms. Madsen and the Western Area Water Supply Authority for their time with the Industrial Commission.

NORTH DAKOTA DEPARTMENT OF MINERAL RESOURCES

Dr. Lynn Helms presented for consideration of approval the following cases:

- i. **Order 32310 for Case 29703** – regarding a motion of the Commission to consider the name change of the Squaw Creek Field and associated pools in McKenzie County, ND.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approves Order No. 32310 issued in Case No. 29703 approving the motion of the Commission to change the name of Squaw Creek Field and associated pools, McKenzie County, ND to Praelens Butte Field, and further relief.

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

- ii. **Order 32311 for Case 29704** – regarding a motion of the Commission to consider amending commission orders 28682, 28684, 28686, 28687, 31014, 31018, 31033, 31055, 31060, 31061, 31067, 31071, and Director’s Order No. AO534 related to confiscated wells in Billings, Burke, Golden Valley, and McKenzie Counties, ND.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approves Order No. 32311 issued in Case No. 29704 affirming Orders 28682, 28684, 28686, 28687, 31014, 31018, 31033, 31055, 31060, 31061, 31067, 31071, and Director's Order No. 534 that confiscated and transferred title to the Commission, under NDCC Sections 38-08-04 and 38-08-04.9, of all production and/or injection related equipment, and salable oil at certain abandoned wells, located in Billings, Burke, Golden Valley, and McKenzie Counties, ND, requiring federal lease operators to submit plugging and abandonment procedures to the Commission and Bureau of Land Management, requiring federal lease operators to plug and abandon unplugged wells and reclaim sites of plugged wells at no cost to the Commission by December 31, 2023, requiring federal lease operators to reclaim sites of the wells plugged and abandoned in 2023 by December 31, 2024 at no cost to the Commission, requiring federal lease operators to work with the Commission and US Forest Service to convert wells to livestock water wells, and such further relief.

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

- iii. **Order 32415 for Case 29807** – regarding a joint application of Liberty Resources Management Company, LLC and Rocky Top Energy, LLC for an order of the Commission amending order No. 31560 entered in Case No. 29009 to allow for the transfer of wells located in the Glass Bluff-Madison Unit, McKenzie and Williams County, ND.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approves Order No. 32415 issued in Case No. 29807 continuing the matter of the joint application of Liberty Resources Management Company, LLC and Rocky Top Energy, LLC for an order of the Commission amending Order No. 31560 entered in Case No. 29009 which required the plugging of certain wells and instead allowing some or all wells to be brought back to production, such wells being located in the Glass Bluff-Madison Unit, McKenzie and Williams County, ND and directs the Director of the Department of Mineral Resources to schedule unit review for an April 2023 hearing.

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

- iv. **Order 31781 for Case 29213** – regarding a motion of the Commission to consider the termination of the Bear Creek Duperow Unit, Dunn County, ND, operated by XTO Energy Inc.

It was moved by Attorney General Wrigley and seconded by Governor Doug Burgum that the Industrial Commission approves Order No. 31781 issued in Case No. 29213 approving the termination of the Bear Creek-Duperow Unit, Dunn County, ND, operated by XTO Energy Inc., with an effective termination date of September 1, 2020, and such further relief.

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

- v. **Order 32353 for Case 29746** – regarding the authority of Iron Oil Operating, LLC to recover a risk penalty from Twin City Technical, LLC, as an owner of interests in the Boxcar 1-4-16H well (File No. 37896) located in McKenzie County, ND.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approves order No. 32353 issued in Case No. 29746 denying the application of Iron Oil Operating, LLC to recover from Twin City Technical, LLC, as an owner of interest in the Boxcar 1-4-16H well (File No. 37896), located in a spacing unit described as Section 4, 9, and 6, T.148N., R.102W., McKenzie County, ND, a risk penalty as provided in NDCC § 38-08-08 and such further relief.

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

Mr. Ed Murphy presented the Geological Survey Quarterly Report. In 2022, the Geographic Survey conducted 313 geologic reviews of infrastructure projects, an 80% increase from the previous year. These reviews were for road projects, water projects, transmission line corridors and wind farms, oil and gas pipeline corridors and well pads, and general construction projects.

Mr. Murphy presented the 2022 Department of Mineral Resources Strategic Plan Review. There were 79 one year-year goals in the 2022 Geological Survey Strategic Plan and 72 were completed as planned. In addition to the 72 original projects, 22 new projects were also completed. As a result, there were 94 projects completed in total, which was 15 more than originally anticipated.

Mr. Murphy presented for consideration of approval the 2023 Department of Mineral Resources Strategic Plan. The 2023 Geological Survey Strategic Plan contains 79 one-year goals and 63 long-term goals. A detailed list of the strategic plan is available upon request.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approves the 2023 Department of Mineral Resources Geological Survey Strategic Plan.

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

Dr. Helms gave an update on Litigation:

- i. 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
- ii. Blue Appaloosa
- iii. 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
- iv. Industrial Commission Order 31792 – Liberty Resources vs. NDIC et al
- v. North Dakota Industrial Commission v. U.S. Department of Interior
- vi. Dominek v Equinor et al
- vii. Spec Tech v NDIC

Dr. Helms presented the Report on Bureau of Land Management revision to North Dakota Resource Management Plan and associated Environmental Impact Statement for 58,900 surface acres and 4.6 million mineral acres in North Dakota.

Dr. Helms presented the Report on Dakota Access Pipeline Environmental Impact Statement cooperating agency comments.

Dr. Helms presented the Department of Mineral Resources Legislative Update.

BANK OF NORTH DAKOTA

Mr. Todd Steinwand presented the Bank of North Dakota Legislative Update.

Mr. Kirby Evanger presented for consideration of approval of Amendments to General Loan Policy – Adoption of Current Expected Credit Losses (CECL).

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission accept the recommendation of the Bank of North Dakota Advisory Board and approve amendments to the General Loan Policy to include the adoption of the Current Expected Credit Losses (CECL) standard.

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

Mr. Rob Pfennig presented for consideration of approval of Amendments to Funds Management Policy.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission accept the recommendation of the Bank of North Dakota Advisory Board and approve amendments to the Funds Management Policy to include Commercial Mortgage Backed Securities as a separate tracked category of investment, update policies to reflect the shift from LIBOR to SOFR (secured overnight financing rate) and remove non-regulatory risk measurement ratio.

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

Mr. Steinwand presented the December 15th, 2022 Non-confidential Advisory Board Minutes.

It was moved by Attorney General Wrigley and seconded by Governor Burgum that under the authority of North Dakota Century Code Sections 6-09-35, 44-04-18.4, 44-04-19.1, and 44-04-19.2, the Industrial Commission enter into executive session for Bank of North Dakota confidential business and attorney consultation.

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

Governor Burgum stated that the commission is meeting in 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, and BND staff will participate in that executive session.

After the Bank of North Dakota executive session, the Commission will meet in executive session to consult with the Commission's attorneys regarding the current adversarial proceeding listed on the agenda. Only Commission members, their staff, and Lignite Research Council staff will participate in that executive session.

Any formal action taken 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 30 minutes.

The executive session began at 4:35 p.m.

The Meeting Closed to the Public for Executive Session Pursuant to NDCC 6-09-35, 44-04-18.4, 44-04-18.4, 44-04-19.1, and 44-04-19.2.

BANK OF NORTH DAKOTA EXECUTIVE SESSION

Industrial Commission Members Present

Governor Doug Burgum
Attorney General Drew H. Wrigley

Bank of North Dakota Members Present

Todd Steinwand, BND
Kelvin Hullet, BND
Rob Pfennig, BND
Kirby Evanger, BND

Others in attendance

Ryan Norrell	Governor's Office
John Reiten	Governor's Office
Jace Beehler	Governor's Office
Zach Greenburg	Governor's Office
Steve Nelson	Attorney General's Office
Dutch Bialke	Dept. Of Agriculture
Karen Tyler	Industrial Commission Office
Reice Haase	Industrial Commission Office
Brenna Jessen	Industrial Commission Office

LIGNITE RESEARCH, DEVELOPMENT AND MARKETING PROGRAM EXECUTIVE SESSION

Industrial Commission Members Present

Governor Doug Burgum
Attorney General Drew H. Wrigley

Lignite Council Members Present

Jonathon Porter
Jason Bohrer
Claire Vigessa
John Weeda

Others in attendance

Ryan Norrell	Governor's Office
John Reiten	Governor's Office
Jace Beehler	Governor's Office
Zach Greenburg	Governor's Office
Steve Nelson	Attorney General's Office

Dutch Bialke	Dept. of Agriculture
Karen Tyler	Industrial Commission Office
Reice Haase	Industrial Commission Office
Brenna Jessen	Industrial Commission Office
Tom Boyd	Winthrop Attorney
Brent Lawrence	Winthrop Attorney

The executive session ended at 5:15 p.m. and the Commission reconvened in open session.

During the Lignite Research, Development and Marking Program executive session, guidance was provided to the Commission regarding the matter listed on the agenda.

During the executive session, the Commission made a motion regarding one loan request.

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

Governor Burgum asked if there was any other remaining administrative business, to which there was none.

The next Industrial Commission meeting will be held on Tuesday, March 28th, 2023.

Governor Burgum adjourned the meeting at 5:18 p.m.

North Dakota Industrial Commission

A handwritten signature in black ink, appearing to read 'K. Tyler', with a large circular flourish at the end.

Karen Tyler, Interim Director and Secretary