

Minutes of a Meeting of the Industrial Commission of North Dakota  
Held on June 5, 2018 beginning at 1:00 p.m.  
Governor's Conference Room  
State Capitol

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

Also Present: Leslie Oliver, Governor's Office  
Lt. Governor Sanford, Governor's Office  
Jessie Pfaff, Agriculture Department  
Other attendees are listed on the attendance sheet available in the Commission files  
Members of the Press

Governor Burgum called the Industrial Commission meeting to order at 1:00 p.m. and the Commission took up Industrial Commission administrative business.

#### **INDUSTRIAL COMMISSION ADMINISTRATION**

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented May 17, 2018 non-confidential meeting minutes.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission May 17, 2018 non-confidential meeting minutes be approved as presented. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

#### **WESTERN AREA WATER SUPPLY (WAWS)**

Mr. Garland Erbele, Chairman of the Western Area Water Supply Authority Study Advisory Committee, reported on the study that had been ongoing since last year. He stated that Section 11 of HB 1020 required that an independent study be conducted regarding the feasibility of the sale or lease of the industrial water supply assets of WAWS and to provide information regarding the financial impact to WAWS, its members and customers, the financial viability of WAWS, and options available to WAWS for debt servicing. An advisory committee for the study was formed consisting of:

- State Engineer Garland Erbele, Chairman
- Lt. Governor Brent Sanford
- Lynn Helms, Director of the Department of Mineral Resources
- Karlene Fine, Industrial Commission Executive Director and Secretary
- Joe Morrisette, Director of the Office of Management and Budget.

Mr. Erbele indicated that Stantec and Houston Engineering were hired to complete the study and over the past year the Advisory Committee has been meeting with the contractor on the progress of the study. He stated that the Advisory Committee recently met and reviewed the final report and determined that the study did meet the requirements of the law, accepted the report and approved the final payment to the contractor following their presentations to the Industrial Commission today and to the Water Topics Committee on June 13.

Mr. Erbele introduced Mr. Kevin Martin, Stantec/Houston Engineering representative. Mr. Martin presented the Industrial Water Supply Infrastructure Financial Analysis of the Western Area Water Supply Authority report. (A copy of the report is available in Commission files.) He summarized the report as follows: (He noted that considerable detailed information is available in the printed report.)

The Scope of the Study included:

- Asset Condition Assessment & System Capacity Analysis
- Funding & Financing Alternatives
- Feasibility of Lease/Sale of Assets and Capacity Market/Pricing Analysis
- Financial Management Plan.

The Executive Summary lists their findings as:

- 1) Our analysis shows unused capacity that could be offered to the market on a firm/interruptible basis;
- 2) Hold off on refinancing variable rate BND debt and request principal forgiveness from the State on Resources Trust Fund debt;
- 3) Highest value lies in water capacity, not industrial assets;
- 4) Identified parameters of a shift from “retailer” to “wholesaler” by offering capacity as a concession;
- 5) Pivoting service model should improve financial sustainability;
- 6) Conservative estimates of revenues from interruptible service show positive impacts to members and customers.

Mr. Martin noted that the asset conditions are good--this is a fairly new system. The available maximum sustainable capacity is 22 MGD. When maximum city demands are met, there is still over 67 million gallons available on a daily basis (in theory). When considering estimated population growth, the system would not be able to meet the city demands on a daily basis by 2030 based on a static system. The hydraulic analysis showed where the water is available and the system has the ability to take water off the system and store it for fracking and other needs. He noted that this excess capacity is a valuable resource and there is considerable demand for the water. He indicated that over the past year WAWS has pivoted to being a wholesaler and having third parties sell the water and is seeing improved financial sustainability.

Under the alternative model, there is the option to seek out third-party concessionaire(s) or a private investment to buy a portion of the excess capacity. It would provide a sustainable cashflow that is not tied to oil price and not tied to activity in the oil patch. The question is will the industry accept a longer term agreement for that volume of water and at what price. Using a test case scenario under the alternative service model, if 50% of available capacity is sold on an interruptible basis at a 20% discount, the full debt service is paid and 2010 baseline sales paid starting in 2020. This would be a risk shift from WAWS to the private industry.

It was noted that the Domestic Fund is healthy and sustainable. In regards to the Industrial Fund, utilizing a status quo scenario and increasing 2018 sales by 3%, sustainable projections are created.

The point was made that if WAWS sells more water it will be better off financially. The question is whether there is the potential to shift risk to the private sector to provide a level of sustainability for WAWS and at what cost.

In response to questions, Mr. Martin stated the following:

- An investment bank contacted Stantec/Houston Engineering indicating an interest in this type of opportunity. He noted that WAWS has already secured a number of contracts for 2018. To move to a concessionaire system there needs to be a margin for an entity to make a profit.
- Under the alternative method the private sector would be investing in a storage system as opposed to WAWS. The fact is that they are already doing this and taking water from every possible source.
- The hidden gem is the contracts for the maintenance water -- a consistent long term source of revenue.
- Refracs were not considered in the report. To quantify it would have been difficult. They would be very good accounts for WAWS.

Lt. Governor Sanford noted that Stantec/Houston Engineering answered the questions they were required to answer. It sounds like WAWS already has multiple concessionaires. He questioned who in the oil field services industry would be willing to take the risk for 5-7 years--that question hasn't been answered.

In response to a question, Mr. Martin stated that the three WAWS wholly owned water depots are worth approximately \$10 million. If the right entity came along to buy, it wouldn't pay down the debt enough. The retail rate is only at the depots, the discounted rate applies to everything else that is sold. It was indicated that agricultural users pay the retail price at the depots because of the convenience of being able to access the water quickly.

Governor Burgum thanked the Advisory Committee and Stantec and Houston Engineering for their work on this project.

Ms. Fine presented the Western Area Water Supply Authority April Financial Report and Debt Reduction Report as follows:

RE: Western Area Water Supply Authority-Industrial Sales-April, 2018 & Debt Repayment Reports

Attached is the Western Area Water Supply Authority (WAWS) financial information for the 2017-2019 biennium through the month of April, 2018.

Page 1 was prepared by the Bank of North Dakota reflecting the debt service payments for the month of April, 2018. With the restructuring of the loans the principal and interest was paid this month only on the \$87.75 million BND loan (3.38313% variable rate in April).

The next 3 pages (pages 2, 3 & 4) I prepared based on the information provided by WAWS staff reflecting April revenues and expenses and net income. Net income for the month of April was - \$90,014.79 after making the principal payment on the BND loan and making the capital improvement/operational costs of \$203,593.61 that the Commission approved at their March meeting.

As you will recall from the overall Debt Service spread sheet the breakeven sales monthly number is \$1,063,061 (an increase from the breakeven number of \$994,920 for CY 2017). With WAWS sales for the month of April being \$1,232,541.76 WAWS was over that breakeven number by \$169,480.76.

Page 5 is the Industrial Account balance sheet prepared by WAWS staff as of April 30, 2018. This is the first balance sheet you have seen without the baseline sales payments. The WAWS staff has received the amendment from the member entities which removed the baseline sales accruals from the

balance sheet for the years 2016, 2017 and 2018. Pages 6 - 14 is a Balance Sheet summary for the General (Domestic) and Industrial funds.

You have requested that the average sale price for water be provided each month. For the months of July through April the numbers are:

July	\$0.01362 per gallon or \$0.57 per barrel
August	\$0.01542 per gallon or \$0.65 per barrel
September	\$0.01285 per gallon or \$0.54 per barrel
October	\$0.01305 per gallon or \$0.55 per barrel
November	\$0.01346 per gallon or \$0.57 per barrel
December	\$0.01404 per gallon or \$0.59 per barrel
January	\$0.01442 per gallon or \$0.61 per barrel
February	\$0.01381 per gallon or \$0.58 per barrel
March	\$0.01393 per gallon or \$0.59 per barrel
April	\$0.01514 per gallon or \$0.64 per barrel

Mr. Todd Pokrzywinski, Interim WAWS Executive Director, gave an update on sales and current activity through April. (A copy of the update is available in the Commission files.) He noted that the trend is going in a favorable direction. April sales are at almost \$6 million and the budgeted revenue was just over \$2 million. It is expected that this trend will continue through 2018. The adjusted revenue forecast for 2018 is \$19.94 million and the required amount to break even is \$12.4 million. There is a lot of anticipated demand north of the river which will increase sales. He pointed out, as noted in the Stantec Study, there are limitations on the amount of water sales WAWS can make south of the river because of pipeline capacity.

Ms. Fine discussed the reimbursement rate adjustment as follows:

RE: WAWSA 2018 Industrial Reimbursement Rate Adjustment

North Dakota Century Code §61-40-10 states in part:

**61-40-10. Industrial water depot and lateral sales.**

.....

- b. Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.

Last December you approved the attached 2018 Industrial Reimbursement Rate for WAWSA. During the past few months the Commission has been encouraging WAWSA staff to identify all potential water sources for resale including reuse water. WAWSA has now identified a reuse water source from Watford City. There are additional operational costs with using this water source so the WAWSA Board has requested an increase of \$.07 per gallon for a reimbursement rate to cover their operational costs retroactive to the date of sale of the reuse water. This would bring the Watford City rate to \$1.27.

It is my recommendation that the Industrial Commission accept the WAWSA Board recommendation and adjust the Watford City reimbursement rate retroactive to the date of the first sale of the reuse water.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the WAWSA Board recommendation and increase the Watford City reimbursement rate by \$.07 per gallon bringing the rate to \$1.27 retroactive to the date of the first sale of the reuse water. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

#### **DEPARTMENT OF MINERAL RESOURCES**

Mr. Lynn Helms, Department of Mineral Resources Director, presented proposed Order 28938 for Case 26505. (Order 28938 is available in the Commission files.)

Mr. Helms indicated that this case involves a water injection unit -- the Southwest Starbuck-Madison Unit in Bottineau County. The Unit consists of 560 acres with one injector well and was effective October 1, 2008. The last oil production from the Unit was in 2015. The proposed order would terminate the Unit as of April 1, 2016 and requires the operator to reclaim the plugged well and to bring the injection well into compliance by October 31, 2018.

**Case 26505: It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order 28938 issued in Case 26505 terminating the Southwest Starbuck-Madison Unit be approved this 5th day of June, 2018. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Ed Murphy gave a presentation of the Geological Survey Division Quarterly Report including the Lake Bed Sediment Interim Legislative Study update. (A copy of the report is available in the Commission files.) His report included information on the following topics:

- Wilson M. Laird Core and Sample Library
- Inyan Kara Maps
- High-Level Radioactive Waste Disposal Interim Legislative Study
- Lake Bed Sediment Interim Legislative Study
- Outline of proposed Lake Bed Regulations
- 2018 Public Fossil Dig Sign Up
- Oligocene Eagle Display
- Regulatory Programs
- Publications and Presentations

Mr. Murphy noted that the usage of the core library has increased significantly in the first quarter of 2018. He reported on the eight Inyan Kara maps that had been published during the quarter. In response to questions, he stated that the depth to the sandstone formation is 5,500-6,500 feet and the formation is 550 feet thick. Mr. Helms noted that the purpose of this particular set of maps was to shift the focus of the site selection for disposal wells to the best geologic formation instead of the site selection being made because of proximity to roads and other infrastructure. There was discussion regarding the extensive confining zone above the Inyan Kara formation.

Mr. Murphy reported that in response to the High-Level Radioactive Waste Disposal interim legislative study, a bill draft was proposed. The interim Natural Resources Committee voted unanimously to accept the bill draft.

Mr. Murphy stated that in response to Section 29 of SB 2014, a study of lake bed sediment has been prepared in coordination with the State Water Commission, Health Department, and Game and Fish. The study included:

- the appropriate jurisdiction and regulation of sediment studies and dredging operations,
- best practices of other states,
- an outline of proposed regulations, and
- a plan to implement a uniform permitting process.

Mr. Murphy summarized the work that had been done as follows:

- The rules and regulations of nine states were reviewed. In consultation with the other state agencies it was decided to build off South Dakota's regulations. South Dakota regulations treat the lake bed as a mineral resource. Currently an entity wishing to dredge in North Dakota may not have to obtain a permit or could have to obtain up to five permits. This new proposal would require interested parties to always get a mining permit from the Industrial Commission. The other permits would still be required because in most instances they are required by the federal government and Corps of Engineers.
- A new chapter to the century code would establish this jurisdiction.
- An outline of proposed regulations was provided. The proposed regulations would require an operator to obtain a permit from the Industrial Commission before dredging operations. A permit would be needed for dredging more than 100 yards of lake sediment. Operators would need to stay a certain distance from dams for safety concerns. The other agencies would have 30 days to make comments on the permit and those concerns would become part of the terms for the permit. If a permit was not granted, the applicant could request a hearing. If one of the other agencies has concerns, they could also request a hearing. This will enable the applicant to apply to one agency while the other agencies receive notice of the proposed activities.
- Bonding requirements would be waived for political subdivisions. The other agencies were willing to have the Department of Mineral Resources (DMR) take the lead. However, DMR is willing to have another agency do so. Before a bond would be released there would be reports and inspections by DMR staff. There was discussion among the state agencies as to whether these regulations are needed. There have been a limited number of lakes in the last 30 years which would have been impacted by these proposed regulations. However, moving forward this could become a greater issue due to aging infrastructure.

In response to questions, Mr. Murphy stated that the company coming in would have contracts with the adjacent surface mineral owners. Whoever is taking the mud out is responsible for it. A 404 and 401 permit continually came up, but it is a separate issue. The permits required are site specific. However, this would be the one agency that would require an application submission. It was described as this being like a "one call" for dredging.

In response to a question, Mr. Murphy indicated that this work had been done to fulfill the directive from the Legislature that this issue be studied and then the Legislature can decide whether a law should be passed determining jurisdiction and that regulations be developed.

Mr. Murphy stated that they had a huge response for the public digs--the 350 spots were filled right away and they still have a waiting list of 300 people.

Mr. Murphy noted that industry has been relaxing its specifications for proppant sand. To determine if North Dakota has any sand that would meet the new specifications Geological Survey staff has collected samples and the Department of Transportation did the testing on the samples and that information has been published in a report. While those sand samples were being gathered, samples of coal with rare

earth elements were also collected. The highest level too date had been 605; just this week a coal sample was shown to have 1,026 parts per million, which is the highest concentration of rare earths found nationwide. The report on that information is being released. He pointed out that the work the Geological Survey had done resulted in studies being done by UND and the EERC and those entities are receiving over \$4 million in grants. He noted the issue has been finding consistent numbers and deposits.

Mr. Chris Maike and Mr. John Axtman provided a presentation of UAS applications for geotechnical and well site inspections and the collaborations that have taken place with other state agencies. (A copy of the presentation is available in Commission files.) The report highlighted the work that has been done in regards to landslide mapping - collaborating with DOT and the Southwest Water Authority. Some of the sites/areas noted were Valley City, Billings County, Hwy 22, and the Badlands in Billings County.

UAS has also been utilized for pipeline spills (Department of Health) and pre-site well inspections, flooding near and around well sites, reclamation, reconnaissance for rare earth elements, sand proppant and paleontology, and stratigraphy. There have been instances in which flooding occurs due to ice jams and mountain runoff. Well sites are able to be monitored and this enables well sites to shut down quickly to avoid complications.

In response to questions, Mr. Maike stated that they are investigating LIDAR but not currently utilizing it. Mr. Helms stated that DMR has reached out to the Department of Transportation to be a part of their recently announced drone project.

**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 close the meeting to the public and enter executive session for the purpose of attorney consultation. The purpose of the executive session will be to consult with the Commission's attorney(s) regarding adversarial proceedings in the following matter: Case No. 09-2018-CV-00089, Sorum, et al v. State of North Dakota, et al. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Governor Burgum reminded the Commission members and those present in the executive session that the discussion during executive session must be limited to the announced purpose for entering into executive session which is anticipated to last between 15 and 30 minutes.

Governor Burgum stated that the Commission was meeting in executive session to consult with the Commission's attorney(s) regarding Case No. 09-2018-CV-00089 and noted that any formal action by the Commission would occur after it reconvened in open session.

Commission members, their staff, DMR staff, and Special Assistant Attorney General(s) and their staff remained but the public was asked to leave the room. The executive session began at 2:54 p.m.

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## EXECUTIVE SESSION

### **Members Present:**

Governor Doug Burgum  
Attorney General Wayne Stenehjem  
Commissioner Doug Goehring

### **Others in Attendance:**

Leslie Oliver                      Governor's Office  
Lt. Governor Sanford        Governor's Office

Lynn Helms	Department of Mineral Resources
Bruce Hicks	Department of Mineral Resources - Oil and Gas Division
Ed Murphy	Department of Mineral Resources - Geological Survey
Daniel Gaustad	Pearson Christensen Law Firm
Paul Anderson	Pearson Christensen Law Firm
Andrea Pfennig	Industrial Commission Office
Karlene Fine	Industrial Commission Office

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The Industrial Commission reconvened in open session at 3:45 p.m. and the public was invited to return to the meeting room. Governor Burgum noted that during its executive session the Commission consulted with its attorney regarding Case No. 09-2018-CV-00089.

### **OUTDOOR HERITAGE FUND (OHF)**

Ms. Fine presented the Outdoor Heritage Fund Financial Report and noted that the amount of uncommitted dollars for funding awards as of May 8, 2018 is \$18,235,417.91. The OHF Advisory Board is recommending approval of \$4,600,942 in project funding for Grant Round 11.

Ms. Fine provided the Commission with the OHF Advisory Board's recommendations regarding amendments to the OHF application form and process. (A copy of the recommendations is available in the Commission files.)

Ms. Andrea Pfennig, Deputy Executive Director and Secretary, provided proposed revisions to the OHF application reflecting changes to the program's policies and procedures. She stated that the overall goal of the changes is to make the application more user friendly - would like to move from a Word document to a fillable PDF. She noted the new language to the application process:

- encouraging applicants to submit their application prior to the deadline to allow time for staff to review the application and to have the applicant make corrections or respond to questions earlier in the process;
- limiting the number of times an applicant can revise their application to one time after the application deadline; and
- allowing staff to reject an application if it is determined to be incomplete or falls under the "exemptions" list in the law.

In regards to the actual application the proposed new language included:

- clarification regarding whether or not the proposed project is part of a Comprehensive Conservation Plan;
- establishing guidelines (cannot exceed NRCS Field Office Tech Guide without justification) for the costs for seeding, fencing, pipelines, wells, cover crops and guidelines for perimeter fencing (this is being proposed to provide consistency in the program);
- a provision indicating that the OHF Advisory Board does not have an appetite to fund projects to construct or refurbish indoor/outdoor ice rinks, indoor/outdoor athletic courts and sports fields and other substantially similar facilities;
- a provision indicating that the OHF Advisory Board does not have an appetite to fund projects not meeting a minimum funding request of \$2,500.

Ms. Pfennig indicated that a majority of the changes are some rewording, clarifying of how the process works or a reformatting of the documents.

Ms. Fine, Ms. Pfennig and Jim Melchior, Chairman of the Outdoor Heritage Fund Advisory Board, responded to questions, provided background information on projects that have been turned down in the past and discussed reasons for making the changes. There was discussion about what the intent was of Directive D regarding the establishment and development of parks and other recreation areas and how the law has been interpreted since the program was implemented. The Commission expressed a desire to think about the changes and any unintended consequences and take up the revisions at a future meeting--prior to the October 1 deadline.

Ms. Fine provided the following background information on procedural issues and practices that are followed by the Outdoor Heritage Fund Advisory Board and actions taken by the Board at their recent meeting.

### **OHF Policy and Procedure Issues**

#### ***Procedural Issues***

- Tie Votes:
  - There are two votes by the Board on each application: a funding vote (in which Board members indicate that they are supportive of some level of funding the project) and then a final recommendation vote. There was one instance where the funding vote has been 6 to 6 and the application did not go forward for the next vote. There was also an instance in which an amendment to a motion failed on a tie vote (6-6) and did not move forward. The established practice of the Board in regards to tie votes is that the motion fails due to a lack of majority.
- Even Number of Board Members:
  - At a majority of the meetings, not all of the voting members have been in attendance and so this has not been an issue. Adding a board member will not guarantee that there will always be an odd number in attendance.
  - NDCC 54-17.8-06 outlines the makeup of the Board, including the number of members and groups that are represented. Legislation would be required to change this.
  - Note: Attendance information attached. (Attachment 1)
- Determination of project eligibility:
  - This has been left to the staff, technical advisory committee or to the Board.
  - The law states: The commission shall use the fund to provide grants to state agencies, tribal governments, political subdivisions, and nonprofit organizations, with higher priority given to enhance conservation practices in this state by:
    - a. Providing access to private and public lands for sportsmen, including projects that create fish and wildlife habitat and provide access for sportsmen;
    - b. Improving, maintaining, and restoring water quality, soil conditions, plant diversity, animal systems, and by supporting other practices of stewardship to enhance farming and ranching;
    - c. Developing, enhancing, conserving, and restoring wildlife and fish habitat on private and public lands; and
    - d. Conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas.
  - The law states: The advisory board shall recommend to the commission the approval of grants for funding activities that fulfill the purposes of this chapter. The Board has an established practice of requiring conservation to be the backbone of any project within the 4 directives.
  - In regards to the Pembina Gorge project, the technical advisory committee was asked the question of eligibility and they opted to have the Advisory Board make that determination.
- Determination as to whether the Commission can only approve funding for projects recommended by the Board:
  - Based on how other research programs with Advisory Boards have been administered, the practice of the Commission has been that a grant could not be approved unless there was a recommendation to fund at some level. If the Commission would wish to revisit this practice (there is some debate as to whether this is statutorily required), it may be appropriate to look at the law and the legislative history when the OHF was established to determine if there is flexibility.
  - Note: A listing of the various statutes for awarding of grants is attached. (Attachment 2)

### ***Policy Issues***

- Directive D and the type of projects that should be considered:
    - The law states that OHF funds may not be used, except after a finding of exceptional circumstances by the Industrial Commission, to finance:
      - A paving project for a road or parking lot.
      - A swimming pool or aquatic park.
      - Playground equipment, except that grant funds may be provided for up to 25% of the cost of the equipment not exceeding \$10,000 per project and all playground equipment grants may not exceed 5% of the total grants per year.
      - A building, except for a building that is included as part of a comprehensive conservation plan for a new or expanded recreational project.
    - At this meeting, the Board voted to recommend changing the application form to include the following: “In addition to those specific items in law that are ineligible for funding, in the absence of a finding of exceptional circumstances by the Industrial Commission, the following projects will NOT receive consideration for funding:
      - Construction or refurbishment of indoor/outdoor athletic courts & sports fields, indoor/outdoor ice rinks, and substantially similar facilities.
    - Historically, the board has not recommended funding for basketball courts, ice rinks, development of softball diamonds (including lighting), and other athletic complexes and the Industrial Commission has not given any other guidance on this issue. There has been limited discussion by the Commission on that topic.
      - Note: A complete list of athletic applications received is attached. (Attachment 3)
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### ***Pembina Gorge Discussion***

- Overall, many board members (even those in support of the project) felt that there was not a conservation component to the proposal.
- Some members felt that there will be other projects done in the future that will fit better with the OHF program.
- Theme of comments in favor of the proposal:
  - Recreation is different to everyone.
  - This is important to that corridor of the state.
  - The conservation component depends on the scale with which it is viewed. If you look at the larger project, it will meet the requirements. It is the hub of the Pembina Gorge trail system. This is one piece of a larger conservation project.
- Theme of comments not in favor of the proposal:
  - There is not public access when people will need to pay money for a ski lift ticket.
  - This is clearing forest, installing a major piece of equipment, and charging people a fee. This is not a parks and rec board.
  - If this project is funded, then playgrounds, softball fields, pools, buildings, and anything involving outdoor recreation should be funded.
  - There is an obligation to follow the law. The law says that the funds should be used for conservation. This does not conserve a natural area for recreation.
  - This is a business opportunity and should be treated as such.

### ***Additional Information***

- A density map of OHF funds awarded by county is attached. (Attachment 4)
- Additional statistics on the awarded funds are attached. (Attachment 5)

### ***Options for the Commission***

- A. Establish another grant round with an application deadline of July 1<sup>st</sup> or July 15<sup>th</sup>.
- B. Commission make a determination of exceptional circumstances and approve funding (need to state what those exceptional circumstances are such as uniqueness of the area; overall recreation value to a significant

number of individuals; part of a larger conservation project.) *Note: This would be the first time that the Commission has taken this action and it would be precedent setting.*

- C. Accept the OHF Advisory Board's tie vote as a vote of not to fund and follow the practice of not considering this application for funding.

There was discussion on what the procedure should be for a tie vote. In response to questions, Mr. Melchior stated that since the program's inception, a tie vote fails due to lack of majority.

There was also discussion as to whether legislation should be introduced to have the membership on the Advisory Board be an uneven number although this may not resolve the issue of a tie vote if a member is not present and voting.

In response to a question, Ms. Fine stated that if there is a tie, an applicant may reapply in a subsequent round.

It was pointed out that in the most recent grant round the Pembina Gorge Foundation application received a majority vote to fund the project but it was a tie vote on the amount of funding to be awarded. There was discussion on that particular application and how it seems to fit under Directive D conserving a natural area and creating an area for recreation through the establishment and development of parks and other recreation areas. In response to a question, Mr. Melchior stated that while the project as a whole may involve conservation practices the application received was to replace a chairlift. Additionally, he noted that the chairlift is not available to the public unless users pay a fee.

In response to a question, Ms. Fine stated that the Commission can establish a special round at any time. She noted that if the projects being recommended today were approved, there would still be about \$14 million available this biennium.

Governor Burgum stated that because there is \$14 million available, an additional grant round would be beneficial to get projects moving forward this year. The Governor wanted it to be clear that this vote is only for an additional grant round and not an effort to tell the Advisory Board how to vote. Governor Burgum thanked the Board members for the work that they do.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission establishes an additional grant round for the Outdoor Heritage Fund Program with an application submission deadline of July 15, 2018. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Melchior provided the Commission with a list of all the applications that had been received for Grant Round 11 which totaled \$7,277,717. He indicated that the Board, after reviewing the applications and hearing the presentations from the applicants, recommended the following 13 applications totaling \$4,600,942 for the Commission's consideration:

1. 11-07 (B & C) North McHenry SCD: **McHenry County Conservation Program, Recommended amount \$250,000**; Total Project Costs: \$465,000
2. 11-18 (B) Wells County SCD: **Middle Sheyenne River Watershed Project, Recommended amount \$38,040\***; Total Project Costs: \$63,399
3. 11-02 (C & A, B) National Wild Turkey Federation: **NWTF Northern Plains Riparian Restoration Initiative, Recommended amount \$45,000**; Total Project Costs: \$546,336
4. 11-05 (C & A, B) Audubon Dakota: **Stutsman County Prairie Management Toolbox, Recommended amount \$943,489**; Total Project Costs: \$1,677,871

5. 11-13 (C & A, B, D) ND Natural Resources Trust/Dunn County SCD: **Bakken Development & Working Lands Program, Recommended Amount \$2,170,000**; Total Project Costs: \$3,845,000
6. 11-14 (C & B) Cass County SCD: **Cass County Windbreak & Wildlife Planting Initiative, Recommended amount \$50,000**; Total Project Costs: \$100,000
7. 11-16 (C & A, B) ND Natural Resources Trust: **Working Grassland Partnership Phase III, Recommended amount \$396,850**; Total Project Costs: \$743,250
8. 11-01 (D & A, B, C) Morton County Parks: **Graner Park Bank Stabilization Phase 2, Recommended amount \$104,033**; Total Project Costs: \$138,711
9. 11-09 (D) Jamestown Park & Recreational Foundation: **Public Accessible Sensory Garden, Recommended amount \$33,000**; Total Project Costs: \$60,260
10. 11-10 (D & A, B, C) Bismarck Parks and Rec: **Atkinson Nature Park Improvements, Recommended amount \$21,830**; Total Project Costs: \$57,830
11. 11-19 (D & A) ND Parks and Recreation Dept.: **Sheyenne River Water Trail Development, Recommended amount \$8,700**; Total Project Costs: \$16,300
12. 11-20 (D & C) Audubon Dakota: **Urban Woods and Prairies Initiative Expansion, Recommended amount \$530,000\***; Total Project Costs: \$802,463
13. 11-21 (D & B) Riding for Dreams Equine Assisted Activities & Therapies: **Riding for Dreams Riding & Hiking Trail, Recommended amount \$10,000**; Total Project Costs: \$32,006

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendations of the Outdoor Heritage Fund Advisory Board and approves funding of the following 13 projects in the total amount of \$4,600,942 and authorizes the Industrial Commission Executive Director and Secretary to enter into contracts with the applicants as noted below:**

1. **“McHenry County Conservation Program” - North McHenry SCD - \$250,000**
2. **“Middle Sheyenne River Watershed Project” - Wells County SCD - \$38,040\* (a revised budget was provided at the meeting)**
3. **“NWTF Northern Plains Riparian Restoration Initiative” - National Wild Turkey Federation - \$45,000**
4. **“Stutsman County Prairie Management Toolbox” - Audubon Dakota - \$943,489**
5. **“Bakken Development & Working Lands Program” - ND Natural Resources Trust/Dunn County SCD - \$2,170,000 with the stipulation that no funding be used for reclamation**
6. **“Cass County Windbreak & Wildlife Planting Initiative” - Cass County SCD - \$50,000**
7. **“Working Grassland Partnership Phase III” - ND Natural Resources Trust - \$396,850**
8. **“Graner Park Bank Stabilization Phase 2” - Morton County Parks - \$104,033**
9. **“Public Accessible Sensory Garden”- Jamestown Park & Recreational Foundation - \$33,000**
10. **“Atkinson Nature Park Improvements” - Bismarck Parks and Rec - \$21,830**
11. **“Sheyenne River Water Trail Development” - ND Parks and Recreation Dept. - \$8,700**
12. **“Urban Woods and Prairies Initiative Expansion” - Audubon Dakota - \$530,000\* (funding for administrative costs was not recommended for funding)**

13. **“Riding for Dreams Riding & Hiking Trail” - Riding for Dreams Equine Assisted Activities & Therapies - \$10,000**

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

The staff was asked to provide information on OHF projects where citizens pay to utilize the project.

**LIGNITE RESEARCH, DEVELOPMENT & MARKETING PROGRAM (LRD)**

Ms. Fine presented the Lignite Research Program Financial Report. (A copy of the report is available in the Commission files.) She noted that as of March 31, 2018 there is uncommitted cash in the amount of \$13.6 million.

Mr. Mike Holmes, Industrial Commission Lignite Research Program Technical Advisor, discussed the Lignite Research Council Grant Round 86 recommendations:

**LRC-LXXXVI (86)-B: To Test, Confirm, and Initiate Commercial Design of a Post-Combustion Bolt-On" CO<sub>2</sub> Capture System Suitable for At-Scale, Royalty-Free Retrofit of Existing North Dakota Lignite and Coal Fired Power Generating Facilities (with North Dakota Manufacturing Opportunity to reach National and International Markets).** Submitted by: Mattoon Power Enterprises LLC; Request for: \$649,860; Total Project Costs: \$1,580,800; Principal Investigator: Paul Gandola; Project Duration: 12 months. The objective of the project is to demonstrate and measure the effectiveness of new methods for a cost effective “bolt-on” solution capable of reducing the cost of CO<sub>2</sub> capture for 60% - 90% of the CO<sub>2</sub> in coal and lignite flue gas. The approach is based on technical innovations for a proven potassium carbonate process to operate at atmospheric and near-atmospheric conditions, and a broader view of the overall economics, which include benefits to North Dakota in its lignite, coal, energy production, and manufacturing sectors. He noted that the vote was 15 to fund and 4 not to fund. Contingencies are: 1) the project investigator reviews the project management plan and especially the staffing plan in detail with Mr. Holmes and 2) require the usage of North Dakota lignite and 3) final review of the budget and cost share.

**It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the Lignite Research Council’s recommendation to fund the grant application “”To Test, Confirm, and Initiate Commercial Design of a Post-Combustion ‘Bolt-On’ CO<sub>2</sub> Capture System Suitable for At-Scale, Royalty-Free Retrofit of Existing North Dakota Lignite and Coal Fired Power Generating Facilities (with North Dakota Manufacturing Opportunity to reach National and International Markets)” and to authorize the Industrial Commission Executive Director and Secretary to execute an agreement with Mattoon Power Enterprises L.L.C. to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$649,860 (small research/education/demonstration funding category) with the contingencies that Mattoon Power Enterprises L.L.C. reviews the elements of the project management plan with and receives the approval of the Technical Advisor which shall include the requirement that North Dakota lignite is utilized in the testing, the Technical Advisor participates in project team reviews and the Industrial Commission Executive Director preapproves cost share match funding. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

**LRC-LXXXVI (86)-C: Economical Extraction and Recovery of Rare-Earth Elements and Production of Clean Value-Added Products from Low-Rank Coal Fly Ash** Submitted by: UND

Energy and Environmental Research Center (EERC); Request for: \$30,000; Total Project Costs: \$510,000; Principal Investigators: Bruce C. Folkedahl & Daniel A. Laudal; Project Duration: 18 months. The EERC and UND Institute for Energy Studies (IES), with assistance from Pacific Northwest National Laboratory (PNNL), are proposing this project with the objective to develop an economically viable and tailorable rare earth element (REE) extraction and concentration method for low-rank coal (LRC) fly ash and bottom ash that produces a concentrate containing  $\geq 2$  wt% total REEs. He noted that this project is different from the other projects that have been funded because it will be looking at extracting the REE from the fly ash rather than from the coal. The vote was 19 - 0 to fund the project. The proposed contingencies are: 1) the Technical Advisor participates in the review meetings and 2) the Technical Advisor reviews the project management plan with the Project Manager.

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the Lignite Research Council's recommendation to fund the grant application "Economical Extraction and Recovery of Rare-Earth Elements and Production of Clean Value-Added Products from Low-Rank Coal Fly Ash" and to authorize the Industrial Commission Executive Director and Secretary to execute an agreement with the Energy and Environmental Research Center to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$30,000 (small research) with the contingencies that the Technical Advisor participates in review meetings and that the Technical Advisor reviews the project management plan with the Project Manager. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 54-17.5-06 and 44-04-19.2(1) the Industrial Commission close the meeting to the public and enter executive session for the purpose of considering the applicants' confidentiality requests for the LRC 86A Application and Appendix C of the LRC 86C Application and requests for confidentiality of LRC 86A project reporting and portions of the LRC 86C project reporting. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Governor Burgum reminded the Commission members and those present in the executive session that the discussion during executive session must be limited to the announced purpose for entering into executive session which is anticipated to last between 15 and 30 minutes. He noted that the Commission is meeting in executive session to consider confidentiality requests for the LRC 86A application and Appendix C of the LRC 86C application and LRC 86A reporting and portions of the LRC 86C project. He noted that any formal action by the Commission would occur after it reconvened in open session. The Commission members, their staff, Industrial Commission LRP Technical Advisor and Lignite Research Council Chairman remained, but the public was asked to leave the room. The executive session began at 4:34 p.m.

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## EXECUTIVE SESSION

### **Members Present:**

Governor Doug Burgum  
Attorney General Wayne Stenehjem  
Commissioner Doug Goehring

### **Others in Attendance:**

Leslie Oliver            Governor's Office  
Lt. Governor Sanford    Governor's Office  
Jessie Pfaff             Agriculture Department

Jason Bohrer  
Mike Holmes  
Andrea Pfennig  
Karlene Fine

Lignite Research Council Chairman  
Industrial Commission Lignite Research Program Technical Advisor  
Industrial Commission Office  
Industrial Commission Office

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The Industrial Commission reconvened at 4:55 p.m. Governor Burgum invited the public to return to the meeting room. He noted that during its executive session, the Commission made a motion to grant confidentiality for Appendix C of LRC 86C and portions of the reporting on the LRC 86C project contingent upon the applicant providing 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.**

Governor Burgum also stated that during its executive session the Commission made a motion to grant confidentiality of the LRC 86 A application and that the reporting on the LRC 86A project be granted with the provision that only proprietary or trade secret information is confidential. All information that is not proprietary or a trade secret is to be made available to the public. **On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

**It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the Lignite Research Council's recommendation to fund the grant application "Continued Funding for Regional Lignite Public Affairs Program 'Coalition for a Secure Energy Future'" and to authorize the Industrial Commission Executive Director and Secretary to execute an agreement with the Lignite Energy Council to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$1,800,000 (marketing) On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

### State Mill (Mill)

Mr. Vance Taylor, President, presented the Eide Bailly study on gain sharing that the Legislature had directed be completed. (A copy of the report is available in the Commission files.) He noted that the report supports all aspects of the gain sharing. The report covers four areas including financial benchmarking, the results of an employee survey, the results of a milling company survey, and a financial analysis of potential results that would occur if gainsharing were repealed. The report is to be presented to the interim Legislative Government Finance Committee on June 7, 2018.

Mr. Taylor stated that the report demonstrates that net income is within the parameters of similar entities. Favorable labor and benefits percentages compared to other entities. The Mill's total labor and benefits average is 5.8% compared to the industry standard of 7.2% of sales. All the milling companies responding to the milling company survey indicated that they have profit sharing as part of their bonus program. Their bonus programs are based on profitability and some use performance and hours worked. A local comparison of compensation with other similar operations in Grand Forks was also done and it showed the Mill was at lower or similar pay scales.

Mr. Taylor indicated that the employee survey showed all the responses indicating that gain sharing is either important or very important to the employees.

Financial performance data comparing 2001-2005 to 2013-2017 was assessed to determine certain percentages of the profitability increase that could be attributed to the gain-sharing program. Aspects that were attributed to the increase included:

- Favorable yield,
- Favorable employee production efficiency,
- One-time initial employee turnover cost,
- Favorable employee retention,
- Improved safety.

Gain-sharing was found to be attributable to increases in all of the categories. Mr. Taylor stated that he felt the scenario in which gain-sharing was attributable to 75% of the increases was the most realistic. According to the report at the 75% scenario, the net increase in gain before transfers attributable to the gain-sharing program was \$4,138,440.

The report stated that based on the findings of the report, specifically the earnings analysis along with consideration of compensation data comparison and other financial and non-financial aspects of maintaining the gain-sharing program, the gain-sharing program is financially feasible. An analysis was done regarding replacing salary increases with the gain-sharing. The report found that salary increases would be more expensive than gain-sharing.

In response to questions Mr. Taylor discussed the seven-day work week for employees, status of the construction on the 100-car shuttle train project, some anticipated efficiencies in operations, use of software to assist in reducing the grain delivery waiting times, hiring of new employees as part of the Mill succession planning and the quality of the 2017 grain crop.

### **Oil and Gas Research Program (OGRP)**

Ms. Fine presented a memorandum regarding the contract for the iPIPE project previously approved by the Commission. She indicated that subsequent to the action taken by the Commission on May 17 authorizing the Executive Director to enter into a contract with the iPIPE project applicants, the project applicants have requested that the Energy and Environmental Research Center (EERC) manage this project on behalf of the project applicants and that the Commission enter into the contract with the EERC rather than the project applicants.

**It was moved by Attorney General Stenhjem and seconded by Commissioner Goehring that the Industrial Commission authorize the Industrial Commission Executive Director and Secretary to execute a contract with the Energy and Environmental Research Center on behalf of the iPIPE project applicants -- Hess Corporation, Statoil ASA and Oasis Midstream Partners -- for the \$1,600,000 funding approved for this project. On a roll call vote, Governor Burgum, Attorney General Stenhjem and Commissioner Goehring voted aye. The motion carried unanimously.**

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 5:20 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary