

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on February 25, 2015 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also

Present: Alan Anderson, Department of Commerce
Andrea Pfennig, Renewable Energy Program
DeAnn Ament, Public Finance Agency
Thomas Harkless, Wells Fargo
Members of the Press

Governor Dalrymple called the Industrial Commission meeting to order at 1:00 p.m. and the Commission took up Renewable Energy Program business.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the following financial report:

Renewable Energy Development Fund
Financial Statement
2013-2015 Biennium
February 25, 2015 Industrial Commission Meeting

	<u>Cash Balance</u>
July 1, 2013 Balance	\$ 2,757,612.42
Revenues from Resources Trust Fund	\$ 3,000,000.00
Revenues through December 31, 2014	\$ 3,710.98
Expenditures net of returns through December 31, 2014	<u>\$(1,699,125.76)</u>
Cash Balance as of December 31, 2014	\$ 4,062,197.64
Outstanding Administrative Commitments (<i>estimate</i>)	\$(41,048.11)
Outstanding Project Commitments as of December 31, 2014	<u>\$(1,337,153.90)</u>
Uncommitted dollars as of December 31, 2014	\$ 2,683,995.63

Renewable Energy Development Fund
Continuing Appropriation Authority
2013-2015 Biennium

July 1, 2013 Balance of Uncommitted Dollars	\$ 825,744.42
Transfer from Resources Trust Fund for 2013-2015 Biennium	\$ 3,000,000.00
Interest Income (Estimated)	\$ 10,000.00
Income from Project Applications (Estimated)	\$ 1,500.00
Returned Commitments	<u>\$ 163.23</u>
	\$ 3,837,407.65
Administrative Commitments	\$(110,000.00)
Commitments 2013-2015	<u>\$(1,035,623.00)</u>
	\$ 2,691,784.65

Senate Bill 2014 (2013 Legislative Session) included an amendment to “57-51.1-07. Allocation of moneys in Oil Extraction Tax Development Fund” that stated the following:

Five percent of the amount credited to the Resources Trust Fund must be transferred no less than quarterly into the Renewable Energy Development Fund, not to exceed three million dollars per biennium.

Renewable Energy Development Fund (54-63-04, N.D.C.C.) – Continuing appropriation. The Renewable Energy Development Fund is a special fund in the state treasury. All funds in the Renewable Energy Development Fund are appropriated to the Industrial Commission on a continuing basis for the purpose of carrying out and effectuating this chapter. Interest earned by the Fund must be credited to the Fund.

Mr. Al Anderson, Renewable Energy Council Chairman, indicated that the Council is recommending one project for funding. He presented the following Grant Round 24 application:

R024-C: Growing the Bioscience Industry in North Dakota; Submitted by Bioscience Association of North Dakota (BioND), Principal Investigator: Bruce Gjovig, Project Duration: 18 months; Total Project Costs: \$120,000; Request for \$60,000 (A copy of the application, technical reviews responses and technical advisor’s recommendation are available in the Commission files.) The three main objectives of this project are:

- To provide a voice for the bio industry, with a focus on biofuels and biomaterials utilizing new technologies;
- To provide networking and educational opportunities;
- To promote value-added market opportunities.

This will be accomplished by hiring an executive director to oversee projects. The group plans to be self-sustaining by the end of the 18 month project period by growing membership from 30 to 75 members. If successful, this project could help develop value-added industry opportunities in the state. Technical Reviewers recommended to fund; Council vote was 6 - 0 to fund.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Renewable Energy Council to fund the grant application “Growing the Bioscience Industry in North Dakota” and authorize the Industrial Commission Executive Director to execute an agreement with the Bioscience Association of North Dakota to provide a total of Industrial Commission Renewable Energy Program funding in an amount not to exceed \$60,000. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Renewable Energy Program business, Governor Dalrymple adjourned this portion of the meeting at 1:08 p.m. and the Commission took up Public Finance Authority business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Also

Present: DeAnn Ament, Public Finance Agency
Thomas Harkless, Wells Fargo
Members of the Press

Governor Dalrymple called the Public Finance Authority portion of the Industrial Commission meeting to order at 1:09 p.m. following completion of Renewable Energy Program business.

Ms. DeAnn Ament, Public Finance Authority Executive Director, presented the following report on the recent Capital Financing Program Series 2015A Bond Sale that had been prepared by Jessica Cameron, Public Financial Management:

In our role as independent financial advisor to the North Dakota Public Finance Authority (the "Authority"), Public Financial Management, Inc. ("PFM") has carefully reviewed the structure and pricing of the Authority's \$1,945,000 Capital Financing Program Bonds, Series 2015A (the "Series 2015A Bonds"). The following is intended to serve as a summary of the bond sales.

Transaction Summaries

\$1,945,000 Capital Financing Program Bonds, Series 2015A

The Authority competitively sold the Series 2015A Bonds on January 27, 2015 to provide moneys to lend to the City of Minot through the purchase of approximately \$2 million of lodging tax revenue bonds to finance a North Dakota State Fair building renovation and to pay the cost of issuing the Series 2015A Bonds. The Authority received two bids, as summarized below.

<u>Bidder</u>	<u>Net Interest Cost</u>	<u>True Interest Rate</u>
Robert W. Baird & Co., Inc.*	\$413,634.50	2.5109%
Hutchinson, Shockey, Erley & Co.	\$418,117.03	2.5592%

**Low bidder.*

Spread to MMD

The following table shows the yields for the Series 2015A Bonds and their spread to the AAA Municipal Market Data (MMD) curve. The AAA MMD curve represents the valuation of AAA rated general obligation credits, assuming a 5.00% coupon, based on market activity in both the primary and secondary municipal bond market.

<u>Maturity</u>	<u>Yield</u>	Spread to AAA	<u>Maturity</u>	<u>Yield</u>	Spread to AAA
2015	0.30%	0.22%	2023	2.05%	0.51%
2016	0.40%	0.26%	2024	2.15%	0.47%
2017	0.70%	0.28%	2025	2.35%	0.57%

2018	0.90%	0.28%	2026	2.50%	0.62%
2019	1.10%	0.29%	2027	2.65%	0.67%
2020	1.30%	0.33%	2028	2.80%	0.73%
2021	1.50%	0.32%	2029	2.90%	0.76%
2022	1.80%	0.43%			

PFM reviewed the results of the Authority's Bonds with regard to prevailing market conditions, and it is our opinion that the interest rate scales, couponing, reoffering yields and underwriting compensation received for the Bonds are fair and favorable to the Authority. The final pricing for the Series 2015A Bonds resulted in a gross underwriting spread of \$21,918.69 or \$11.27 per face amount of bonds.

We also opine that the Authority's Series 2015A Bonds were appropriately priced relative to other issues sold or trading in the secondary market during the same period. PFM believes that the final all-in true interest cost of 3.1666% for the Series 2015A Bonds are favorable to the Authority in light of prevailing market conditions. Additionally, PFM believes that these statistics are comparable to the interest rate levels of similar transactions sold either competitively or through negotiated placement in the market during the week of sale.

Standard & Poor's Ratings Group confirmed the Authority's outstanding "AA" credit rating prior to the receipt of bids. This marks the first CFP financing with the "AA" credit rating.

We greatly appreciate the opportunity to have served as financial advisor to the Authority on the Series 2015A Bonds and we look forward to being of continued service on future financing transactions. As always, we will be available to respond to any questions you may have concerning the contents of this memorandum or on any part of the financing process.

Ms. Ament updated the Commission regarding legislation as follows:

Status of PFA Bills

HB 1014 Industrial Commission appropriation bill.

The hearing before the Appropriations Committee was held on January 15, 2015. On February 24, 2015 the House passed the bill 77 - 15.

HB 1137 Relating to creation of the capital infrastructure revolving loan fund; to provide for a transfer; and to provide a continuing appropriation.

The hearing before the Political Subdivisions Committee was held on January 15, 2015. A "do pass as amended" was recommended 12-1-1 and the bill was rereferred to Appropriations. On February 24, 2015, Appropriations reported back "do not pass" 22-1.

Bills Being Monitored

HB 1085 Relating to federal funds reporting requirements by state agencies and reports to the legislative management; and to amend and reenact section 54-27-27 of the North Dakota Century Code, relating to federal grant applications reporting requirements by state agency.

Each executive branch state agency receiving federal funds, shall report to the office of management and budget biennially on the amount of federal funds received by the agency for the preceding biennium in a form determined by the office of management and budget. The hearing before the Government and Veterans Affairs Committee was held on January 22, 2015. A “do pass” was recommended 10-4. On January 27, 2015 the House passed the bill 74 - 19.

HB 1250 *Relating to the publishing of minutes of board and commissions.*

Each governing body to which the governor appoints any member shall publish on the governor's office website the minutes of each meeting of the governing body within sixty days after the meeting. The hearing before the Political Subdivisions Committee was held on January 23, 2015. On February 12, 2015, the House defeated the bill 32 - 59.

HB 1443 *Relating to creation of the infrastructure revolving loan fund; to provide for transfers; and to provide a continuing appropriation.*

This bill is similar to HB 1137. However, it does not restrict borrowers whose projects are eligible under the State Revolving Fund from utilizing this loan fund. The first hearing before the Appropriations Committee was held January 29, 2015. On February 24, 2015, Appropriations reported back with amendments and a “do pass” 21-2.

SB 2375 *Formation of a community facilities district for public improvements.*

The bill would allow for the creation of Special Purpose Taxing Districts which would provide access to capital for a district without putting a city or county at risk. The first hearing before the Political Subdivisions Committee was held February 5, 2015.

In response to a question, Ms. Ament said SB 2375 would allow for the creation of a new type of political subdivision. Nationwide there are over twenty states that have some form of this and have special purpose taxing districts (SPTD) such as community facility districts – they go by many different names. The benefit to the SPTD is that they can finance infrastructure. Essentially, if you are setting up a special assessment district and they default, you can levee taxes on all the properties in that community. With an SPTD the county would not be on the hook and the city would not be on the hook. For example, a city could create this special purpose taxing district and they could do water, sewer, curb and gutter infrastructure for a new development and bond for all of the costs. If the development never came to fruition then the bondholders have bonds with no value as there is no one in the development to pay the assessments.

She indicated that the bill was heard by the Political Subdivisions Committee. There was discussion about having amendments proposed that took out the ability to finance any water projects because of the territorial issues. She has not seen any amendments yet. She noted that it was one of the last bills introduced and it was stated that an Arizona law has been used to put together the bill draft. (The North Dakota Homebuilders Association had contracted with an agency out of Arizona to help with the legislation.) She noted that there is not much history about financings done by these SPTDs. The IRS has questioned whether bonds issued by these districts

Minutes - Page 4
February 25, 2015

are tax exempt. There is a home association that's been dealing with the IRS for three years now because the IRS does not believe these bonds are tax exempt.

Being no further Public Finance Authority business, Governor Dalrymple adjourned the meeting at 1:30 p.m. and the Commission took up Department of Mineral Resources business.

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Karlene Fine, Executive Director and Secretary

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Agriculture Commissioner Doug Goehring

Also

Present: Lynn Helms, Department of Mineral Resources
Ed Murphy, DMR-Geological Survey
Alison Ritter, DMR
Craig Smith, Crowley Fleck
Ron Ness, ND Petroleum Council
Steve McNally, Hess Corp.
Bill O'Halloran, Province of Nova Scotia
Michael Bird, Province of Nova Scotia
Kimberly Doane, Province of Nova Scotia-Energy
Brent MacDonald, Province of Nova Scotia-Environment
Jaret Wirtz, WAWSA
Cory Chorne, WAWSA
Members of the Press

Governor Dalrymple called the Department of Mineral Resources portion of the Industrial Commission meeting to order at 1:30 p.m. following completion of Public Finance Authority business.

Mr. Lynn Helms introduced Director Kimberly Doane, Petroleum Resources, Nova Scotia Department of Energy and staff.

Ms. Doane introduced her staff and stated they were here to learn from jurisdictions on how to adapt and be ready for oil and gas development onshore. In Nova Scotia they have both offshore and onshore development. She stated they are here to learn from North Dakota regarding how you have adapted to such huge development and growth in a very short period of time including the legislative and regulatory requirements you have had to go through. Hopefully we can take some of the harder lessons you have learned and incorporate them earlier on in our legislative and regulatory requirements. She indicated that Mr. Helms and his staff have spent a great deal of time with them and have offered to help and provide guidance to them. She said they have gone to New York, Ohio, Pennsylvania, West Virginia, D.C. and North Dakota and tonight they are headed to Alberta. They wanted to see different shale reservoirs and how they are being regulated and if they are being regulated the same or if the differences in geological units makes a difference in how you regulate them so they can adapt that into their regulations. Nova Scotia is an international affiliate of the IOGCC which is how they came to be engaged and involved with some of the states.

In response to a question regarding what her assessment or evaluation so far after visiting all the different states and regulatory agencies, Ms. Doane said she has learned that they have a lot to learn. There are a lot of subtleties to how different states and provinces regulate. The biggest thing she has seen is the technical competency of your team – it is very difficult to appreciate the technical expertise you are going to need and to have it early on in the game versus waiting until it is too late – because then you are fixing problems versus having the resources up front. She

recognized she has a very limited sized staff with eleven people so we are pretty maxed out dealing with offshore and onshore related issues.

In response to a question regarding what their resource is, Ms. Doane said they are at the point where they do not know what their resource is yet onshore. Offshore is a bit different, we have spent a lot of money on research. Onshore resource assessments have come only from company assessments. They have had independent companies do them. They are taking time now to step back and take a look at it and enhance the regulations they do have.

Mr. Helms presented the following cases heard on January 21 & 22, 2015: (Copies of all the orders are available in the Commission files.)

Case 23259, Order 25602 - application barring the assessment of a risk penalty – He said Kenisa Oil is a small company and are asking that the risk penalty not be levied against them on two wells. (A copy of the handout is available in the Commission files.) Liberty is the name of the company that is currently trying to get the risk penalty. Sequel sold these wells to Liberty. The issue comes down to whether the previous operator, Sequel sent an invitation to participate to Kenisa. Sequel did not provide a sufficient address for the post office to deliver that invitation to participate so it was returned undeliverable and Sequel did not follow up on that. Based on the fact they were not properly served an invitation to participate, the proposed order grants Kenisa's application to not have the risk penalty assessed against them.

Case 23259: It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order 25602 issued in Case 23259, be approved and effective this 25th day of February, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 23521, Order 25861 - application for an exception to the flaring order – He said Hess is asking for relief from the gas capture requirements of 74 percent capture in November and December 2014. They shut down their Hawkeye compression station for ten days in November to reconfigure the station for upcoming work for the Lake Sakakawea crossing which will increase their capacity by about five fold. They installed some rental compression at the same time which they had problems with and ended up having two weeks of downtime in December as well. The total amount of increased flaring that occurred during that 10 day and 14 day periods has already been made up – it only took four days for the increased capacity to make up for that additional flaring that happened during those time periods.

In response to a question Mr. Helms said the 24 days of additional flaring was paid back in four days of increased compression after the compression station was started.

In response to a question regarding bringing processing capacity on line – you are trying to create more capacity in the process of doing that you have to temporarily shut down, Mr. Helms said it is a perfect description of what happened here. They had hoped to do this earlier in the year when the weather was better, but with unforeseen delays they ended up doing this in November and

December and the downside of that was shutting in wells or severely restricting production in their Blue Buttes and Hawkeye system during those winter months creates a real safety problem. It potentially harms the wells and it also idles gathering systems and liquids collect in there and water collects and you have a safety situation. It is a temporary shut down for a large long term increase – that is what happened here.

Mr. Helms explained how an improved compressor station leads to more gas being utilized. He said they are able to boost the pressure in the pipe from Hawkeye to Tioga substantially with that increased compression and they can transport more gas through that eight inch pipe by having that additional compression. The ultimate big solution will come in October, hopefully when the Corps of Engineers approves the river crossing. Once that is approved and that pipe is in place, this work will not have to be repeated, it was needed for that as well. This took them from 74 percent down to 69 percent in November so they were five percent under the goal; in December instead of being at 74 percent they were at 72 percent. They were close but this occurrence dropped them below the goals and that is what they are asking for is temporary limited relief from those goals for the months of November and December 2014.

In response to the question of why Hess didn't make this request back in November Mr. Helms said we would much prefer that companies anticipate this and if they can apply in advance. In this case, the new capture goal kicked in October 1. Hess thought they were going to do the work before that but the rental compression showed up late so they were not able to install it in September; it didn't show up until November and that is when they installed it. As soon as November ended and Hess had their gas production data in, which would have been the first week of December, Hess made this application on December 12. Because of the Commission's process and the time it takes to advertise, it is just now arriving at the Commission's point of decision. In order to have gotten this order in front of the Commission in October, before this event occurred, they would have had to have made application August 22 which at that time, they fully expected the rental compressor to show up and they would have put it in. A lot of this has to do with the timing of the Commission's process and the timing of production information coming in but it is something we want to look at very carefully to see if people are for no good reason delaying and then coming and asking for forgiveness instead of asking for permission.

In response to a question Mr. Helms stated that the Division has not had issues with this company.

The Commission discussed a number of issues in regards to these kinds of requests:

- Flaring exceeding the goal is a violation of the policy and operators shall be penalized for that;
- Should there be a set policy outlining the circumstances that may be considered in granting relief from the flaring order;
- Should there be an overall greater benefit to the State if relief is granted;
- Is the Commission discouraging development of natural gas gathering and processing by saying if you want to make changes to your system/pipeline to create more efficiency or make it more effective, you may be penalized for doing so?

- The purpose of the gas capture policy is that an operator needs to develop a plan which means that they are managing their production in such a way that they are anticipating future events.

Mr. Helms said the staff should put together a consistent policy to guide operators because this will certainly not be the last of these cases. There are going to be plant shut downs, some with warning some without, and there are going to be planned projects that are delayed. The Commission should try to provide some guidance to the companies. Going into this gas capture policy the staff had no idea how many and what type of issues the Commission would be facing. Now the Commission has had the Springbrook Plant and this one. Tomorrow there are four cases on the docket from two operators that look similar in their application. The Commission is going to need to have a consistent policy that doesn't penalize operators for making the investments that they need to make but that holds their feet to the fire on doing all the planning they can and notifying the Department when those plans come apart for whatever reason. He said they will develop a guidance document that can be given to industry on how to deal with these going forward. He said this is especially needed since next January the gas capture goal jumps to 85 percent. That will be a big step from 77 percent to 85 percent.

Mr. Helms said in this case even though it caused a second disruption he is glad Hess did not just make the changes that were needed to make the October goal but they also rented a big compressor and added that at the same time so the gas that was lost during this 24 days actually was made up for in four days of reduced flaring after that compressor went online. It was a very quick payback in terms of flaring. It was nice to see that kind of responsible work by an operator. They are now at 79 percent for overall operations. They are still bottlenecked, the Tioga gas plant is running at about 76 percent of capacity because this big pipe under the river should have gone in during the 2013 construction season and should have gone in in 2014 but now he thinks it will go in in 2015. That will make a big difference to everyone in this area.

In response to a question regarding if he believes Hess reasonably could have expected the equipment to be ready by the deadline, Mr. Helms said yes. He believes that if the equipment had been available and they'd been able to follow their plan, they would have beat the deadline. After looking back at the timeline, there is almost no way they could have anticipated in mid-August this was going to happen to them right before the deadline. That is an important analysis for his staff to review those things and make sure someone is not asking forgiveness after an unreasonable delay or something they should easily have been able to anticipate. In this case, they really planned and got caught in an equipment delivery situation and they could not have gotten the case in front of the Commission much faster.

Case 23521: It was moved by Commissioner Goehring and seconded by Attorney General Stenhjem that Order 25861 issued in Case 23521, be approved and effective this 25th day of February, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenhjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 23584, Order 25924 - application authorizing the recovery of a risk penalty
Case 23585, Order 25925 - application authorizing the recovery of a risk penalty
Case 23586, Order 25926 - application authorizing the recovery of a risk penalty
Case 23587, Order 25927 - application authorizing the recovery of a risk penalty
Case 23588, Order 25928 - application authorizing the recovery of a risk penalty

Mr. Helms said the next six orders are identical and are risk penalty orders related to the issues between Emerald and Zavanna that are part of a district court case. He did not know why the cases were coming in piecemeal. Staff is going to tell the attorneys they strongly dislike this but the Commission needs to make this decision so these cases can become part of that district court case and get litigated. The staff has determined that Emerald did everything the Commission requires to assess the risk penalty but there is a contract the district court needs to decide whether it negates the risk penalty. The Commission needs to act on these orders so they can be added to the other cases before the court.

Case 23583: It was moved by Commissioner Goehring and seconded by Attorney General Stenhjem that Order 25923 issued in Case 23583, be approved and effective this 25th day of February, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenhjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 23584: It was moved by Commissioner Goehring and seconded by Attorney General Stenhjem that Order 25924 issued in Case 23584, be approved and effective this 25th day of February, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenhjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 23585: It was moved by Commissioner Goehring and seconded by Attorney General Stenhjem that Order 25925 issued in Case 23585, be approved and effective this 25th day of February, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenhjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 23586: It was moved by Commissioner Goehring and seconded by Attorney General Stenhjem that Order 25926 issued in Case 23586, be approved and effective this 25th day of February, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenhjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 23587: It was moved by Commissioner Goehring and seconded by Attorney General Stenhjem that Order 25927 issued in Case 23587, be approved and effective this 25th day of February, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenhjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 23588: It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 25928 issued in Case 23588, be approved and effective this 25th day of February, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 23531, Order 25871 - application seeking a setback relief

Case 23592, Order 25933 - application eliminating tool error requirements and providing setbacks of 200 feet

Case 23593, Order 25934 - application authorizing multiple wells on 1280-acre spacing unit & eliminating tool error requirements & providing setbacks of 200 feet

Case 23594, Order 25935 - application to eliminate tool error setback requirements & reducing minimum setbacks from 200 feet to 100 feet

Case 23606, Order 25947 - application to alter setback requirements from 500 feet to 200 feet

Case 23607, Order 25948 - application to alter setback requirements from 500 feet to 200 feet

Case 23608, Order 25949 - application for up to 5 wells on a 640-acre spacing unit and altering setback requirements

Mr. Helms said the decision will be the same in the next seven orders; they are all applications from three operators in the Spotted Horn/Squaw Creek Bakken area. The operators made the applications because they don't want to do the typical overlapping spacing units and section line wells. However, in the hearing, it came out that by reducing these setbacks in parts of these spacing units from 500 feet to 200 feet, they will actually be fracturing across the spacing unit boundary into the adjacent spacing unit. The fractures extend out at least 1,000 feet and are propped 500 feet and have effective frac lengths of greater than 200 feet. The second problem is they have no agreement between the three companies as to how many wells they will add to that 300 foot area in each layer of the reservoir and when they will be drilled so it is impossible under these applications to protect the correlative rights of the mineral owners in the adjacent spacing units because the numbers of wells in different layers and the setbacks from the boundaries and the timing of the wells is totally random and up to three different operators and they will not be consistent. The seven orders deny the applications and indicate to the operators that they should come back and ask for section line wells like the Commission has typically done across the basin. They are not consistent at all in how they would develop this acreage that is very close to the neighbor's spacing unit. This plan cannot protect correlative rights, it is impossible.

In response to a question regarding waste, Mr. Helms said we do need to allow development of this 1,000 foot wide strip to prevent waste but we have to do it in a way that protects correlative rights and we have found that way through the overlapping spacing units and the section line wells. That is what we want these companies to do.

Case 23531: It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order 25871 issued in Case 23531, denying the application be approved this 25th day of February, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 23592 It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order 25933 issued in Case 23592, denying the application be approved this 25th day of February, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 23593 It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order 25933 issued in Case 23592, denying the application be approved this 25th day of February, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 23594 It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order 25933 issued in Case 23592, denying the application be approved this 25th day of February, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 23606 It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order 25933 issued in Case 23592, denying the application be approved this 25th day of February, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 23607 It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order 25933 issued in Case 23592, denying the application be approved this 25th day of February, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 23608 It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order 25933 issued in Case 23592, denying the application be approved this 25th day of February, 2015. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Ed Murphy presented the Geological Survey Division Quarterly Report and the Year-end Strategic Plan Report. (Copies of the reports are available in the Commission files.) He commented on the discussions that had taken place with the House Appropriations Government Operations Division on the Core Library expansion and expressed his disappointment that the appropriation had been removed from the bill. They had:

- Presented 1.5 hours of testimony over three different occasions on this issue;
- Reduced the cost of the project
- Provided information on phasing the project,

- Developed an option to bond it if a direct appropriation was not feasible
- Provided a very good example of the value of the Core Library -- Whiting Petroleum was involved in an article in the American Association of Petroleum Geologists back in April 2012 where they pointed out that their Pronghorn play which extends from western Stark County into Billings, Golden Valley and a little into McKenzie County changed because of the core work they had done in the Core Library in Grand Forks. They attributed the entire play to that core work. That has resulted in 217 wells, 19.5 million barrels of oil just from the Whiting wells – we looked at production in November it was 18,600 barrels which means an extraction tax of \$48,400 per day based on \$40.00 oil would pay for the \$15.5 million expansion in 320 days. He thinks that is unique and he will be making that argument as they move over to the Senate. They are aware the House has said no building but if the Senate would put the building back in they are hopeful that something can be worked out in conference committee.

Mr. Murphy discussed the Geological Survey Division 2015 Strategic Plan. (A copy of the Strategic Plan is available in the Commission files.)

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approves the Geological Survey Division 2015 Strategic Plan. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Helms gave the legislative update. (A copy of the Legislative Report is available in the Commission files.) He highlighted the following bills:

HB 1014 - He said they do want to go in and advocate for the Core Library expansion. The executive budget recommendation contained 22 FTEs for the Department and HB 1014 now has 15 FTEs in it. Those 15 are what is needed to get by at current activity levels so with the Commission's permission he will go in and advocate for the additional seven FTEs that they need for the growing demands on the Department. That is the two things he would like to do with the budget bill.

In response to questions Mr. Helms reviewed the level of production and the increased number of wells over the past two years.

HB 1187 - Mr. Helms indicated that this bill has been amended and is now forward looking instead of looking back and voiding three Commission orders. It would void any future order that might be adopted after July 31, 2015. He noted that it refers to "general applicability" which is not defined in the North Dakota Century Code but is defined in the Federal Uniform Commercial Code. His problem with this is situations arise that require the Commission to respond in less than the ten month time period that it takes to do an administrative rule and situations arise that should be more focused than that. For example, the gas capture order addresses roughly 426 Bakken pools out of a total of over 2,800 producing pools in North Dakota; it is only fifteen percent of the pools; now 95 percent of the production. Does it fall under general applicability or not? Should the Commission have done a state-wide rule that

applied to every pool and every well in North Dakota? He does not believe it is a good concept and he encouraged the Commission to authorize him to appear in opposition to HB 1187 on the Senate side.

In response to questions Mr. Helms reviewed the original intent of the bill and the votes that had taken place on the bill. He indicated that if this law had been in place it would have made the flaring order and the oil conditioning orders impossible.

In response to a question Mr. Helms discussed SB 2343 which would require a fiscal note on any order that had an impact of \$20 million. Mr. Helms said he thought it was \$20 million per biennium. Each Bakken well has a positive fiscal impact on the state of \$2.7 million in the biennium so seven wells or more would require a fiscal note. It is a bit of a problem with excessive management of a regulatory situation that changes very quickly and the Commission has to be able to respond to changes. When something like crude by rail gets to be an issue, the Commission has to be able to respond in less than ten months. When flaring gets to 38 percent, the Commission has to be able to respond in less than ten months and not do something state-wide.

Mr. Helms indicated that we need to point out that these bills are at odds with each other. We can't do what is being asked of the Department in SB 2374 and HB 1358 under what we are being told to do in HB 1014, HB 1187 and SB 2343. That is our mission for the last half of the Session. There are some really good ideas in HB 1358 and SB 2374. He totally agrees the State needs to ramp up gathering pipeline oversight and regulation. We do need to begin tackling the legacy contamination issues that happened in the 1960's and 1970's. We certainly need to look at our diking rules and that sort of thing and work on the spills but we can't do that under the limiting provisions of HB 1014, HB 1187 and SB 2343.

Governor Dalrymple said that was our best argument – all of this complicated oversight people would like to see us do – bring on new technologies and get them deployed as quickly as possible, we can't do that if we don't have flexibility to adopt policy. It is really a contradiction.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approves Mr. Helms continuing to express the Commission's opposition to HB 1187 and SB 2343 and advocate for the Department's full-time employees and the Core Library. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

In response to a question regarding a letter asking when a well is abandoned and if you pump it for one day and get 25 gallons of water out of it does that count as having pumped it during the year, Mr. Helms said they are looking into that and preparing a response to that letter. The answer would be no. The well has to produce in paying quantities sometime during that twelve months. We internally have defined that as selling oil and paying royalties on that oil but there has been a court case that also impacted that definition. That case indicated that the well has to produce enough to cover its operating costs. If the well doesn't do that for a twelve month

period, then it is an abandoned well and the clock begins ticking on posting additional bonding, plugging the well, confiscation, etc. He indicated that as the well count grows this is an area the Commission will need to provide more oversight as people abandon wells or wells fall into inactive status and are not being taken care of.

Ms. Karlene Fine stated she received a request from DMR staff to add to the list of those individuals that can serve as hearing examiners - Dave McCusker would be handling administrative cases.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the following resolution that includes Mr. Dave McCusker as a hearing examiner. On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

**RESOLUTION OF THE
INDUSTRIAL COMMISSION OF NORTH DAKOTA
NAMING HEARING EXAMINERS**

Whereas, Section 38-08-04.1 of the North Dakota Century Code provides that the Industrial Commission may use hearing examiners under such rules and regulations as the Commission may prescribe; and

Whereas, Section 43-02-03-93 of the North Dakota Administrative Code provides that the Commission may by motion designate and appoint qualified individuals to serve as examiners,

NOW, THEREFORE, the Industrial Commission rescinds all prior appointments of examiners and designates and appoints the following individuals to serve as the Commission's examiners as it relates to the Commission's responsibilities under Chapter 38-08 of the North Dakota Century Code:

Hope L. Hogan, Assistant Attorney General

Matt Sagsveen, Assistant Attorney General

Chris Harvey, Assistant Attorney General

**Lynn D. Helms, Director, Department of Mineral Resources and
Director, Oil and Gas Division**

Bruce Hicks, Assistant Director, Oil and Gas Division

Mark Bohrer, UIC & Horizontal Drilling Manager

Dave Hvinden, Field Supervisor

Fred Anderson, Department of Mineral Resources GeoTech Support Staff Officer

Dave McCusker, Petroleum Engineer

This Resolution shall be effective as of this 25th day of February, 2015.

Mr. Helms updated the Commission on Cases 23443, 23444 and 23445 -- flaring relief for 1804 Gas Plant construction near Springbrook, ND. He had a graph of flaring that was taking place prior to the new gas plant going into operation. He noted the point in time when the Commission was asked to approve some flaring relief so they could purge the gathering system and bring the plant on. The operator has purged the gathering system and it is now all done so the flaring has dropped substantially down to about 20 percent and they are purging the plant and bringing

Minutes - Page 11
February 25, 2015

pieces of equipment on even as we speak and they think by mid-March they will be at 100 percent and the flares will go out. The Commission set a March 31 deadline for them and they will make that. So they went from 60 percent flaring to 20 percent so far and by the end of March it will be at zero.

Being no further Department of Mineral Resources business, Governor Dalrymple adjourned the meeting at 2:43 p.m. and took up Western Area Water Supply Authority business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on February 25, 2015 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also

Present: Jaret Wirtz, WAWS
Cory Chorne, WAWS
Eric Hardmeyer, Bank of North Dakota
Brad Thompson, Bank of North Dakota
Bob Humann, Bank of North Dakota
Chad Johnson, Bank of North Dakota
John Stewart, Bank of North Dakota Advisory Board
Members of the Press

Governor Dalrymple called the Western Area Water Supply Authority (WAWS) portion of the Industrial Commission meeting to order at 2:44 p.m. following completion of Department of Mineral Resources business.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the following monthly report: (A copy of the full report with attachments is available in the Commission files.)

RE: Western Area Water Supply Authority - Industrial Sales - January, 2015 and Debt Repayment Report

Attached is the Western Area Water Supply Authority (WAWS) financial information for the month of January and for the 18 months ending January 31, 2015.

Pages 1 & 2 were prepared by the Bank of North Dakota reflecting debt service payments. This report reflects the debt reduction payments made through January 31, 2015. During the month of January WAWS made a principal prepayment totaling \$582,542.15 which was applied to debt service payments due in 2016.

All the principal prepayments are being applied to the debt service owed on BND Loan #1. Original loan was \$50,000,000 and with the prepayments made through January 31, 2015 the principal owed is down to \$36,503,556.78. On this particular loan through January 31, 2015 WAWS has made principal prepayments totaling \$13,496,443.22.

The next 3 pages (pages 3, 4 & 5) I prepared based on the information provided by WAWS staff reflecting revenues and expenses and showing net income. Capital improvement disbursements (highlighted in orange) and prepayments (highlighted in yellow) are noted separately. Excluding those adjustments the net income for the month of January was **\$2,472,086.95**. Revenues in January were \$4,323,457.18 - the highest revenues over the past 18 months. I would note that of that \$4.3 million \$2,113,537 comes from direct connections. **Net income for the 18 months was \$22,870,883.29 excluding the debt service prepayments.** Page 6 is the balance sheet prepared by WAWS staff as of January 31, 2015. As noted on the Balance Sheet the Accounts Receivables are \$7,918,992.77.

In response to a question Mr. Jaret Wirtz, WAWS Executive Director, said WAWS is not running any lateral lines to customers; the customers are coming to the WAWS pipeline. WAWS is allowing its customers to access water directly from their pipeline. If WAWS can continue to do that, he

thought WAWS would have sufficient cash flow to be able to keep making its debt service payments and possibly making more prepayments on their outstanding debt. Currently their sales are coming from 40% pipelines and 60% depots but in the future he believes the pendulum will swing to 50/50 and then go to more pipeline sales than depot sales. The majority of the water sold in the Bakken (not just from WAWS) will be through pipeline. It will get more trucks off the road; save on infrastructure; and piping water is cheaper for the companies.

Ms. Fine distributed the WAWS legislative update as follows:

Western Area Water Supply Authority Legislative Update - February 25, 2015

SB 2020 - Water Commission budget - The Western Area Water Supply authority requested \$120 million of funding either from a grant or a loan. The amendments to the bill are a bit unclear but on the Senate floor the bill carrier stated that the Senate is recommending funding of \$45 million in \$10,000,000 increments for only domestic use. (As an FYI, the Senate has approved termination of the Water Infrastructure Revolving Loan Fund.)

SB 2336 - This bill relates to the Water Commission's role in approving the planning, location and water supply contracts of any authority depots, laterals, taps, turnouts and risers for industrial sales for oil and gas exploration and production after July 1, 2013. This bill was amended and passed the Senate 35 - 11. The amendments require that WAWS file its applications with the Water Commission, then the Water Commission must give electronic notice, allow a comment period of seven days and make a decision within ten days after receipt of the application. "The commission shall consider any public comments from permit holders within the county relating to the application before making a determination to approve or disapprove the application. Allows for the approval or disapproval to be delegated to the state engineer. (Copy attached.)

SB 2361 - This bill deals with WAWS authority to use eminent domain. The bill was amended and now states that the Authority cannot use eminent domain for infrastructure that is solely for industrial water sales for oil and gas development. This bill passed Senate 40-6

Mr. Wirtz reviewed what SB 2336 had originally proposed and what it would require as it is currently amended--a seven-day process for review. He reminded the Commission of what the current process is for the Water Commission to review laterals for industrial water sales. He noted that for some customers the seven-day process will still be a problem and cause delays in their drilling. He stated that WAWS still does not like what is being proposed and will oppose the bill in the House.

Mr. Wirtz said SB 2361 deals with WAWS ability to use eminent domain. The bill as originally drafted would have prohibited WAWS from using eminent domain. It was amended so that WAWS cannot use eminent domain for infrastructure that is solely for industrial water sales for oil and gas development.

In response to a question Mr. Wirtz reviewed the two instances where WAWS had used eminent domain. Mr. Chorne stated that out of 4,000 easements that WAWS had secured eminent domain was used in only two instances (land issue for locating a tank on high ground and the other one was for ½ mile).

In response to a question, Mr. Wirtz discussed what is currently in SB 2020 as it relates to WAWS--what was stated in the bill and what was stated on the floor of the Senate. He noted that originally they had requested \$120 million; there had been discussions about how much would be grant and how much would be loan; discussions lowering the amount to \$65 million or possible \$45 million; usage limited to only domestic operations; and limitations on the source of repayment for any loan. As the bill is currently written there is no limit written in the actual bill but on the Floor there was some debate on the funding level. They will be working with the House members to get the funding level increased and clarified. He stated that WAWS has a lot of important projects that need to be done – taking the cut from \$120 million to \$65 million would be bad but \$45 million is huge and would be detrimental to WAWS system.

In response to a question regarding what projects would be eliminated if the funding level is dropped from \$120 million to either \$45 or \$65 million, Mr. Wirtz said they have a list and will have to reprioritize. He reviewed some of the projects that were on the list; the need for a larger transmission line to Stanley; design work on the water plant; having to hook up the city of Ross to the line because of an arsenic problem; requests for domestic rural water users; and projected growth throughout the system which results in more demands for water. Once they know a funding amount they will have to look at each project on a case by case basis and make a decision; they are not easy decisions.

Mr. Wirtz indicated that sales for February look good -- should be in the \$3 million range. It is another positive month.

Being no further Western Area Water Supply Authority business, Governor Dalrymple adjourned the meeting at 3:04 p.m. and took up Bank of North Dakota business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on February 25, 2015 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also

Present: Eric Hardmeyer, Bank of North Dakota
Brad Thompson, Bank of North Dakota
Bob Humann, Bank of North Dakota
Chad Johnson, Bank of North Dakota
John Stewart, Bank of North Dakota Advisory Board
Members of the Press

Governor Dalrymple called the Bank of North Dakota portion of the Industrial Commission meeting to order at 3:04 p.m. following completion of Western Area Water Supply Authority business.

Mr. Eric Hardmeyer, Bank of North Dakota President, presented the College Save Plan Rules Revisions resolution. He said College Save is subject to the Administrative Rules Practices Act and they are making a simple change that allows participants to change their investments twice a year rather than being limited to once a year. That was enabled through federal action when Congress passed the ABLE Act of 2014.

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

**RESOLUTION OF THE INDUSTRIAL COMMISSION OF NORTH DAKOTA
APPROVING REVISIONS TO COLLEGE SAVE PLAN RULES**

Whereas, North Dakota Century Code Section 6-09-38 required the Bank of North Dakota (Bank) to adopt College Save Program Rules (Rules) to administer, manage, promote and market a higher education savings plan (Plan);

Whereas, the Bank adopted Rules for the Plan on September 15, 2000 and amended those Rules on August 23, 2001, February 28, 2002, September 30, 2003, and July 16, 2008;

Whereas, Congress, as part of H.R. 647, the ABLE Act of 2014, authorized participants in a qualified 529 program to select where the contributions of the 529 program are invested up to two times in a calendar year;

Whereas, the Bank's current Rules authorize participants in a 529 program to direct where the contributions of the program are invested only once per calendar year;

Whereas, the Bank has determined it is necessary to amend the Rules and the Bank of North Dakota Executive Committee has recommended approval of the amended Rules;

Resolved, that the Industrial Commission approves and adopts the amended Rules governing the operation of the Plan in substantially the form annexed hereto effective April 1, 2015; and

Resolved, that the Chairman is hereby authorized to execute and deliver on behalf of the Industrial Commission such documents as may be reasonably necessary to effect the purposes of the foregoing resolution; and

Resolved, that the members of the Industrial Commission and the officers of the Bank are hereby authorized and directed acting in the name and on behalf of the Bank and under its seal or otherwise to prepare, execute and deliver, file and record all instruments, documents and other papers and to do all such other acts as they in their discretion and with advice of counsel may deem necessary or appropriate to carry into effect the intent of the foregoing resolutions.

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

Mr. Darrell Lingle, Eide Bailly, presented the audit of the North Dakota Guaranteed Student Loan Program Audit. (A copy of the audit is available in the Commission files.) He said their firm had issued:

- An unmodified opinion on the financial statements as of September 30, 2014. It is the highest level of assurance that the independent auditor can provide--it used to be referred to as an unqualified opinion.
- They did not identify any matters that were required to be reported on in regards to internal controls over financial reporting or on compliance with laws and regulations. It is a clean opinion over those two matters. They did not identify anything that they would consider to be a material weakness or a significant deficiency in the internal controls over the Program.
- The independent auditor's report that is required by OMB Circular A-133 is an unmodified opinion on the compliance with major federal programs. No control matters were identified during testing over the compliance with major federal programs. Again, a clean opinion.
- They had no matters to report in regards to any of the items included within this report. All of the items included within this communication are clean.
- They did have two significant or sensitive estimates in regards to the financial statements for the Guarantor Program. Those would include management's estimate of the allowance for future refunds of the default aversion fees and also management's estimate of the allowance for loan losses. In both of those estimates they performed audit procedures that enabled the auditor to be able to gain satisfaction in regards to management's estimates that they were materially correct in relation to the financial statements as a whole.

Mr. Hardmeyer presented the proposed 2015 BND Budget and discussed each of the line items. He reviewed the comparison of the actual 2014 budget with the proposed 2015 budget. He said they based their forecast on three things: a challenging economy both in agriculture and in

energy, good loan growth and interest rates moving up slightly in the second half of 2015. The rest of the budget is in line with what they proposed in their legislative budget.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Bank of North Dakota 2015 Budget be approved as follows:

**BANK OF NORTH DAKOTA
ENDING BALANCE SHEET**

ACTUAL 2014 v. BUDGET 2015

	(In thousands)			
	Actual 2014	Budget 2015	Difference	% Change
Cash and due from banks	362,985	564,921	201,936	55.63%
Federal funds sold	42,105	55,000	12,895	30.63%
Securities	2,933,570	2,939,131	5,561	0.19%
Loans				
Commercial	1,559,137	1,771,333	212,196	13.61%
Farm	436,970	433,949	(3,021)	-0.69%
Residential	652,076	662,000	9,924	1.52%
Student loans	1,203,972	1,233,939	29,967	2.49%
	3,852,155	4,101,221	249,066	6.47%
Less allowance for loan loss	(58,346)	(58,346)	-	0.00%
	3,793,809	4,042,875	249,066	6.57%
Other assets	83,280	87,070	3,790	4.55%
Total Assets	7,215,749	7,688,997	473,248	6.56%
Deposits -				
Non-interest bearing	700,446	750,000	49,554	7.07%
Interest bearing	5,030,165	5,351,000	320,835	6.38%
Federal funds purchased and repurchase agreements	178,455	225,000	46,545	26.08%
Short and long-term borrowings	645,126	667,719	22,593	3.50%
Other liabilities	9,197	7,566	(1,631)	-17.73%
Total liabilities	6,563,389	7,001,285	437,896	6.67%
Equity	652,360	687,712	35,352	5.42%
Total Liabilities and Equity	7,215,749	7,688,997	473,248	6.56%

**BANK OF NORTH DAKOTA
ENDING INCOME STATEMENT**

ACTUAL 2014 v. BUDGET 2015

	(In thousands)			
	Actual 2014	Budget 2015	Difference	% Change
Interest Income	174,584	187,225	12,641	7.24%
Interest Expense	31,455	36,122	4,667	14.84%
Net Interest Income	143,129	151,103	7,974	5.57%
Provision for Loan Losses	8,000	6,000	(2,000)	100.00%
Net Interest Income After Provision	135,129	145,103	9,974	7.38%

Non-Interest Income	7,987	7,207	(780)	-9.77%
Non-Interest Expense				
Salaries and benefits	13,751	15,281	1,530	11.13%
Data processing	4,487	7,516	3,029	67.51%
Occupancy and equipment	790	989	199	25.19%
Other operating expense	12,903	13,208	305	2.36%
	31,931	36,994	5,063	15.86%
Net Income	111,185	115,316	4,131	3.72%
Return on Average Assets	1.53%	1.51%		
Return on Average Equity	18.29%	16.89%		

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

Mr. Hardmeyer presented the legislative update as follows: (A more detailed report is available in the Commission files.) He discussed the status of each of the bills that impacted the Bank or the Student Loan Trust.

2015 Legislation Impacting BND Capital					
House Senate Bill No.	Bill Status	Agency/Borrower/ Effective Date	Transfer Amount	Purpose	Repayment
HB 1014	Passed House	Industrial Commission Appropriation	\$40,000,000	PACE Fund and Beginning Farmer Loan Fund Transfers	No Repayment
HB 1443	Appropriations Committee Recommends. House Vote Pending	Bank of North Dakota	\$100,000,000	\$150 Million Infrastructure Revolving Loan Fund which includes critical access hospital loans. \$100 Million From BND, \$50 Million from Strategic Investment & Improvements Fund.	No Repayment
TOTAL			\$140,000,000		

2015 Legislation Impacting BND Loan Programs & State Agency Borrowing Authority					
House Senate Bill No.	Bill Status	Agency/Borrower/ Effective Date	Amount	Purpose	Repayment
HB 1049	Appropriations Committee Recommends. House Vote Pending	BND New Loan Program - Addiction Counseling Revolving Loan Program	\$150,000	Loans to individuals participating in internship at licensed substance abuse treatment facility in ND.	Appropriation from ND Student Loan Trust to BND.
HB 1112	Passed House	Emergency Commission	Loan Amounts Will Be Determined	Allows Adjutant General to borrow from BND to respond and recover from State disasters if event meets Stafford Act minimum for Presidential declaration.	Loan Repayments
HB 1373	Passed House	Creation of ND ABLE Act impacting College SAVE	\$150,000 Estimated Expenditures	BND administer ABLE Plan for qualified State disability expense programs.	BND Contingency Expense

SB 2008	Passed Senate	PSC Appropriation	(\$900,000)	Section 5 - Transfer Funds from Beginning Farmer for Rail Rate Complaint Case	Beginning Farmer Loan Fund Repaid from Successful Litigation Outcome
SB 2178	Passed Senate	BND New Loan Program - School District Construction Loan Fund	\$19,697,572	New Construction and Remodeling loans up to \$250 million.	Appropriation From General Fund to BND in 2015-17 Biennium. Note: BND may not expend more than \$9,848,786 during first year of biennium.
SB 2288	Passed Senate	BND to Adopt Rules to develop, implement, promote, and administer in conjunction with ND University System.	\$5 Million Estimate	Development and Implementation of GAP Scholarship Program	To Be Determined After Legislative Cross-Over

2015 Legislation Impacting ND Student Loan Trust		
House Senate Bill No.	Bill Description/Status	Appropriation Amount from NDSLTT
HB 1003	North Dakota University System - Section 12 - Professional Student Exch. Program/Connect ND Campus Positions	\$1,004,744
HB 1049	BND Addiction Counseling Revolving Loan Program	\$150,000
TOTAL		<u>\$1,154,744</u>

Mr. Hardmeyer also updated the Commission on Senate Bill 2282 which dealt with the Financial Center. He indicated the bill had been defeated in the Senate but he anticipates that it may come back in the second half of the session. At this point a number of buildings have been removed from legislation with the idea that they may be considered again depending on the next budget forecast. He will continue to be an advocate for the financial center. In response to a question he indicated that he had visited with the Office of Management and Budget and a representative from that office had testified in support of the building.

Mr. Hardmeyer introduced John Stewart, Chairman of the Bank of North Dakota Advisory Board.

Mr. Hardmeyer presented the Bank of North Dakota Advisory Board and his recommendation for BND officer salary increases. (A copy of the memorandum is available in the Commission files.) He said he is concerned about how the Bank of North Dakota compares in regards to salaries with the rest of the industry. He indicated that four or five years ago the Bank did a study with Blanchard regarding compensation. The Bank brought Blanchard back to update the compensation survey. Blanchard looked at compensation comparing the Bank with its peer group which would be twenty other regional banks with assets between \$1 billion and \$10 billion generally located in our area. The survey showed that those banks, almost 100 percent, have an

incentive program – short and long term incentive program and the Bank has none nor is one being proposed. Because of that they did not choose to discount the findings of or make adjustments based on the Bank’s unique nature. What is being looked at is just salary comparisons. The proposed increases are really base level increases and it does not get the Bank to where it needs to be. He stated that while these increases are a good start salary adjustments need to continue. He noted that with the recommended raise, it would put Mr. Porter in a 65 percent comp ratio, Mr. Humann in a 69 percent, Mr. Herslip in a 72 percent and Ms. Leingang in a 75 percent comp ratio. The salaries will still be behind and adjustments will still need to be made. He indicated that the State when looking at their salary ranges is trying to get employees to 95 percent of their comp ratio.

There was discussion about the competitive market and a concern that the Bank could be losing some of their top talent. Mr. Hardmeyer stated the Bank’s loan officers are constantly getting approached. He indicated that the Bank had recently lost the Risk Manager and to find a qualified replacement the compensation level had to be increased by 20%. He related information on a recent hire in a private bank where a commercial loan officer was paid \$135,000 plus a \$40,000 bonus.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Bank of North Dakota Advisory Board and BND President Hardmeyer and approve the following Bank of North Dakota officers salary increases effective January 1, 2015:

	<u>Increase</u>	<u>% Increase</u>	<u>New Salary</u>
Tim Porter	\$16,705	12%	\$155,909
Bob Humann	\$15,040	10%	\$165,443
Joe Herslip	\$11,025	10%	\$121,275
Lori Leingang	\$11,576	10%	\$127,339

There was further discussion regarding increases and the next tier of employees. Mr. Stewart said the Bank Advisory Board has been concerned about this issue for the past few years and although some increases have been made the Bank continues to fall behind -- especially in the current market environment. On behalf of the Advisory Board he stated their concern on losing talented professionals and when you replace them you face compression issues. He noted that the Board feels strongly that there needs to be higher compensation for the Bank officers; it makes good business sense to do that.

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

Mr. Hardmeyer left the meeting at this time.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, discussed the Bank of North Dakota Advisory Board and her recommendation for the BND president salary increase as follows:

DT: February 25, 2015

RE: Salary increase

Last July the Bank of North Dakota Advisory Board requested a compensation study of unclassified positions at the Bank of North Dakota including the Bank President. This was prompted by a concern that the salary levels and salary structure for the Bank officers, including the Bank President, may not be competitive. Mr. Hardmeyer in his Bank Officer salary recommendations outlined the process that was taken in conducting the study of comparative salaries and the development of a new compensation structure.

The survey showed that the level of compensation for the Bank President is below market. Therefore the Bank Advisory Board is recommending that the Bank President's compensation be adjusted by 10% (\$26,124) effective January 1, 2015 setting his compensation at \$287,361 and that subsequent increases be given on a regular basis to bring the compensation level to a more comparative salary level. The Board notes that the Blanchard Compensation report shows that Mr. Hardmeyer's compensation level at 80% of the compa-ratio would be at \$353,600.

I have reviewed the survey information and concur with the Bank Advisory Board's recommendation to authorize a salary adjustment of 10% effective January 1, 2015 for Eric Hardmeyer, Bank of North Dakota President. I will build into future salary increases the Bank Advisory Board recommendations for ongoing adjustments to bring the Bank President's salary compensation to be more in line with market.

It was noted that Mr. Hardmeyer receives no bonus or stock incentives that you would typically find in a private bank. Ms. Fine stated that with this increase the Bank President's compensation would still be below market. She indicated that the Advisory Board had discussed a higher level of compensation. There was discussion about how the Bank President's compensation level compared with the President and General Manager of the State Mill.

It was moved by Attorney General Stenejem and seconded by Commissioner Goehring that the Industrial Commission accept the recommendation of the Bank of North Dakota Advisory Board and the Industrial Commission Executive Director and approve a 10% salary increase of \$26,124 effective January 1, 2015 for Bank of North Dakota President Eric Hardmeyer bringing his total salary to \$287,361.

Mr. Stewart stated that the Advisory Board is very pleased with Mr. Hardmeyer's leadership at the Bank and with the entire team at the Bank. They are well qualified and are doing a great job.

The Commission members stated their agreement. The Commission indicated they would revisit salaries in the near future. They thanked Mr. Stewart and the Advisory Board for the work they are doing. They are right on target in looking at the Bank as an enterprise that needs to have quality people that are appropriately compensated. It was noted that the Bank is also a public institution and is compared to other public employees and that brings in other issues that the Commission must consider.

Mr. Stewart thanked the Commission for the opportunity to speak on this issue that the Advisory Board sees as very important. He would look forward to an opportunity where the Advisory Board could meet with the Commission and discuss strategy and philosophy. He indicated that

all the Advisory Board members understand the uniqueness of the Bank and are committed to the Bank's mission.

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

Mr. Stewart left the meeting at this time.

The non-confidential Bank of North Dakota Advisory Board December 18, 2014 meeting minutes were distributed.

Governor Dalrymple closed the meeting at 4:00 p.m. pursuant to North Dakota Century Code 6-09-35 to discuss the items on the agenda under Bank of North Dakota confidential business.

Following the confidential portion of the meeting, the Commission reconvened in non-confidential session at 4:30 p.m. and it was noted that during the confidential portion of the meeting, it had been moved and seconded that the Bank of North Dakota be authorized to participate in two loans identified as Attachments 18 and 19. In non-confidential session, on a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Bank of North Dakota business, Governor Dalrymple adjourned the meeting at 4:31 p.m. and took up Administrative business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on February 25, 2015 beginning at 1:00 p.m.
Governor's Conference Room
State Capitol

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

Also

Present: Members of the Press

Governor Dalrymple called the Administrative portion of the Industrial Commission meeting to order at 4:32 p.m. following completion of Bank of North Dakota business.

Ms. Karlene Fine, Industrial Commission Executive Director and Secretary, presented the legislative update as follows:

Legislative Update - February 25, 2015

- SCR 4009 - Study the Industrial Commission membership as it relates to decisions regarding the oil and gas industry - Hearing held on January 23, 2015. Senate GVA voted it out of committee 7-0 Do Not Pass. On the Senate calendar??
- HB 1179 - Increase the size of the Industrial Commission by adding the State Tax Commissioner and the President of the Public Service Commission. Hoghouse amendment was passed out of House Political Subdivisions Committee on a 7-6 vote which would have removed all the exemptions from the Administrative Practices Act for Industrial Commission agencies. Bill was defeated on the floor with only 3 votes for the bill as amended.
- HB 1014 - Industrial Commission appropriation bill.
All agencies were authorized the 3/3 with no market equity adjustments.
- DMR - 15 new FTEs (down from the 22 FTEs plus 3 contingency FTE's in the Governor's Budget)
Core Library not funded \$16 million (a downsized project suggested)
DMR \$3,000,000 in litigation monies moved to a separate litigation fund bill (HB 1432)
The one-time funding for 4 projects contained in the Governor's Budget were approved plus 2 ATV's that were not in the Governor's Budget
 - BND - 2 new FTE's were approved that were included in the Governor's Budget
Funding of \$10 million for short line railroads removed and \$ 2 million placed in DOT budget
 - HFA - HIF tax credits in the bill at the \$30 million level (current biennium had \$20 million) as included in the Governor's Budget
 - Mill - 12 new FTE's (employees needed for the increased capacity being constructed as approved by the IC) as included in the Governor's Budget
Increased the transfers from the Mill's profits from the cap of \$6,817,200 to 75% of profits with no cap.
 - Lignite Research Program - Authorized \$5,000,000 from General Fund for additional lignite research. (Was not in the Governor's Budget.)
Allowed for out-of-state membership on the Lignite Research Council
 - Includes a legislative intent section regarding priorities if additional funding is available. On that list is the Core Library, additional FTE's for DMR, HIF funding and Lignite Research \$'s.

Minutes - Page 2
February 25, 2015

SB 2032 - This bill as originally proposed placed under the Industrial Commission an Oil and Gas Development Strategic Planning Authority. This bill was amended placing this responsibility with the Department of Commerce with the funding coming from the General Fund rather than the Oil and Gas Research Fund. After receiving a do not pass recommendation from the Senate Appropriations Committee the bill was killed on the floor on a 16-30 vote.

Ms. Fine discussed each of the bills and how she anticipates the agencies will be dealing with House Bill 1014 in the Senate.

She indicated that Ms. Jolene Kline could not be present today as she was participating in the Housing Conference. Ms. Fine provided the summary report on the Housing Finance Agency legislation that Ms. Kline had prepared. At this point there are still two bills that have funding for the Housing Incentive Fund -- \$30 million in HB 1014 and \$20 million in Senate Bill 2257.

Being no further Administrative business, Governor Dalrymple adjourned the meeting at 4:39 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary