

NORTH DAKOTA  
CORN UTILIZATION COUNCIL  
FARGO, NORTH DAKOTA

**Audit Report**

For the Two-Year Period Ended  
June 30, 2012

ROBERT R. PETERSON  
STATE AUDITOR



Office of the State Auditor  
Division of State Audit

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## *Independent Auditor's Report*

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Honorable Jack Dalrymple, Governor

Members of the Legislative Assembly

Members of the North Dakota Corn Utilization Council

Tom Lilja, North Dakota Corn Utilization Executive Director

We have audited the special-purpose statement of revenues and expenditures of the North Dakota Corn Utilization Council for the two-year period ended June 30, 2012. The special-purpose financial statement is the responsibility of the North Dakota Corn Utilization Council's management. Our responsibility is to express an opinion on the special-purpose financial statement based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the special-purpose financial statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the special-purpose financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall special-purpose financial statement presentation. We believe our audit provides a reasonable basis for our opinions.

As discussed in Note 1, the special-purpose financial statement of the North Dakota Corn Utilization Council is intended to present the revenues and expenditures of only that portion of the governmental activities of the state of North Dakota that is attributable to the transactions of the North Dakota Corn Utilization Council. They do not purport to, and do not, present fairly the financial position of the state of North Dakota in conformity with accounting principles generally accepted in the United States of America.

The accompanying special-purpose financial statement is prepared to provide state decision makers, including the Senate and House Agriculture Committees, with a comprehensive overview of the North Dakota Corn Utilization Council's operations in accordance with NDCC section 4-24-10. The revenues and expenditures are reported as discussed in the first note to the special-purpose financial statement. The special-purpose financial statement is not intended to be a presentation in conformity with generally accepted accounting principles.

In our opinion, the special-purpose financial statement referred to above presents fairly, in all material respects, the revenues and expenditures of the North Dakota Corn Utilization Council for the two-year period ended June 30, 2012, in conformity with the basis of accounting described in Note 1 to the special-purpose financial statement.

In accordance with *Government Auditing Standards*, we have also issued our report dated November 15, 2012 on our consideration of the North Dakota Corn Utilization Council's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

This report is intended solely for the information of the Governor, North Dakota Corn Utilization Council, Legislative Audit and Fiscal Review Committee, Senate and House Agriculture Committees, and management of the North Dakota Corn Utilization Council and is not intended to be and should not be used by anyone other than these specified parties.

A handwritten signature in black ink, appearing to read "Bob Peterson", written in a cursive style.

Robert R. Peterson  
State Auditor

November 15, 2012

***Independent Auditor's Report on Internal Control Over  
Financial Reporting and on Compliance and Other Matters  
Based on an Audit of a Special-Purpose Financial Statement  
Performed in Accordance with Government Auditing Standards***

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Honorable Jack Dalrymple, Governor

Members of the Legislative Assembly

Members of the North Dakota Corn Utilization Council

Tom Lilja, North Dakota Corn Utilization Council Executive Director

We have audited the special-purpose financial statement of the governmental activities of the North Dakota Corn Utilization Council as of and for the two-year period ended June 30, 2012 and have issued our report thereon dated November 15, 2012. Our report was modified to indicate the statement of revenue and expenditures was prepared in accordance with NDCC section 4-24-10 and is not intended to be a presentation in conformity with generally accepted accounting principles. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

**Internal Control Over Financial Reporting**

Management of the North Dakota Corn Utilization Council is responsible for establishing and maintaining effective internal control over financial reporting. In planning and performing our audit, we considered the North Dakota Corn Utilization Council's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the North Dakota Corn Utilization Council's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the North Dakota Corn Utilization Council's internal control over financial reporting.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the North Dakota Corn Utilization Council's financial statement will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

### **Compliance and Other Matters**

As part of obtaining reasonable assurance about whether the North Dakota Corn Utilization Council's special-purpose financial statement is free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of special-purpose financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed an instance of noncompliance or other matters that is required to be reported under *Government Auditing Standards* and which is described in the accompanying schedule of Findings, Recommendations, and Management Responses as Finding 12-1.

We noted certain matters that we reported to management of the North Dakota Corn Utilization Council in a letter dated November 15, 2012.

This report is intended solely for the information and use of the North Dakota Corn Utilization Council, Legislative Audit and Fiscal Review Committee, and members of the North Dakota Legislative Assembly, and is not intended to be and should not be used by anyone other than these specified parties. However, this report is a matter of public record and its distribution is not limited.



Robert R. Peterson  
State Auditor

November 15, 2012

## *Special-Purpose Financial Statement*

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### **Comparative Statement of Revenues and Expenditures**

<b><u>Revenues:</u></b>	<b><u>June 30, 2012</u></b>	<b><u>June 30, 2011</u></b>
Corn Assessments (net of refunds of \$146,635 and \$77,909)	\$ 3,339,077	\$ 2,908,856
Interest & Investment Earnings	9,320	9,229
Miscellaneous General Revenue		81
<b>Total Revenues</b>	<b><u>\$ 3,348,397</u></b>	<b><u>\$ 2,918,166</u></b>
<b><u>Expenditures:</u></b>		
Grants to State Colleges	\$ 855,388	\$ 486,769
Grants to Associations	486,000	521,600
Miscellaneous Grants	373,939	624,068
Travel	176,197	152,095
Salaries and Benefits	164,367	158,069
Operating Fees and Services	157,554	173,593
Conference Expenses	87,385	79,588
Dues and Memberships	63,800	39,080
Professional Development	25,645	1,500
Printing	22,586	13,826
IT Contractual Services and Repairs	22,550	9,918
Rentals/Leases - Bldg./Land	20,392	20,266
Fees - Professional Services	14,764	41,663
Miscellaneous Supplies	9,119	11,229
Office Supplies	6,426	6,080
Postage	6,100	12,651
IT-Communications	6,031	3,999
IT Equip under \$5,000	3,194	1,420
Repairs	3,136	5,900
Rentals/Leases - Equip & Other	3,026	
Bldg., Grounds, Vehicle Supply	2,049	4,879
Utilities	1,571	1,363
IT Software/Supplies	1,058	140
Supply/Material-Professional	825	1,594
Insurance	628	794
IT - Data Processing	20	
<b>Total Expenditures</b>	<b><u>\$ 2,513,751</u></b>	<b><u>\$ 2,372,083</u></b>
<b>Revenue Over Expenditures</b>	<b><u>\$ 834,646</u></b>	<b><u>\$ 546,083</u></b>

See Notes to the Special-Purpose Financial Statement



# Notes to the Special-Purpose Financial Statement

## **NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

The responsibility for the special-purpose financial statement, the internal control structure and compliance with laws and regulations belongs to the management of the North Dakota Corn Utilization Council (Council). A summary of the significant accounting policies follows:

### A. Reporting Entity

For financial reporting purposes, the Council includes all funds, programs, and other activities over which it is financially accountable. The Council does not have any component units as defined by the Government Accounting Standards Board. The Council is part of the state of North Dakota as a reporting entity.

The Council was established with the authority to contract and cooperate with any person for market maintenance and expansion, utilization research, transportation, and education; accept donations of funds, property, services or other assistance from any source; and provide educational and informational materials. This is accomplished through the levying of an assessment on all varieties of corn grown in the state, except sweet corn and popcorn, sold to a designated handler. The amount of the levy is one-quarter of one percent of the value of a bushel.

The Council has a close working relationship with the North Dakota Corn Growers Association (Association). This relationship is further explained in Note 2 to the financial statements. The special-purpose financial statement includes only activities of the Council, which is one department that has one division. The Council is responsible for and is funded under a continuing appropriation and receives no funding from the State Legislature.

### B. Reporting Structure

The special-purpose financial statement includes all activities of the reporting entity as defined above. These activities are funded from fund 270, the Corn Council Fund. The comparative statement of revenues and expenditures is a combined statement to give the users an overview of the agency's activity.

### C. Basis of Presentation

Revenues and expenditures on the statement of revenues and expenditures are principally reported on the modified accrual basis of accounting which is generally accepted accounting principles (GAAP) for governmental fund types. Because of the unique nature of North Dakota's accounting system and its appropriation laws, there are at times differences between the way expenditures are appropriated and GAAP. These differences are discussed below.

Under the modified accrual basis of accounting revenues are recognized when susceptible to accrual (i.e. measurable and available). Measurable means the amount can be determined, available means due and collectible within the current period or soon enough thereafter to be used to pay liabilities of the current period. Revenues are considered available if they are collected within a year after fiscal year end. Expenditures are recorded when goods or

services are received. Exceptions include: principal and interest expenditures which are recorded when due; compensated absences which are recorded when paid; and claims and judgments.

As stated above, there can be differences between revenues and expenditures reported on the state accounting system and budget basis and those reported by the Office of Management and Budget in the state's CAFR in accordance with GAAP. Basically there are two types of differences: accounting and statutory.

Accounting differences can include:

- A. Revenue reported on the statement of revenues and expenditures can differ from GAAP revenues because certain receivables are accrued for GAAP purposes while they were not recorded as revenue on the state's accounting system when they are received after the apply back period.
- B. Certain transfers are sometimes recorded as revenues and expenditures on the state's accounting system.
- C. Expenditures recorded on the state's accounting system do not report expenditures relating to capital lease and other financing arrangements.

Statutory differences can occur because of the North Dakota Century Code section 54-44.1-11. This section requires the Office of Management and Budget to cancel most unexpended appropriations 30 days after the end of each biennial period. Certain GAAP expenditures are not recorded as budgetary expenditures because the agency does not have the ability to pay the expenditures within 30 days after the end of the biennium. These are relatively rare occurrences, and when significant, will be clearly disclosed.

D. Other GAAP Reporting Differences

GAAP financial statements would include a balance sheet by fund type and account group. Revenues, expenditures, and expenses would also be reported by fund type. In addition, a statement of cash flows would have to be prepared for proprietary fund type activities. GAAP financial statements would also provide more complete note disclosures. This type of information is available in the state's comprehensive annual financial report and the Office of Management and Budget's combining statements by department.

For this report, revenues and expenditures are reported on a departmental basis to give an overview of the Council's operations. All revenue and expenditures are included regardless of the nature of the activities.

**NOTE 2 – RELATED PARTIES**

The Council contracts with the Association, a related organization through similar control and management for promotional activities which included a purchase of a pick-up truck for advertising for the Association and administrative services. The Council and the Association have an agreed upon a policy in which the Association's Board of Directors will be the designated advisory board of the Council.

The Executive Director of the Council is also the Executive Director of the Association. The Association employs one administrative assistant who shares her time between the Council and the Association. The Council reimburses the Association for their portion of the salary per the contract.

For fiscal year 2012, the Council paid \$58,707 for administrative services and \$40,000 for the promotional advertising for the pick-up truck purchase. For fiscal year 2011, the Council paid \$47,785 for administrative services.

The Northern Corn Development Corporation (Corporation) is a related party of the ND Corn Utilization Council. The Northern Corn Development Corporation, a non-profit, was formed for the purpose of the business planning stage for nitrogen fertilizer plant within the tri-state area. The steering committee is made up of corn growers and the address of the non-profit is the Council's office and the registered agent is the Executive Director of the Council. The Corporation was formed by members of the Council and Association. No transactions were paid to the Corporation during fiscal year 2012 and 2011, but in fiscal year 2013 a \$925,000 payment was made which is disclosed in Note 4.

**NOTE 3 – OTHER SIGNIFICANT ITEMS**

The Council has cash and investment reserves of \$3,940,723 and \$3,018,524 at June 30, 2012 and 2011, respectively. Based on the average monthly expenditures for fiscal year 2012 and 2011, this amount represents approximately 19 and 15 months of expenditures, respectively.

**NOTE 4 – SUBSEQUENT EVENTS**

The Council paid Northern Corn Development Corporation, a non-profit, which was set-up to explore the feasibility of starting up a nitrogen plant in Western North Dakota \$925,000 in fiscal year 2013 for business planning.

## *Supplementary Information*

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### **Responses to LAFRC Audit Questions**

*The Legislative Audit and Fiscal Review Committee (LAFRC) requests that certain items be addressed by auditors performing audits of state agencies.*

1. *What type of opinion was issued on the financial statements?*

Unqualified.

2. *Was there compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning?*

Other than our finding addressing "Northern Corn Development Corporation" (page 11), the North Dakota Corn Utilization Council was in compliance with significant statutes, laws, rules, and regulations under which it was created and is functioning.

3. *Was internal control adequate and functioning effectively?*

Yes.

4. *Were there any indications of lack of efficiency in financial operations and management of the agency?*

No.

5. *Has action been taken on findings and recommendations included in prior audit reports?*

There were no recommendations in the prior audit report.

6. *Was a management letter issued? If so, provide a summary below, including any recommendations and the management responses.*

Yes. The Governance Communication on page 12 of this report contains two informal recommendations related to the approval of purchase card expenditures and conflict of interest statements.

## LAFRC Audit Communications

1. *Identify any significant changes in accounting policies, any management conflicts of interest, any contingent liabilities, or any significant unusual transactions.*

There were no significant changes in accounting policies; no management conflicts of interest, contingent liabilities or significant unusual transactions were noted.

2. *Identify any significant accounting estimates, the process used by management to formulate the accounting estimates, and the basis for the auditor's conclusions regarding the reasonableness of those estimates.*

None noted.

3. *Identify any significant audit adjustments.*

None.

4. *Identify any disagreements with management, whether or not resolved to the auditor's satisfaction relating to a financial accounting, reporting, or auditing matter that could be significant to the financial statements.*

None.

5. *Identify any serious difficulties encountered in performing the audit.*

None.

6. *Identify any major issues discussed with management prior to retention.*

This is not applicable for audits conducted by the Office of the State Auditor.

7. *Identify any management consultations with other accountants about auditing and accounting matters.*

None.

8. *Identify any high-risk information technology systems critical to operations based on the auditor's overall assessment of the importance of the system to the agency and its mission, or whether any exceptions identified in the six audit report questions to be addressed by the auditors are directly related to the operations of an information technology system.*

ConnectND Finance and Human Resource Management System (HRMS) are the most high-risk information technology systems critical to the North Dakota Client.

## **Findings, Recommendations, and Management Response**

### **NORTHERN CORN DEVELOPMENT CORPORATION (Finding 12-1)**

In fiscal year 2009, the Corn Council formed the Northern Corn Development Corporation, a nonprofit, because of positive results of Council funded feasibility studies that the Corn Council look into the possibility of using corn to develop nitrogen in western North Dakota. The corporation was formed to look at the business planning aspect of this area.

According to the Secretary of State's website, the corporation's principal office is the same as the Council and the registered agent is the Executive Director of the Council. The Council paid the Corporation \$925,000 in fiscal year 2013 for start-up costs for consultants, accounting, and legal for business planning.

Based on our review of the North Dakota Century Code (NDCC) and an Attorney General's opinion related to similar actions by the Oilseed Council, we question whether the Council has the statutory authority to establish the nonprofit corporation and expend monies to provide start-up costs to the corporation.

NDCC 4.1-04-09 states that the Council's duties are to use the money raised under this chapter to fund research, education programs, and market development efforts.

Attorney General Letter Opinion 97-L-7 stated that the Oilseed Council could not provide funds to the American Renewable Oil Association for a grower-owned oilseed processing and marketing business because the funds were to be used for start-up costs to fund the development of the business including legal and accounting assistance, developing the business plan and structure and adopt by-laws.

#### **Recommendation:**

We recommend the Corn Utilization Council:

- Obtain an Attorney General's opinion regarding the statutory authority of the Council's establishment and funding of the Northern Corn Development Corporation.
- Recover the \$925,000 from Northern Corn Development Corporation unless the Attorney General's office rules the action is within the Council's statutory authority.

#### **North Dakota Corn Utilization Council Response:**

*The North Dakota Corn Utilization Council sought an opinion from the Attorney General as to whether the Council has the authority to "assign" the technology to the non-profit corporation and to contract with that corporation to "commercialize" the technology. Tom Lilja, Executive Director of the North Dakota Corn Utilization Council received a letter regarding the scope of the Corn Council Authority on September 21, 2011, from Charles Carvell, Assistant Attorney General.*

*We believe the contract with Northern Corn Development Corporation is consistent with the guidance provided in the Carvell letter. Specifically NDCUC is relying on the implied powers of the Council to make use of the results of funded research to establish new markets or to increase the market value of corn. Carvell states that while the North Dakota Corn Utilization Council cannot fund a private business entity or operate one itself to commercialize a technology; it clearly has the authority to contract with an entity to capture the value of intellectual property acquired through research contracts and to place the technology in use for the benefit of corn growers.*

*Carvell notes that the Council has the power to “contract with any person for any purpose related to this chapter including research, education, publicity, promotion, and transportation.” Consistent with that authority, NDCUC is contracting with Northern Corn Development Corporation for research related to the manufacture of fertilizer from renewable sources of hydrogen which may provide a marketing benefit to farmers who grow corn using that fertilizer. Northern Corn Development Corporation is also receiving similar contracts from other commodity organizations in support of this research including the South Dakota Corn Council, the Minnesota Corn Utilization and Promotion Council, the North Dakota Soybean Council, and the Canola Growers of Manitoba. These organizations are each funding this research project consistent with their statutory authority. The North Dakota Agricultural Products Utilization Commission has also funded this research project under statutory authority to encourage the use of commodities produced in North Dakota.*

*The North Dakota Corn Utilization Council recognizes the limit of its authority consistent with Opinion 97-L-7 (Oilseed Council) and, through its contract with Northern Corn Development Corporation, prohibits the use of any of these research dollars for the exclusive benefit of a private company. The Council will allow Northern Corn Development Corporation to transfer the acquired intellectual property to a private entity that will commercialize that technology. The Council understands that the terms of that transfer may require review by the Attorney General, as noted in the Carvell letter. We request the recession of Finding 12-1.*

*Auditors concluding remarks:*

*We reviewed the letter sent to the Attorney General's office requesting an opinion that the Corn Council is referencing above. The opinion request was whether or not the Corn Council had the authority to assign intellectual property or commercialization rights it may acquire in the course of funded research projects to a not-for-profit development corporation. The request does not address whether or not the Council has the statutory authority to establish or fund the Northern Corn Development Corporation as our recommendation states.*

## **Governance Communication**

November 15, 2012

To: The North Dakota Corn Utilization Council

The Legislative Audit and Fiscal Review Committee

We have audited the special-purpose financial statement of the North Dakota Corn Utilization Council for the two-year period ended June 30, 2012, and have issued our report thereon dated November 15, 2012. Professional standards require that we provide you with the following information related to our audit.

### **Qualitative Aspects of Accounting Practices**

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the North Dakota Corn Utilization Council are described in Note 1 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the two-year period. We noted no transactions entered into by the governmental unit during the two-year period for which there is a lack of authoritative guidance or consensus. There are no significant transactions that have been recognized in the financial statements in a different period than when the transaction occurred.

### **Difficulties Encountered in Performing the Audit**

We encountered no significant difficulties in dealing with management in performing and completing our audit.

### **Corrected and Uncorrected Misstatements**

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. There were no known or likely misstatements that we needed to report to management.

### **Disagreements with Management**

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

### **Management Representations**

We have requested certain representations from management that are included in the management representation letter dated November 15, 2012.



## **Management Consultations with Other Independent Accountants**

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a “second opinion” on certain situations. If a consultation involves application of an accounting principle to the governmental unit’s financial statements or a determination of the type of auditor’s opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

## **Other Audit Findings or Issues**

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit’s auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention. It should be noted that the retention of the State Auditor is a matter of state law and is not under the control of the North Dakota Corn Utilization Council.

The following presents our informal recommendations.

### **PURCHASE CARDS**

The Executive Director has a purchase card; however, we noted the expenditures are not being properly approved by someone other than the Executive Director each month.

OMB Policy 300 – Purchasing Card – states the supervisor should sign the cardholder’s statement certifying that the purchases were made for the use of state business and appropriate rules and regulations were followed.

#### Recommendation:

We recommend the Corn Utilization Council chairman review and document approval of the Executive Director’s monthly purchase card expenditures.

#### *North Dakota Corn Utilization Council Response:*

*The North Dakota Corn Utilization Council agrees. The Chairman of the Council approves the Executive Director’s monthly expense statements. The Council Chairman will additionally approve the monthly purchase card expenditures of the Executive Director.*

### **CONFLICT OF INTEREST STATEMENTS**

The Corn Council’s Ethics and Understanding policy section four discusses awarding no contracts or funding that will cause the question or raise a conflict of interest with any council or staff member. However, we noted that neither the council nor the staff are completing conflict of interest statements on a yearly basis that identify what the potential conflict of interests may be to the Council.

Committee of Sponsoring Organizations of the Treadway Commission (COSO) Internal Control - Integrated Framework states management must continually demonstrate, through words and actions, a commitment to high ethical standards. A written code of conduct and conflict of interest statements are an important part of a system of internal control to foster a strong ethical climate and shared values and teamwork in pursuit of entity's objectives.

Recommendation:

We recommend the Corn Council modify the Ethics and Understanding policy to include all Council members and employees annually:

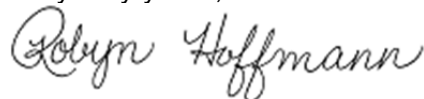
1. Complete a conflict of interest statement; and
2. Acknowledge they have read and understand the policy.

*North Dakota Corn Utilization Council Response:*

*The North Dakota Corn Utilization Council agrees. NDCUC is undertaking a strategic planning session in December of 2012 and conflict of interest statements will be included and acknowledged by both the board and staff.*

This information is intended solely for the use of the North Dakota Corn Utilization Council and management of the North Dakota Corn Utilization Council and is not intended to be and should not be used by anyone other than these specified parties.

Very truly yours,



Robyn Hoffmann, CPA  
Auditor In-Charge

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