

NORTH
Dakota

Be Legendary.

Public Service Commission



Randy Christmann
Chair



Sheri Haugen-Hoffart
Commissioner



Julie Fedorchak
Commissioner

Period of July 1, 2021
through June 30, 2023

Biennial Report

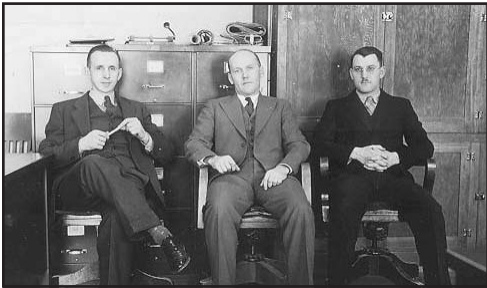
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Introduction

The Public Service Commission (PSC) is a constitutional agency with varying degrees of statutory authority over electric and gas utilities; telecommunications companies; power plant, transmission line and pipeline siting; railroads; auctioneers and auction clerks; weighing and measuring devices; natural gas pipeline safety; underground facility damage prevention and enforcement; coal mine reclamation; and eliminating public hazards from abandoned mine lands.

The Commission typically meets in formal session every two weeks. Special meetings are held to handle special or emergency situations. The agendas for these special meetings are prepared and distributed in the same manner as those for regular meetings and are distributed to a mailing list. Agendas, meeting minutes, and copies of significant orders are also posted on the Commission’s website at www.psc.nd.gov.



1936 Public Service Commissioners

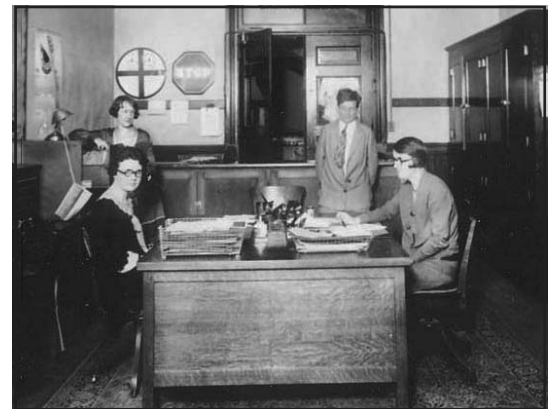
The Commission is comprised of three commissioners who are elected on a statewide basis to staggered six-year terms. The Commission had 43 authorized full-time employees throughout the biennium.

History of the Public Service Commission

The Commission was established before North Dakota became a state. Lawmakers for Dakota Territory established a Board of Railroad Commissioners in 1885 to oversee railroads, sleeping car companies, express companies, and telephone companies. The North Dakota Constitution retained this board and entrusted it with powers and duties to be prescribed by law. In 1940, the board’s name was changed to Public Service Commission.

As the preceding list indicates, the Legislature has broadened the Commission’s duties since its early days. However, this trend has been reversed in some areas as technology and a changing regulatory environment at both the federal and state levels have resulted in a greater dependence on competitive market forces to regulate services and rates of what were traditionally monopoly service providers.

We anticipate that some degree of regulatory oversight will remain in most of the Commission’s traditional areas of responsibility. The public’s needs and legislative policymakers will ultimately decide how much regulation is required in various industries.



1926 Commission Staff

This report outlines the Commission’s functions, goals, accomplishments, legislation affecting the agency and future challenges. The following pages contain summary discussions from each of the Commission’s regulatory and support divisions. These reports will be presented following a brief biographical profile of each commissioner.

Commissioner Randy Christmann



Randy Christmann was elected to the North Dakota Public Service Commission in November 2012 and re-elected in 2018 with a majority of votes in 49 of the 53 counties. He brings to the Commission a background in agriculture, telecommunications, and 18 years in the North Dakota Senate representing energy country. Most of all, he brings what the Minot Daily News called a “let’s work together attitude.”

Outside of government service, Randy operated a 117 year-old third generation cattle ranch west of Hazen, North Dakota. His wife, Bethanie, is a mortgage underwriter with Bravera Bank. Before graduating from Hazen High School in 1978, Randy enlisted in the North Dakota Army National Guard. He also enrolled at North Dakota State University and graduated from there in 1982 with a bachelor’s degree in business administration.

Randy was elected to the North Dakota Senate in 1994, helping Republicans achieve majority status in the North Dakota Senate. Governor Ed Schafer appointed Randy to serve as one of the two legislative appointees on the Lignite Research Council. He continued to serve in that position under Governors Hoeven and Dalrymple.

Following the statewide general election in 2000, Senate Republicans chose Randy to serve as their Assistant Majority Leader. He was re-elected to that post every two years through 2012. He also served on the Senate Appropriations Committee.

From 1999 through 2012 the members of West River Telecommunications Cooperative elected Randy to serve as a director. During part of this time Randy also served as the president of the North Dakota Association of Telecommunications Cooperatives.

Randy now brings his agriculture, telecommunications, and energy industry background to the Public Service Commission. He has led the effort to implement rules for future decommissioning and reclamation of wind farms and solar farms, serves as a PSC representative on the Lignite Research Council, and serves as a PSC representative for the multi-state Southwest Power Pool. He is the current chair and his portfolios include:

- Business Operations
- Coal mining, reclamation, and abandoned mine lands
- Telecommunications
- SPP/RSC

Commissioner Sheri Haugen-Hoffart

Sheri was appointed to the Public Service Commission in February 2022 by Governor Doug Burgum and was confirmed by the voters in Nov. 2022. Sheri came to the Commission after working in the Office of State Tax Commissioner as a human resource manager since 2017.

Sheri's portfolio at the Public Service Commission includes wind & solar reclamation; economic regulation-electric; pipeline safety; damage prevention and enforcement; weights & measures; consumer affairs; and cybersecurity. Sheri currently serves as Treasurer on the Mid-America Regulatory Conference (MARC) Board and serves as Chair on the Upper Great Plains Transportation Institute's Advisory Council.

A native of Rugby, North Dakota, Sheri earned a bachelor's degree from the University of North Dakota in 1988 and a master's degree in management from the University of Mary in 1996. Previous to her most recent position at the Tax Commissioner's office, she served as the deputy state treasurer, director of education in the North Dakota Securities Department, coordinator for the University of North Dakota's Division of Continuing Education in Bismarck and emergency service director for the Burleigh-Morton Chapter of the American Red Cross.

Sheri was elected to the board of directors of Capital Electric Cooperative in 2010 and became chair of the board in 2020. She also previously chaired the board of Central Power Electric Cooperative, a wholesale power supply and transmission cooperative whose six member co-ops include Capital Electric.

Sheri is married to Richard and they are proud to be owners of homesteaded land that has been in her family for three generations. She is passionate about working with military groups on several different issues including raising awareness about PTSD and stigmas surrounding it, caring for disabled veterans, and participating in Wreaths Across America.



Commissioner Julie Fedorchak



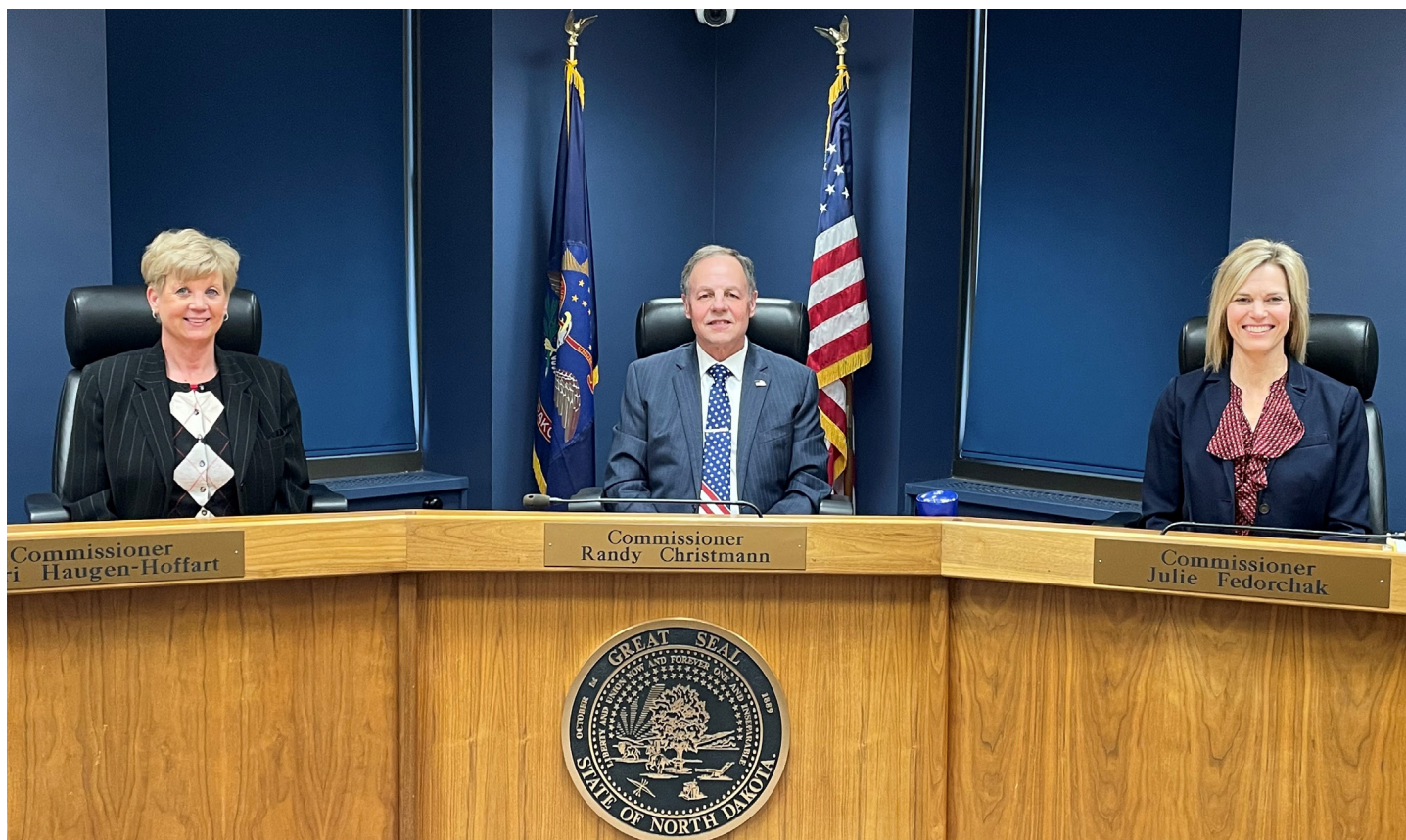
Julie Fedorchak has served on the Commission since 2013. She heads the pipeline, electric transmission and energy conversion siting; gas economic regulation, railroad safety and regulation portfolios and is the state's liaison to the Midwest Independent System Operator (MISO) and the Organization of MISO states (OMS).

Julie is the first vice president of the National Association of Regulatory Utility Commissioners (NARUC) and will ascend to president of that organization at its annual meeting in November 2023. She serves on the advisory board for the Electric Power Research Institute. Julie has held numerous leadership roles including president of the Organization of MISO States (OMS), vice-chair of the NARUC Gas Committee and vice president of the Gas Technology Institute's advisory board. She is a member of the Aspen Institute's Rodel Class of 2015.

A North Dakota native, Julie was appointed to the Public Service Commission in December 2012 by Gov. Jack Dalrymple. She was confirmed by voters in 2014 and was elected to a full six-year term in 2016 and again in 2022.

Julie is a strong voice regionally and nationally for a sustainable transition of the electricity industry. She advocates that utilities, policy makers and regulators must maintain the reliability and affordability of the U.S. power grid, which is the backbone of our society. In North Dakota, she developed and received legislative approval for a state rail safety program, pushed for innovative ways to connect rural areas to natural gas service and led efforts to enhance the Commission's pipeline reclamation program. She has led the Commission's siting portfolio for more than a decade and has overseen the permitting of more than \$10 billion of investments. In this process, Julie helps oversee a transparent process that invites public input, provides regulatory certainty and mitigates landowner concerns, safety risks and long-term environmental, historic and cultural impacts.

Julie graduated with honors from the University of North Dakota. She is married to Mike Fedorchak of Minot and they have three children. Julie is a trustee for the University of Mary, a volunteer for her local homeless shelter and enjoys many hobbies including golfing, entertaining, swimming and reading.



Public Service Commissioners

Agency Overview

The Legislature has given the Commission broad jurisdiction over several industries. In some cases the Commission functions like a court, in other instances it operates like a licensing board, and sometimes it serves as an environmental regulatory inspection agency.

This biennium there were 840 cases filed with the Public Service Commission to include industry filings, complaint proceedings, and rule making.

Formal hearings are held only when necessary and are used only in more complicated or contested cases, or when required by law. The vast majority of the cases that come before the Commission are handled without the need for a formal hearing. Some of these filings take effect with little more than staff review. More involved cases are typically discussed with the parties and the Commission at informal hearings.

The informal hearing is used by the Commission to give parties an opportunity to meet publicly with the Commission, but without the expense and delay that would be associated with a formal hearing. During this biennium the Commission held 15 formal hearings either in the Commission hearing room at the State Capitol or in the area directly affected.

- 98% of all formal cases were processed without the need for a formal hearing
- 27% of all formal cases were closed in less than 30 days
- 30% of all formal cases were closed in 60 days or less

The following graph summarizes the number and types of cases that were processed by the Commission during the biennium:

DIVISION	CASES
Compliance	
Auctioneer	14
Damage Prevention	13
Gas Safety	9
Railroad	12
Weights & Measures	119
Public Utilities	
Electric	179
Gas	37
Pipeline	46
Telecom	344
Miscellaneous	27
Reclamation	31
Abandoned Mine Lands	8
Miscellaneous	1
TOTAL	840

Executive Secretary

The Executive Secretary, appointed by the Public Service Commissioners, serves as the point of contact for companies and individuals who are seeking information or submitting formal filings.

The Executive Secretary is also responsible to certify, publish, and maintain all official Commission documents and case records; serve as the Commission’s personnel and training officer; provide timely recommendations and reports to the Commission on operational and policy matters; coordinate efforts with other agencies; and serve as the main informational liaison with other agencies on operational matters.

The Commission meets in formal session every two weeks. Special meetings are held to handle special or emergency situations.

The Executive Secretary is responsible for ensuring all meetings are noticed and agendas and minutes are prepared and distributed appropriately.

Mission and Values

The Public Service Commission fulfills its statutory mandates by protecting consumers, the public interest and the environment. Our values include:

- **Balance:** balancing public and private interest affecting each decision
- **Collaboration:** tackling work challenges as a team to harness expertise and achieve better outcomes with greater impact
- **Continuous Improvement:** building a workplace that fosters growth, excellence and diversity
- **Creativity:** generating solutions by turning new and imaginative ideas into sound policies and regulations that protect citizens and promote orderly development
- **Responsiveness:** taking action to address the needs of industry and the public

Public Outreach

The Commission serves as a major resource for consumers who are having problems with the services provided by companies within the agency’s areas of responsibility. Complaints or inquiries cover the gamut from utility billings to railroad issues and from gas pumps to ground water near coal mines. In some cases, the Commission has direct jurisdiction over the matters involved, while in other instances the agency has little or no authority to intervene in the matter. In either case, the Commission attempts to provide assistance, either through direct intervention or by disseminating information that will help the parties resolve the problem or by referring to another agency that can assist.



8-1-1 Day at State Fair

The Commission recorded 1,821 informal complaints, inquiries and public input during the biennium.

Of those contacts 285 were public input submitted for siting cases and rate cases. Informal complaints made up 225 of the contacts and involved billing disputes, electric disconnects, and quality of service complaints against regulated utilities.

The PSC reinstated a Consumer Affairs Portfolio in 2014, which provides additional focus on consumer issues and complaints and on improving communication with the public through traditional public information channels, public meetings and social media. Commissioner Haugen-Hoffart held the Consumer Affairs portfolio during this biennium and worked closely with the PSC’s Public Outreach and Consumer Affairs Specialist to strengthen the Commission’s relationship with consumers in North Dakota.

As part of this strengthened focus on communications, the following tools were implemented during this biennium:

- A 2021 and 2022 public contact report was released showing data and trends relating to complaints and input received for each year. In addition, an internal monthly report is sent to Commissioners and Division Directors.
- News releases continue to be sent out before each siting hearing as another tool to educate about public hearings and projects before the Commission. News releases have also been incorporated to inform about Commission votes and other important activities.
- The agency continues to maintain and update its website (www.psc.nd.gov), including a series of “You Should Know” brochures. Case information, meeting notices and minutes, along with audio recordings and a link to live webcasting are all available on the site. A “hot topics” section is included on the website that provides a direct link to case files currently under review to make it easier for the public and reporters looking for that information.
- The agency’s Twitter account is used to educate about public hearings and other newsworthy events. The number of followers continues to increase as the account is used. Currently @NDPSC has 1,236 followers.

Financial Management

Accounting is responsible for processing payments, financial reporting, procurement, asset management, and budgeting for the North Dakota Public Service Commission. Accounting also establishes financial policies and procedures in compliance with OMB policies along with generally accepted accounting principles and state and federal regulations.

2021-2023 Financials

Revenue	General	Federal	Special
Licensing	\$46,910		
Federal Government		\$7,326,022	
Fines	\$313,900		
Interest on Investments			\$19,952
Coal Mining Fees	\$34,097		
Filing Fees*	\$6,800		
Utility Valuation Reimb.			\$5,485
PSC Program Fund Revenue			\$600,172
Trsf. From Hwy Tax. Dist. Fund			\$594,724
Trsf. From General Fund			\$60,000
Total	\$401,707	\$7,326,022	\$1,280,332

Note: Information is based on the June 2023 4911AA PeopleSoft Reports.

*Does not include fees filed by companies to process large cases like siting or rate cases

2021-2023 Budget

Expenses by Line Item	Appropriated	Expended	Unexpended
Salaries and Wages	\$9,998,145	\$9,186,806	\$811,339
Operating Expenses	\$1,801,570	\$1,520,171	\$281,399
Capital Assets	\$145,000	\$94,239	\$50,761
Grants	\$20,000	\$8,853	\$11,147
AML Construction	\$6,000,000	\$4,433,432	\$1,566,568
Rail Fund	\$900,000	\$0	\$900,000
Litigation Fund	\$420,000	\$0	\$420,000
Rail Safety Program	\$614,724	\$593,013	\$21,711
General Fund Transfers	\$60,000	\$60,000	\$0
Total	\$19,959,439	\$15,896,513	\$4,062,926
Funding Source	Appropriated	Expended	Unexpended
General	\$6,495,615	\$6,178,489	\$317,126
Federal	\$11,219,100	\$8,601,512	\$2,617,588
Special	\$2,244,724	\$1,116,512	\$1,128,212

Note: Information is based on the June 2023 4310AA PeopleSoft Report.

Line Item Funding Sources:

- Grants and AML Construction are 100% federal funds
- Rail Fund and Rail Safety Program are 100% federal and special funds
- All other items are a mix of general, federal and special funds

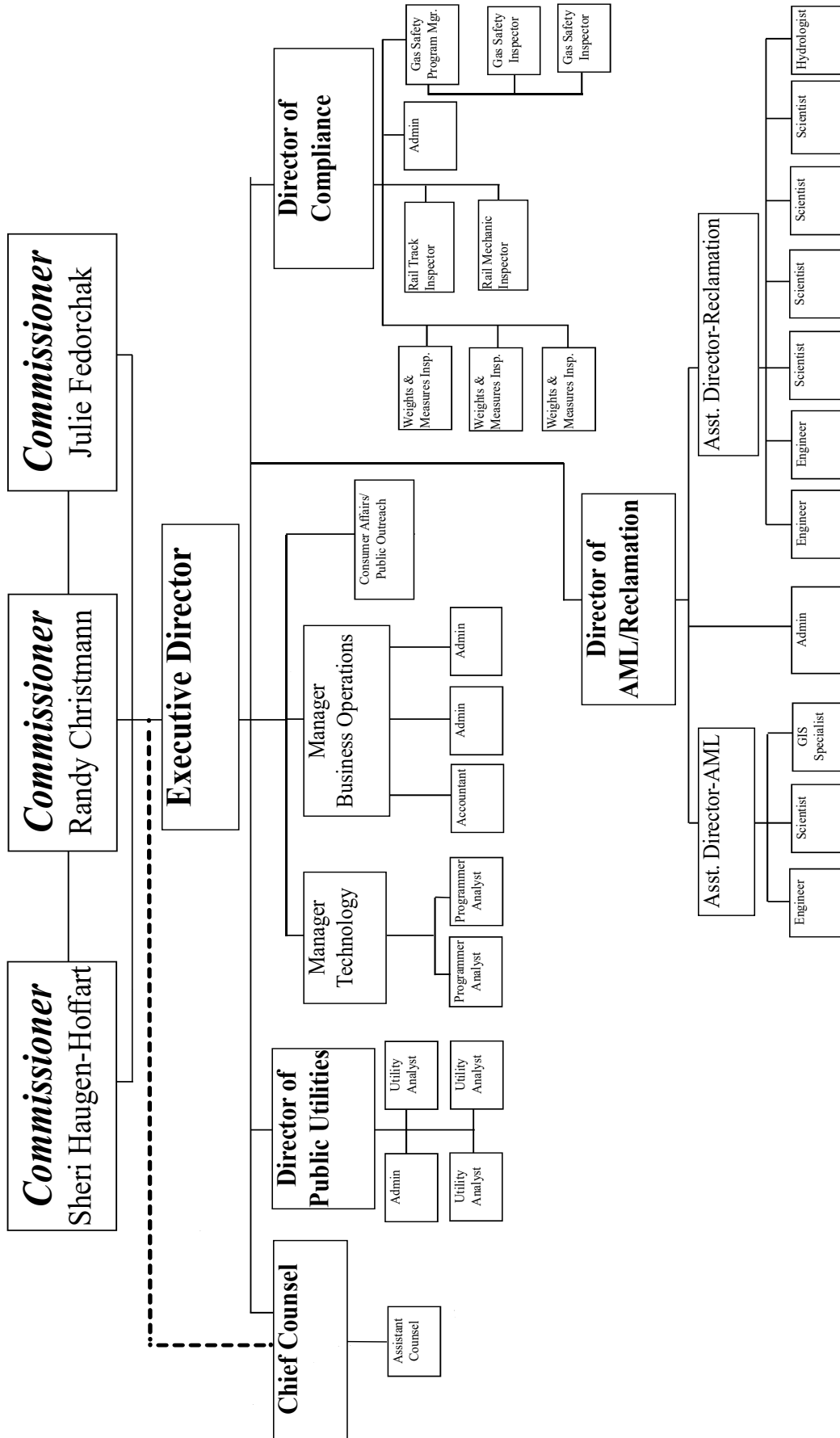
General Counsel

The mission of the Legal Division is to provide high quality legal representation, advice and counsel to the Commission and various divisions and to fulfill staff functions for divisions as situations warrant and time allows. Duties include rate case advocacy, appellate representation of the Commission, representation of the Commission before other state and federal agencies, representation of the Commission in civil proceedings, support for the Commission’s legislative activities, and enforcement of laws, rules, and Commission decisions. The Legal Division also functions as the Commission’s hearing administrator and maintains the Commission’s case docket system. Federal agencies before which the Legal Division represents the Commission include the Department of Energy, Environmental Protection Agency, Surface Transportation Board, Federal Communications Commission, Federal Energy Regulatory Commission, and the Department of Interior.

Section 49-01-09 of the North Dakota Century Code provides that the Attorney General be ex-officio attorney for the Commission and, personally or through commerce counsel, represents the Commission in any proceeding which the Commission deems proper and expedient. The section also authorizes the Commission to employ additional counsel. Section 54-12-08 of the North Dakota Century Code provides that the Public Service Commission may employ attorneys to represent the agency. The Attorney General appoints the attorneys employed by the Commission as Special and Assistant Attorneys General.

Organizational Chart

North Dakota Public Service Commission 2023



Public Utilities Division

Statutory and Constitutional Responsibilities

The Commission:

- Regulates investor-owned electric and gas utilities to ensure that consumers receive safe and reliable service at reasonable rates.
- Is responsible for siting facilities such as electric generation, gas processing, oil refining, pipelines, and electric transmission lines.
- Regulates essential services offered by investor-owned phone companies.
- Works with public utility consumers to resolve billing disputes and service complaints.

Major Activities and Accomplishments

Economic Regulation

Rate Cases:

Following are the rate increase requests and increases granted during the biennium:

Filing Date	Utility Co.	Description	Request (Millions)	Granted (Millions)	Decision
11/06/2020	Northern States Power Company	Electric Rate Increase	\$22.2	\$7.1	08/18/2021
09/02/2021	Northern States Power Company	Natural Gas Rate Increase	\$7.06	\$5.07	10/27/2022
05/16/2022	Montana-Dakota Utilities Co.	Electric Rate Increase	\$25.3	\$15.2	06/06/2023

Regulated public utilities that distribute natural gas to end use customers in North Dakota are Great Plains Natural Gas Co., Montana-Dakota Utilities Co. (MDU), Northern States Power Company (NSP), and Dakota Natural Gas.

Regulated public utilities that distribute electricity to end use customers in North Dakota are Montana-Dakota Utilities Co. (MDU), Northern States Power Company (NSP), and Otter Tail Power Company (OTP).

Advance Determination of Prudence (ADP):

In accordance with N.D.C.C. §49-05-16, the investor-owned electric utilities operating in North Dakota may request an advance determination of prudence for certain major capital investments. If the Commission determines a project is prudent, then the utilities can include the costs of that project in future rates. During the biennium, the Commission received the following ADP filings:

Filing Date	Utility Company	Description	Purpose	ADP Decision
11/18/2022	Northern States Power Company	MinnDakota Wind PPA	Add 150MW wind generation PPA	03/08/2023
02/03/2023	Northern States Power Company	Monticello Nuclear Extension	Extend life of Monticello Nuclear Plant by 20 years	Pending
02/08/2023	Otter Tail Power Company	Fuel Inventory System	Add onsite fuel storage to Astoria Natural Gas Combustion Turbine	Pending
03/23/2023	Northern States Power Company	345kV Transmission Line	Build 345kV transmission line from Sherburne County, MN, to Lyon County, MN	Pending
05/19/2023	Northern States Power Company	Sherco Solar 3	Add 250MW solar generation at the Sherco site	Pending

Public Convenience and Necessity:

During the biennium, the Commission received the following applications for certificates of public convenience and necessity for North Dakota public utility plant or systems:

- Montana-Dakota Utilities Co.'s September 10, 2021, application to construct and operate facilities to provide natural gas service to parts of Cass County. (Case #PU-21-386)
- Dakota Natural Gas, LLC's November 4, 2021, application to construct and operate facilities to provide natural gas service to the Portland, North Dakota, area. (Case #PU-21-424)
- Otter Tail Power Company's January 11, 2022, application authorizing the acquisition of the Ashtabula III wind energy conversion facility owned by Ashtabula Wind III, LLC. (Case #PU-22-27)
- Montana-Dakota Utilities Co.'s September 16, 2022, application to provide retail electric service to Applied Digital's Office and Data Processing Facility near Ellendale, North Dakota. (Case #s PU-22-366 & PU-22-370)
- Montana-Dakota Utilities Co.'s May 3, 2023, application to construct and operate facilities to provide natural gas service to the Portal, North Dakota, area. (Case #PU-23-175)
- Otter Tail Power Company's June 16, 2023, application to construct 6 miles of new 115kV electric transmission line and a new substation in Walsh County. (Case #PU-23-228)

Telecommunications

Competition for telecommunications continues to evolve in the state and the Commission continues to receive filings of interconnection agreements negotiated by incumbent local exchange companies and competitive local exchange companies. Interconnection agreements make provisions for wireline and wireless competitors to interconnect to local exchange areas served by incumbent rural telephone companies, and provision of wholesale prices for services that may be resold by competitors. During the 2021-2023 biennium, the Commission received for approval 49 interconnection agreements and 31 interconnection agreement amendments.

The Commission takes a hands-on role in reclaiming telephone numbers that have been allocated to a company but have not been activated by that company within six months. The Commission also assists in the procurement of telephone numbers not otherwise available to a telecommunications company.

Each year the Commission provides to the Federal Communications Commission verification by the rural telephone companies that federal universal service funds are used only for those purposes specified by the Federal Communications Commission and therefore are eligible to receive such federal funding for the next calendar year.

Since 2007, telecommunications companies designated by the Commission as eligible to receive federal universal service funds began filing annual reports of the federal funds received. The report includes the following information: the use made of those federal funds for the provision of universal telephone services in the state, projections for future federal funds, and anticipated projects funded by those future dollars. Federal

universal funds are to be used only for those purposes specified by the Federal Communications Commission. This information supports rural company certification to receive future universal service funds.

The Commission continues to provide a web-based electronic self-registration system for telecommunications companies other than incumbent local exchange telecommunications companies. The self-registration process is a streamlined process for non-incumbent telecommunications carriers to obtain the equivalent of a Certificate of Public Convenience and Necessity to provide telecommunications services in North Dakota. Approximately 615 telecommunications companies are self-registered.

Damage Prevention Program

The Damage Prevention Program was moved to the Compliance Division during the biennium. Please see page 25 for information about this program.

Energy Conversion and Transmission Facility Siting

Prior to beginning construction of an energy conversion or transmission facility, a certificate of site compatibility or route permit must be obtained from the Commission. It is the responsibility of the Commission to assure that such facilities are sited in an orderly manner to ensure that energy needs are met and fulfilled in an efficient manner, continuing system reliability and integrity, while minimizing adverse human and environmental effects.

During the biennium, the Commission received siting applications for 6 pipelines, 1 natural gas power plant, 2 wind farms and one application to amend/upgrade an existing wind farm. The Commission received 6 electric transmission line and 2 wind farm filings under the abbreviated siting process (SECs) defined in North Dakota Century Code section 49-22-03 for construction of facilities wholly within the geographic area for which the utility had previously obtained a certificate or permit or on which a facility was constructed before April 9, 1975. The Commission also received filings under the abbreviated siting process defined in North Dakota Century Code section 49-22.1-01 (SECs) regarding 4 pipelines and 1 gas or oil processing plant. The Commission received formal requests for jurisdictional determination from the North Dakota Transmission Authority, Steel Reef Burke LLC, Montana-Dakota Utilities Co. and Bayou Midstream LLC.

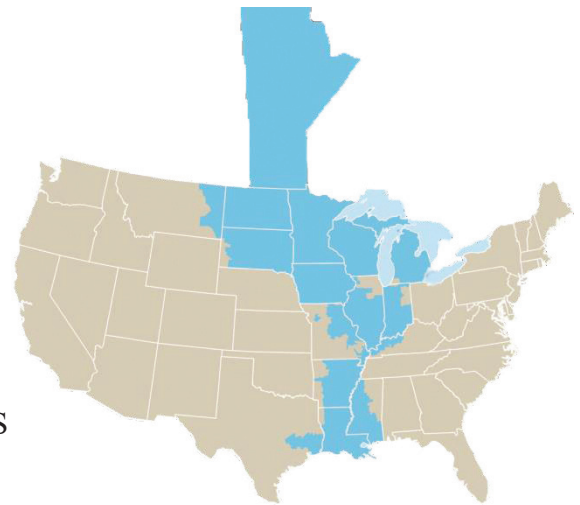
Energy Conversion and Transmission Facility Siting Activities During the Biennium					
Case No.	Applicant	Description	Date of Application	Date of Order	Estimated Investment
PU-21-353	Hiland Crude, LLC	2.9-mile crude oil pipeline	7/30/2021	12/29/2021	\$5,400,000
PU-21-441	Caliber North Dakota LLC	2.62-mile natural gas pipeline	11/30/2021	01/11/2023	\$5,600,000
PU-21-445	OEE XXXI LLC	11.75 MW wind facility	12/03/2021	withdrawn	\$24,000,000
PU-22-034	Montana-Dakota Utilities Co.	12-inch water pipeline	01/18/2022	05/04/2022	\$1,600,000
PU-22-086	Badger Wind, LLC	251.6 MW Badger Wind Project	02/25/2022	11/30/2022	\$390,000,000
PU-22-141	Continental Resources, Inc.	8-inch Buddy Domindgo Pipeline	03/03/2022	07/06/2022	\$3,550,000
PU-22-173	Border Winds Energy, LLC	150 MW wind energy conversion facility improvements	04/20/2022	10/27/2022	unavailable
PU-22-380	Basin Electric Power Cooperative	Pioneer Generation Station Phase 4	10/07/2022	02/08/2023	\$788,000,000
PU-22-391	SCS Carbon Transport LLC	Midwest Carbon Express CO2 pipeline	10/17/2022	08/04/2023 *Reconsideration approved 9/15/23	\$898,000,000
PU-23-255	Tesoro Great Plains Gathering & Marketing LLC	2.4-mile Renewable Diesel Pipeline	06/29/2023	pending	\$4,000,000

Electricity

Midcontinent Independent System Operator (MISO)

The Midcontinent Independent System Operator (MISO) is an independent, nonprofit organization responsible for reliable operation of the regional electric grid owned by member utilities in 15 states (Montana, North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Iowa, Illinois, Indiana, Missouri, Kentucky, Arkansas, Mississippi, Texas and Louisiana) and the Canadian province of Manitoba.

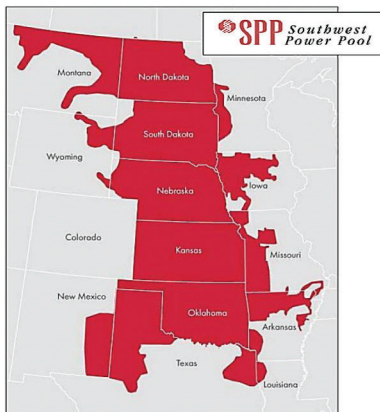
Throughout the biennium, the Commission participated as a member of the Organization of MISO States, Inc. (OMS). The OMS is a nonprofit membership corporation consisting of regulatory agencies (Canadian province of Manitoba, 15 states, and the City of New Orleans) having jurisdiction within the region served by MISO. The OMS provides a means for these regulatory agencies to share resources and to act in concert when deemed to be in their common interest.



Midcontinent ISO Footprint

Southwest Power Pool (SPP)

SPP Footprint



The Southwest Power Pool (SPP) is an independent, nonprofit organization responsible for reliable operation of the regional electric grid owned by member utilities in 14 states (Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming). The Basin Electric Power Cooperative/Western Area Power Administration/Heartland Consumer Power District Integrated System (IS) was added to the SPP footprint in 2015.

Throughout the biennium, the Commission participated as a member of the SPP Regional State Committee (RSC). Similar to the OMS, the RSC is a nonprofit membership corporation consisting of 12 state regulatory agencies having jurisdiction within the region served by the SPP and provides a means for these regulatory agencies to share resources.

MISO and SPP Energy Markets

MISO began operating a regional energy market in 2005 that continues to serve the loads of all MISO participants, including the three jurisdictional investor-owned electric utilities providing service in North Dakota. The SPP operates a similar regional energy market. Both provide a centralized generating unit dispatch procedure that co-optimizes the energy and ancillary services markets to ensure that the lowest cost generators are always being used throughout the regions regardless of utility control area boundaries. The markets establish Locational Marginal Prices (LMP's) for electric energy at local pricing nodes. All energy must be provided through the markets. Producers are paid the LMP for their energy at the time and node where it enters the market. The load pays the LMP at the time and node where the energy is delivered.

Collaborating with MISO and SPP while representing North Dakota's interests in addressing gaps in an electric resource's ability to show up during times of need to properly incentivize those resources for doing so will be increasingly important for a fleet undergoing significant change. States are ultimately responsible for resource adequacy. Continuing to work with MISO and SPP to balance the cost and need for interstate transmission lines under federal jurisdiction with the cost and need for resources under local jurisdiction is critical in ensuring ratepayers are served with affordable and reliable electricity. Such transmission investments are forecasted to be significant, and the Commission must ensure both local and regional industries are working to advance ratepayer interests.

Telecommunications

At the national level, the Commission will continue to present the challenges unique to a rural state concerning the deployment of broadband and wireless services.

The Commission will voice North Dakota concerns as the Federal Communications Commission determines the appropriate monetary compensation to owners of telecommunications networks used by other companies originating or terminating communications on those networks.

As the number of telecommunications consumers and competition in the state increases, and as types of telecommunications services provided to those consumers expands, the supply of telephone numbers for the 701 area code will dwindle. As noted earlier, the Commission takes a hands-on role in reclaiming telephone numbers that have been allocated to a company but have not been activated by that company within six months.

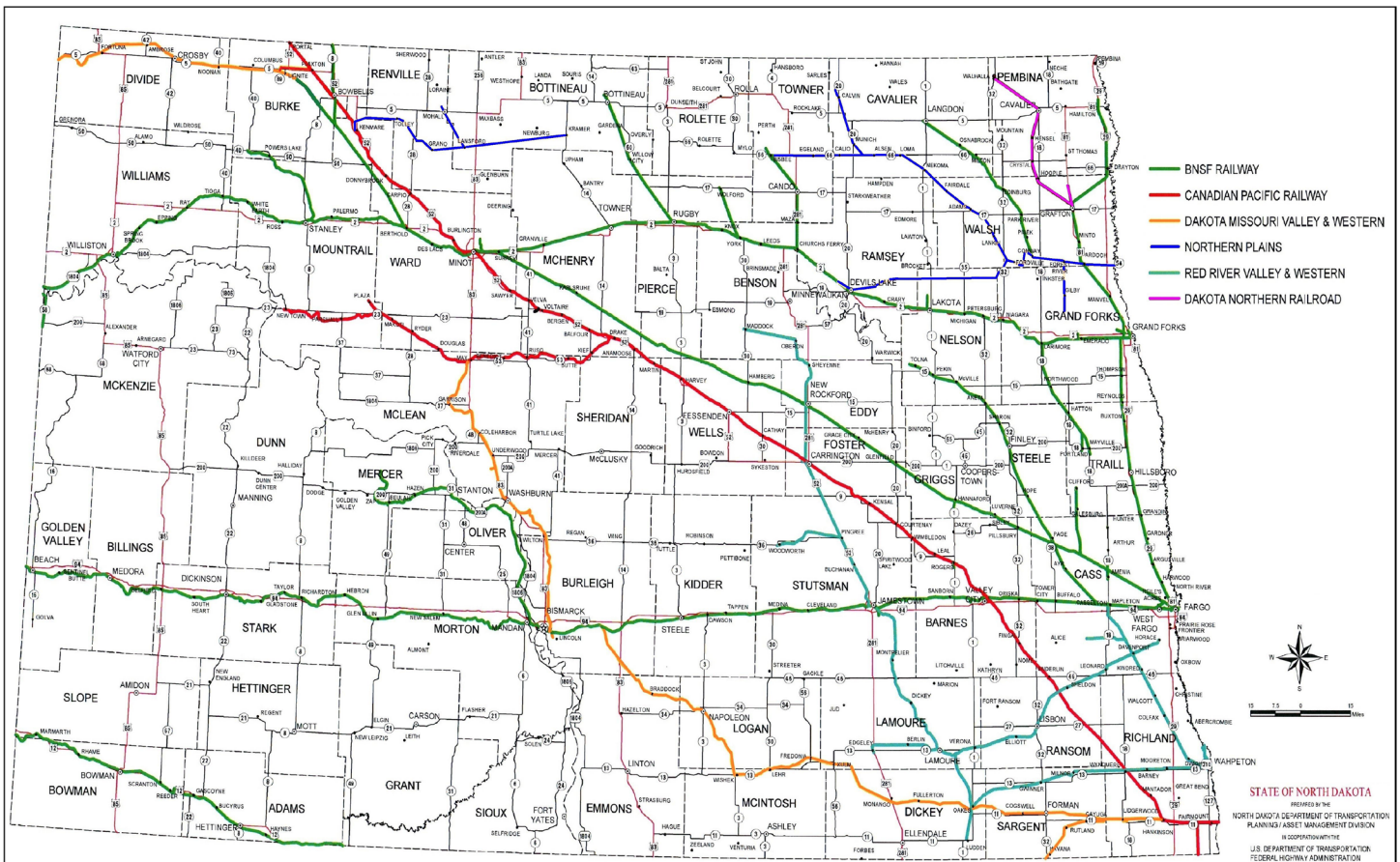
Compliance Division

The Compliance Division regulates the operations of the following jurisdictions:

- Railroad companies and railroad safety to the extent permitted under federal law;
- Weighing and measuring devices, device owners, operators, registered service companies, and registered service persons;
- Intrastate gas gathering, transmission and distribution system operators;
- Damage prevention and enforcement; and
- Auctioneers and auction clerks.

The division employed 10 FTEs during the biennium and houses most of the Commission’s state inspectors. Consolidating these regulated jurisdictions under one division enables a more unified approach to regulatory enforcement and compliance within these program areas.

Railroad - Regulation and Safety Programs



The Railroad Program employs 2 inspectors and oversees two areas:

1. Operating Class 1 and short line railroad regulation to the extent permitted under federal law, and
2. Railroad safety inspection and enforcement.

Railroad Regulation

While the Commission’s regulatory authority over railroads narrowed as a result of the enactment of the Staggers Rail Act in 1980 and the Interstate Commerce Commission Termination Act in 1995, the Commission is the state agency charged with representing North Dakota’s rail interests before federal agencies and in direct negotiations with rail carriers. The Commission, to the extent consistent with federal law, has jurisdiction over certain railroad activities in intrastate commerce and works on behalf of North Dakotans to resolve railroad related issues. Some of these jurisdictions and issues include:

- Pasture fencing issues along railroad right-of-ways.
- Private grade crossings.
- Grade crossing designation (public or private).
- Close clearance issues.
- Railroad abandonment.
- Grade crossing separation.
- Blocked crossings.

With respect to blocked crossings, frequency and duration of blocked crossings has been on the rise nationally and North Dakota is no exception. The Commission does not have authority to formally enforce blocked crossing issues with railroads; however, when blocked crossing complaints are received, staff works with the railroad company to promote a healthy symbiotic relationship between the railroads and the local communities they serve and travel through. The Commission encourages all blocked crossings to be reported to the Federal Railroad Administration (FRA). The FRA is the federal entity, under the U.S. Department of Transportation, working on studying blocked crossings at a national level.

The Commission responded to the following railroad complaints and inquiries, during the biennium:

Rail Complaints	2021-2023
Abandonment	5
Blocked Crossings	14
Clearance	2
Rail Crossing	6
Rail Fences	3
Rail Information (Current/Historical)	4
Rail Safety	5
Right of Way/Property	8
Train Noise/Horns	1
Train Speed	2
Weed Control	3
Total	53

Additionally, the Commission takes a proactive approach to safety and stakeholder concerns. Annually, the Commission hosts a railroad safety and stakeholder roundtable discussion. Railroad officials, along with stakeholders from around the state, participate in the roundtable discussion about performance, shipping, safety, and various other concerns to keep the lines of communication open and to understand various challenges that may be coming. These meetings are also open to the public.

Railroad Safety Program

The Railroad Safety Program serves the public, railroad employees, and railroad customers by implementing inspection and compliance programs that reduce the potential for property damage, injuries, and deaths in and along railroads throughout North Dakota. The program's goal is to reduce the number of accidents, derailments, and other equipment failures experienced within the state of North Dakota. The intent is to directly reduce fatalities and injuries in addition to economic losses and environmental impacts.



“First Responders Train During Derailment Simulation”

The Commission's Railroad Safety Program has operated for four bienniums with great success. The four-year pilot program was established by the North Dakota 64th Legislative Assembly and the 68th Legislative Assembly made the rail program a permanent fixture in the Commission.

The Railroad Safety Program works in cooperation with the FRA under the U.S. Department of Transportation. The program employs 2 state inspectors certified in three of the six FRA inspection disciplines: 1) track, 2) motor power and equipment (mechanical), and 3) hazardous materials (HAZMAT). The remaining three inspection disciplines include: operating practices, signal and train control, and grade crossing/trespasser prevention. The inspectors are state employees who are trained and certified by the FRA to inspect and enforce federal laws and regulations and are authorized to inspect all equipment and track utilized by Class I and short line railroads operating in North Dakota.

The Commission's current track inspector was hired in April 2021 and achieved FRA certification in March 2022. Additionally, the Commission's mechanical inspector achieved FRA certification in 2016 and was recently certified in a second inspection discipline (HAZMAT) in September 2021.

Inspections

State rail safety inspectors have jurisdiction within their respective disciplines throughout North Dakota. They conduct inspections on all 3,000+ miles of track, Class I and short line locomotives and rolling stock, and HAZMAT shippers and receivers. These inspections are conducted on a notice and no notice basis. Inspectors work with railroad personnel to establish good working relationships to gain cooperation. Railroads have been very receptive to state inspectors and understand the goal is to increase and sustain rail safety not only for the public, but also railroad employees.

Inspectors categorize their findings as follows:

- Informational – Informational may be used for a condition that meets the minimum requirements but may need additional monitoring or for a condition that is not covered under regulation.
- Defect – Defects are conditions that do not meet the minimum requirements prescribed by the Federal Railroad Administration and do not pose imminent danger but, if not addressed, could develop into a serious problem.
- Violation – A violation is a serious problem that requires immediate attention. Violations trigger various compliance strategies depending on the severity such as fines, reduced speeds or taking equipment out of service.



Inspector	Discipline	Data	2021-2023 Biennium
Mechanical & HAZMAT Inspector	Inspection Days		244
	Mechanical Certified: 08/2016	Units Inspected*	32,458
		Defects	1,548
		Violations	15
	HAZMAT Certified: 09/2021	Units Inspected*	48,331
		Defects	1,912
		Violations	12
Track Inspector	Track Certified: 03/2022	Inspection Days	171
		Units Inspected**	4,860
		Defects	1,076
		Violations	10

* Units inspected consist of all rolling stock. Each car can consist of multiple units or regulations inspected.

** One unit consists of one mile of track, a switch or turnout, and/or a single derail.

Weights and Measures Program

The Commission ensures the safe and equitable operation of commercial weighing and measuring devices in the state. This is accomplished through inspections, documentation review, licensing of service companies and registered service persons, and quality assurance testing. In addition to devices, the Commission also maintains all working standards used to inspect the accurate operation of weighing and measuring devices. The Commission employs 3 inspectors to carry out these duties.

As of June 30, 2023, there were 25,185 commercial devices operating in North Dakota. These devices were tested for accuracy, at a minimum of every 15 months, by three state inspectors employed by the Commission and 160 registered service persons employed by 52 registered service companies.

In addition to device testing and inspection, the Commission also has a heavy scale quality assurance (QA) program for the entire state of North Dakota that is currently being implemented with one of the three full-time state inspectors. The heavy scale QA program reviews new installations for compliance, monitors the processes and test results of registered service persons, and performs on-site reviews prior to the approval of a permanent variance. The following table includes tests and inspections completed by both the Commission and private inspectors:



Device Type	Total Devices	State Testing	State QA	Private Testing
Gas Pump	15,171	3,327	0	26,805
Counter/Platform Scale	3,844	5,842	0	3,259
Pipeline/Transport Meter	227	34	0	713
Motor Truck Scale	1,035	0*	238	2,169
Hopper Scale	1,194	0*	62	2,100
Deck/Dormant Scale	1,103	0*	104	2,068
Auxiliary Beam	14	0*	1	6
Livestock Scale	82	0*	19	172
Track/Hanging Scale	80	147	0	45
Onboard Weigh System	4	0	0	9
Ag Chemical	175	0	0	344
Anhydrous Meter	185	0	0	323
LPG Meters	525	0	0	889
Bulk Delivery	1,509	0	0	1,839
RR Track Scale	37	0	0	108
Total:	25,185	9,350	424	40,849

*Zero tests are a result of the change to the large scale program

Note: Some devices are tested at a higher frequency than required by law

Revenues generated for weights and measures inspection fees received during the biennium totaled \$172,511.

Gas Pipeline Safety Program

As a requirement of the gas pipeline safety program, the Commission submits an annual Certification to the Secretary of Transportation to assume safety responsibility with respect to all intrastate gathering, transmission, and distribution of natural gas and propane and other gas by pipeline, and for intrastate liquefied natural gas (LNG) facilities used in the transportation of gas by pipeline. At this time, the Commission has not submitted a certification for hazardous liquids pipeline facility safety, which would include intrastate transportation of carbon dioxide (CO₂), ammonia (NH₃), and crude oil among other products by pipeline.

The Commission employed 3 FTEs who provided inspections on the jurisdictional pipelines and operators during the biennium.

Under the authority provided by North Dakota Century Code section 49-02-01.2, the Commission adopted rules for pipeline safety, including minimum safety standards, and has authority to require proof of compliance. The Commission requires each owner or operator of pipeline facilities to establish and maintain records, make reports, provide information, and conduct inspections as proof of compliance.

In addition, Commission personnel conduct inspections, audits, and investigations regarding safety concerns, including:

- Facility design.
- Facility construction.
- Facility operation, including control room operation.
- Facility operator qualification.
- Drug and alcohol abuse.
- Facility maintenance.
- Leak detection and mediation.
- Corrosion detection and mediation.
- Pressure control and overpressure protection.
- Third party damage prevention.
- System failures (incidents).
- Continuing integrity of the system.
- Public education regarding system characteristics and attributes.

The Commission amended N.D. Admin. Code section 69-09-03-02 to adopt by reference changes made by the federal government to gas pipeline safety regulations, Title 49, Code of Federal Regulations Parts 190, 191, 192, 193, 194, 195, and 199, as of December 1, 2021, Case No. GS-21-442.

During the 2021-23 biennium, the gas pipeline safety inspectors conducted inspections of five distribution system operators, ten transmission system operators, and seven gathering system operators on a

combined total of just over 4,280 miles of pipeline. The total number of inspection days are illustrated below:

Pipeline Inspections by Type	2021-2023
Standard Inspection – Records Audit	230
Compliance Follow-Up	2
Design / Testing and Construction	78
Investigating Gas Explosion Incidents	11
Onsite Operator Training (Seminars)	0
Operator Qualifications	22
Integrity Management	16
Damage Prevention Activities	0
Total	359

Program Changes

Announced in 2021 and effective in 2022, the Pipeline and Hazardous Materials Safety Administration introduced what has been dubbed “The Mega Rule.” This new rule changed the definition of regulated gas gathering lines and how they are regulated. These changes increased the number of regulated gathering operators by 4 and jurisdictional gathering line miles from 14 to 2,758, a 19,600% increase.

Additionally, this change increased regulated total pipeline miles from 4,280 miles to 7,078 miles, a 65% increase. The effects of this change on the pipeline safety program are under evaluation.

Licensing (Auctioneers and Auction Clerks)

The Licensing Program protects the interests of North Dakota patrons while regulating auctioneers and auction clerks through licensing, bonding, and complaint investigation.

Licensee Data

At the end of the biennium, the Commission had 274 licensed auctioneers (a reduction of approximately 13% from the previous biennium) and 136 licensed auction clerks (a reduction of approximately 9% from the previous biennium).

Financial Data

Revenues generated for auctioneer and auction clerk license fees received during the biennium totaled \$46,910. Additionally, the Commission received and investigated three informal complaints with one resulting in a civil penalty totaling \$500.

Program Changes

At the request of the Commission and in consultation and agreement with the North Dakota Auctioneer’s Association, the 68th Legislative Assembly completed a partial deregulation of the auctioneer and auction clerk licensing and regulatory program. Beginning on January 1, 2024, auctioneers and auction clerks will no longer be required to carry a bond or be licensed by the PSC. Instead, auctioneers and auction clerks will need to be registered with the North Dakota Secretary of State.

Damage Prevention and Enforcement Program

North Dakota law requires excavations which do not fall within the statutory exemptions listed in N.D.C.C. § 49-23-01(7) to notify 8-1-1 at least two business days in advance of digging. Utility personnel and representatives will be sent to mark the locations of the underground facilities within the locate period. The markings are valid for 21 days from the planned excavation date. This process is coordinated through North Dakota One Call. The Commission's role is to enforce the requirements of the state's damage prevention laws by investigating complaints submitted to the PSC and to take action when violations are identified. The Commission can levy a fine up to \$25,000 per violation depending on the severity.

Each year North Dakota's underground utility infrastructure is jeopardized by unintentional damage from those who fail to call 8-1-1 before digging. During the 2021-2023 biennium, the Commission received and processed 29 third-party complaints alleging violations of North Dakota Century Code Chapter 49-23, the One-Call Excavation Notice System. Commission Advocacy Staff filed six formal complaints during this biennium. The Commission completed 57 complaint proceedings resulting in penalties totaling \$70,900. Of that amount, \$16,500 in penalties were against underground facility operators and \$54,400 in penalties were against excavators. The Commission believes these cases bring a greater industry awareness of the One-Call law.

Additionally, the Commission has participated in the U.S. Department of Transportation's Pipeline and Hazardous Materials Administration One-Call Grant since 2015. As a result of the annual grant, approximately 5 to 11 roadside advertising billboards are placed each year in major markets throughout North Dakota and for the first time, a 30-day digital advertising campaign was launched in conjunction with safe digging month (April) to promote "Call Before You Dig" to reduce third-party damage to underground facilities in the state. The digital campaign was able to produce measurable results and quantify the number of individuals that went to the North Dakota 8-1-1 website as a result of the public service advertisement they viewed, something that billboard advertisements just cannot provide. Staff is looking to increase the use of digital media in future campaigns. The Commission also participated in 8-1-1 Day at the North Dakota State Fair in Minot, where thousands of fair attendees meet with companies and regulators who are all promoting 8-1-1 and damage prevention.

Reclamation Division

Statutory and Constitutional Responsibilities

The Reclamation Division administers and enforces North Dakota's laws and rules governing surface coal mining and reclamation operations under North Dakota Century Code Chapter 38-14.1.

North Dakota's reclamation law is based on the federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) and the federal Office of Surface Mining Reclamation and Enforcement (OSMRE) provided 64 percent of the funding needed to run this regulatory program during the 2021 - 2023 biennium.



Mining and reclamation activities at the Freedom Mine, northwest of Beulah

Prior to issuing a mining permit, the Commission also ensures certain requirements of the Surface Owner's Protection Act, North Dakota Century Code Chapter 38-18, are met.

Key 2023 Legislation

There were no legislative bills passed during the 2023 session that directly affected the coal regulatory program. However, as described below, HB 1061 and SB 2317 were passed during the 2021 legislative session and two formal State Program Amendments were submitted to OSMRE in 2022 in response to these two bills under the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87) and 30 CFR Chapter VII.

- HB 1061 was introduced by the Commission and proposed two changes to the surface mining law. The amendment changes the time in which mining companies must submit permit renewal applications from 120 days to 180 days, and changes the timing for scheduling an informal conference from 30 days to 45 days. State Program Amendment XLII (42), which updates the coal regulatory program in response to HB 1061, was submitted to OSMRE on December 9, 2022, and is still under review by OSMRE.
- SB 2317 was introduced by the mining industry, and it proposed to authorize the use of real property collateral bonds as an acceptable form of collateral bonds. State Program Amendment XLIII (43), which updates the coal regulatory program in response to SB 2317, was submitted to OSMRE on December 6, 2022, and is still under review by OSMRE.

Major Accomplishments and Activities

Significant coal mine permitting activities during the 2021-23 biennium:

- 1) Thirteen insignificant permit revisions were received, and 21 insignificant permit revisions were issued.
- 2) Four significant permit revisions were received, and 14 significant permit revisions were issued.

Significant revisions are subject to the same public notice and comment period as new permit applications.

- 3) Three permit renewal applications were received, and four permit renewal applications were issued.
- 4) One bond release application was received, and four bond release applications were issued. Final bond release was approved on 1,235 acres. The Commission's jurisdiction terminates upon final bond release.
- 5) As of June 30, 2023, there were 135,647 acres under permit for surface coal mining and reclamation operations.
- 6) At the end of the biennium, permits were held by eight companies for eight mines. Of the eight mines, six were active and the other two were inactive and in reclamation status. The active lignite mining companies are: BNI Coal, Ltd. which owns and operates the Center Mine; The Coteau Properties Company which owns and operates the Freedom Mine; The Coyote Creek Mining Company, LLC, which owns and operates the Coyote Creek Mine; and The Falkirk Mining Company which owns and operates the Falkirk Mine. Dakota Westmoreland Beulah Mining, LLC operates the Beulah Mine and was inactive and in reclamation. Reclaimed acreage is also still under permit at the former Gascoyne Mine that was owned and operated by the Knife River Corporation. Two small mines that produce leonardite, an oxidized lignite, are also active. These are American Colloid Company's Page\Perkins\Tompkins Mine and the Stony Creek Mine owned by Leonardite Products, LLC.

Routine mine inspections are conducted and reported based on inspectable units. Each permit is considered an inspectable unit, and a single mine may have more than one mining permit. The following inspections were conducted during the 2021-23 biennium:

- 1) 829 inspections were conducted on the inspectable units that currently total 22.
- 2) 182 complete inspections were conducted (complete inspections cover all aspects of the mining and reclamation operations being conducted).
- 3) 647 partial inspections were conducted.

Three Notice of Violations (NOV) were issued to mining companies during the 2021-23 biennium and \$11,750 in civil penalties were assessed and collected for the violations.

During the 2021-23 biennium, the updated Revegetation Success Guidelines document was adopted by the Commission, Falkirk Mine's performance bond was replaced after the sale of Coal Creek Station from Great River Energy to Rainbow Energy, and the Reclamation Division lost over 100 years of experience due to retirements.

Additional information was added to the Reclamation Division's Geographic Information System (GIS) for storing and managing much of the data received from mining companies. GIS has become an important tool for tracking mining and reclamation activities and for the technical analysis of permit applications. Information

entered into the GIS includes recent high altitude air photos, permit boundaries, roads, stockpile locations, ponds and related features. Information from annual mine maps and bond releases are also entered. GIS data is then loaded onto tablet computers and iPads equipped with Global Positioning System (GPS) receivers that inspectors use when carrying out mine inspections. This allows for accurate tracking and recording of activities during mine inspections.



Dragline at the Freedom Mine northwest of Beulah

The Commission continued to receive excellent evaluation reports from OSMRE's Casper Field Office during the biennium on its implementation of North Dakota's coal regulatory program.

Staff attended numerous OSMRE sponsored training classes and technical conferences during the biennium.

Major Challenges

Permitting Federal Coal: Leasing and permitting of federal coal have become much more time consuming and uncertain in recent years. Approximately 13 percent of the permitted acreage in North Dakota contains federal coal. The mining companies must first obtain the federal coal lease from the Bureau of Land Management and once they obtain the coal lease, federal mine plan approval must be obtained from OSMRE prior to mining the federal coal. Both the leasing and mine plan approval actions are subject to National Environmental Policy Act (NEPA) analysis and the processes for the two actions are somewhat duplicative of each other and the Commission's permitting actions. To streamline the federal coal leasing and mine plan approval process, the Department of Interior implemented a pilot project for a federal coal lease application at the Coyote Creek Mine in the fall of 2018. The project consists of completing one NEPA analysis for both federal actions with the goal of obtaining the lease and mine plan approval within six months. The Commission served as a cooperating agency for the required NEPA analysis and prepared the draft mine plan decision documents. Mine plan approval is still pending.

During the 2021-23 biennium there were a number of federal leases issued. Staff reviewed a number of permit revisions dealing with the mining of federal coal during the 2021-23 biennium and prepared associated draft mine plan decision documents that are associated with those revisions. On January 20, 2023, the Bureau of Land Management (BLM) issued a notice in the federal register that the Resource Management Plan (RMP) for North Dakota was updated, which started a 90-day public comment period. Staff spent countless hours reviewing the RMP, meeting with other state agencies, and drafting comments on behalf of North Dakota.

Mining Company Bankruptcy and Permit Transfers: During the 2017-19 biennium, Westmoreland Coal filed for Chapter 11 bankruptcy. Dakota Westmoreland Corporation, a subsidiary of Westmoreland Coal, operates the Beulah Mine. Commission staff monitored the bankruptcy filings and proceedings to ensure that the state's interests were protected. This included making sure that adequate reclamation bonds were in place in the event of bond forfeiture. Although this was the first mining company bankruptcy in North Dakota, there have been numerous other mining company bankruptcies in other states in recent years. Following the bankruptcy,

the permittee submitted applications for permit transfers to transfer the permits from the pre-bankruptcy company (Dakota Westmoreland Corporation) to the post-bankruptcy company (Westmoreland Beulah Mining LLC). The permit transfers for the two permits at the Beulah Mine were approved during the 2021-23 biennium. On December 29, 2022, the final decree closing the bankruptcy case was signed.

Federal Funding: An ongoing concern is the amount of federal funding that the Commission receives to cover the federal share of the coal regulatory program costs. OSMRE currently covers 64 percent of the program costs, and the remaining 36 percent is paid with state general funds. However, as part of OSMRE budget requests for the past several years, the administration has proposed reducing the amount of federal dollars nationwide for states to administer their coal regulatory programs. While the proposed reductions have not been enacted by Congress, the adequacy of future federal funding continues to be a major concern. In addition, the amount of federal grant monies allocated to the program has remained nearly the same for several years. It is imperative that at some point the federal grant amount will have to increase to account for inflation and other increased program costs.

Trends

The Reclamation Division plans to continue to add more data to the GIS system to manage data and carry out its permit review and inspections more efficiently and effectively. In addition, nearly all of the active permits (those with active mining operations taking place) have converted their permits to electronic permits. Only a few paper permits remain.

Three retirements took place during biennium and one Reclamation staff member accepted a job in the Abandoned Mine Lands (AML) Division. During the biennium, the legislature approved an additional environmental scientist position in the Reclamation Division. At the end of the biennium, one environmental scientist position was vacant in the Reclamation Division.

Final bond release activity is expected to increase as additional reclaimed lands become eligible for release, especially at the four large active mines.

Major Cases

A landowner requested a formal hearing during the 2021-23 biennium regarding surface water erosion, sediment pond discharges, changes in groundwater elevation, and access issues that resulted in flooding and loss of agricultural income to his property, which is adjacent to a surface coal mining permit, but not included within a surface coal mining permit. The formal hearing was held, and the Commission dismissed the formal complaint with prejudice. This same complaint was submitted to OSMRE as a Citizen Complaint, but OSMRE could not issue a determination until the Commission closed the case. Once the Commission closed the case, OSMRE conducted its review. On December 21, 2022, OSMRE issued a response stating that there is no reason to believe there is a violation of the approved North Dakota program, the Surface Mine Control and Reclamation Act (SMCRA), or the implementing regulations.

A landowner filed a request for an informal conference on a significant permit revision during the 2021-23 biennium. The informal conference was held, and an order was issued that required the permit revision to be updated based on the informal conference. The permit revision was still under review at the end of the biennium.

Abandoned Mine Lands (AML) Division

Statutory and Constitutional Responsibilities

The Abandoned Mine Lands (AML) Division is responsible for administering North Dakota's abandoned mine land reclamation law, North Dakota Century Code Chapter 38-14.2, for eliminating hazards associated with abandoned mines. This program covers lands that were mined prior to the federal Surface Mining Control and Reclamation Act (P.L. 95-87) that was enacted in 1977.

The Abandoned Mine Lands Division seeks to enhance the public's safety by using available funds efficiently and effectively to prioritize and reclaim abandoned coal mine sites that pose health, safety, and general welfare hazards. Projects are selected based on public input and an analytical review of all known abandoned mine sites. Projects are completed using the most cost-effective manner possible to ensure maximum returns for the monies expended.

The program receives all its funding from the federal Office of Surface Mining Reclamation and Enforcement (OSMRE) within the Department of the Interior.

Key 2023 Legislation

No legislation was passed during the 2023 legislative session that affected the Abandoned Mine Lands Program.

Major Accomplishments and Activities

The Commission received two grants from the federal Office of Surface Mining Reclamation and Enforcement (OSMRE) during the 2021-23 biennium for North Dakota's AML program. The Commission received grants for \$2,829,000 in 2022 and 2023. As a minimally funded state, North Dakota should have received grants of \$3,000,000 for each of these years. The state grant amounts were reduced by sequestration of federal funds. In November 2021, Congress passed legislation that amended the Surface Mining Control and Reclamation Act of 1977 to re-authorize the AML Program and extended the collection of the federal reclamation fee that is used to fund it until September 30, 2034. The AML fee on North Dakota lignite mined changed from eight cents per ton to 6.4 cents per ton. The Commission is scheduled to receive minimum funding for state AML Programs, or \$3 million per year, for the remaining life of the program (less the amount of future sequestration).

The Infrastructure Investment and Jobs Act, also known as The Bipartisan Infrastructure Law (BIL) was enacted on November 15, 2021. In addition to the extension of abandoned mine land (AML) fee collections and mandatory AML Grant distributions, \$11.293 billion in new funding was authorized to be appropriated for deposit into the Abandoned Mine Reclamation Fund. OSMRE will distribute amounts made available in the appropriation to eligible states and tribes on an equal annual basis over a 15-year period in accordance with the provisions of the infrastructure law. The distribution announced on February 7, 2022, was the first of 15 annual installments under the BIL that will provide approximately \$10.87 billion (after BIL-directed reductions) for AML reclamation projects. The BIL grant funds are in addition to funds available under AML fee-based grants.

As directed by the BIL, the distribution amounts were based on the number of tons of coal historically produced in each state or from the applicable Tribal lands before August 3, 1977. OSMRE relied on the March 1980 Final Environmental Impact Statement (OSM-EIS-2) to ascertain these amounts and then calculated each State's or Tribe's percentage of total historic coal production. North Dakota was allocated an additional



Excavator Digs up Sinkhole that Formed Under Highway 12 Near Scranton

\$3,101,700 dollars for their fiscal year 2022 grant period. Up to 30% of the BIL grant funds can be set aside for specific projects, such as subsidence reclamation projects. The additional funds are being held in a set-aside account that will be available for use when the state no longer receives any AML funding from OSMRE.

During the 2021-23 biennium, major underground mine reclamation projects were conducted to inject cementitious grout into underground mine voids beneath public roads and near other infrastructure and residential sites near Beulah (Mercer County), and Garrison (McLean County) to stabilize the mine and prevent a collapse that could endanger people and damage property. Exploratory drilling projects were conducted near Beulah, Dickinson, Garrison, Noonan, Williston, and Velva to locate and characterize the condition of the underground mine workings. Major construction projects to backfill dangerous surface mine highwalls and eliminate spoil piles were conducted in Ward and Morton Counties.

Sinkhole filling projects were conducted during the 2021-23 biennium to fill approximately 223 hazardous sinkholes caused by underground mine collapse at numerous sites in western North Dakota.

An emergency project was conducted to fill hazardous sinkholes caused by an underground mine collapse along North Dakota Highway 36 near Wilton. In May 2023 a sinkhole was discovered after public complaints of a depression in County Highway 12 south of Scranton. The asphalt road was drilled during an investigation with AML staff, and it revealed a large sinkhole in the middle of the driving lane located south of Scranton. The sinkhole was excavated, compacted, and filled by a local contractor and the road was re-opened.

Two coal refuse fires were extinguished on abandoned mine lands. Both fires were abated by excavating the burning material and capping the area with soil prior to final reclamation. The first AML fire project was southwest of Velva and reclamation work was completed in the fall of 2021. The second refuse fire was located just northwest of New Leipzig on city-owned property adjacent to the landfill. This project was completed in November of 2022.

Progress was made on adding and improving available abandoned mine data to the AML Division's Geographic Information System (GIS). The public has access to this data through the North Dakota GIS Hub and the Commission's website.

The AML Division continued to receive excellent evaluation reports from OSMRE's Casper Field Office during the 2021-23 biennium.

Staff attended several OSMRE sponsored in-person and virtual training classes and technical

conferences during the biennium. One AML staff member also serves as a co-instructor for the AML drilling and grouting course that is included in the OSMRE suite of classes.

Major Challenges

While over \$33 million in reclamation is yet to be completed in North Dakota, the remaining sites are smaller in size than previous project sites. The current inventory does not include all the abandoned mines in North Dakota and recent increases in construction costs are not included in the \$33 million estimate.

As construction work is completed at the larger AML sites, staff will need to design and manage more reclamation sites each year to expend the available funds. Contractor prices for some AML reclamation work have increased in recent years, primarily due to a demand for cement, fly ash, and increasing labor costs.

The additional Bipartisan Infrastructure Law (BIL) grant increased the AML Division's annual funds from \$3 million to \$6 million per year. The increased budget and the overall smaller project sizes make spending the grant money in an effective and efficient manner a challenge. Staff will need to find efficiencies such as having multi-year, multi-site projects and using the latest technology to improve productivity.

Trends

The AML Division uses the latest technology to investigate sites and plan AML reclamation projects. In May of 2022, AML staff had a company demonstrate a void detection scanner and software that would provide more accurate volumes of underground mine voids and enable staff to better estimate the amount of grout needed for grouting projects. In the fall of 2022, the AML Division rented the scanner and scanned voids found during the 2022 drilling project. Staff used the scanned volumes to estimate quantities of grout needed for the 2023 grouting project, and the voids were pumped with grout in June 2023. The actual volumes pumped were generally within 10 percent of the amount estimated. The scanner worked effectively with large open voids, but did not work as well in rubble filled voids. The AML Division plans to look at this and other technologies to better estimate underground mine void sizes.

A drone (UAV) would allow staff to safely investigate dangerous abandoned mine sites. A Presidential Executive Order had banned the use of federal funds to purchase or operate Chinese and foreign entity drones. The ban was lifted in 2023 and the AML Division is looking to purchase a UAV that complies with the Department of Interior's Blue UAS requirements.

Major Cases

No significant cases involving the AML Division occurred during the 2021-2023 biennium.



Pumping Grout Near Highway 15 in Garrison

Former Commissioners

1. Bartlett, David.....	1889-1890
2. Underhill, T.S.	1889-1890
3. Walsh, Geo. H	1891-1892
4. Sletten, Andrew	1891-1892
5. Stevens, Ben.....	1893-1894
6. Cameron, Peter.....	1893-1894
7. Rasmussen, Nels P.....	1893-1894
8. Keyes, Geo. H.	1895-1898
9. Wamberg, John.....	1895-1896
10. Currie, John W.....	1895-1896
11. Gibson, J.R.	1897-1898
12. Erickson, Henry.....	1899-1900
13. Simons, John	1899-1900
14. Walton, L.L.....	1897-1900
15. Youngblood, J.....	1901-1902
16. Shea, J.F.....	1901-1904
17. Schatz, A.	1903-1904
18. Lord, O.J.....	1901-1904
19. Christianson, John	1905-1906
20. Diesem, C.S.....	1905-1908
21. Stafne, Erick.....	1905-1908
22. Westby, Simon.....	1907-1908
23. Mann, William H.....	1909-1916
24. Anderson, O.P.N.	1909-1916
25. Stutsman, W.H.....	1909-1916 & 1921-1922
26. Johnson, N.P.	1917-1918
27. Bleick, Chas	1917-1918
28. Aandahl, S.J.....	1917-1920
29. Dupuis, C.F.....	1919-1920
30. Milhollan, Frank.....	1919-1932
31. Harding, Fay.....	1923-1934
32. McDonnell, G.W.	1921-1936 & 1940-1950
33. McDonald, S.S.	1937-1948
34. Larkin, Ben G.....	1928-1949
35. Cart, Elmer W.....	1935-1940 & 1949-1954
36. Brant, E.H.....	1951-1954
37. Anderson, Anson J.....	1955-1960
38. Nelson, Ernest D.	1949-1961
39. Vaaler, Martin.....	1954-1962
40. Thompson, Richard J.....	1961-1966
41. Wolf, Ben J.	1963-1980
42. Elkin, Richard	1967-1983
43. Sandstrom, Dale	1983-1992
44. Hagen, Bruce E.	1961-2000
45. Reinbold, Leo M.	1981-2003
46. Wefald, Susan E.	1993-2008
47. Clark, Tony.....	2001-2012
48. Cramer, Kevin	2003-2012
49. Fetch, Bonny (<i>temporary appointment</i>)	2012
50. Kalk, Brian P.	2009-2017
51. Kroshus, Brian.....	2017-2022

