

N O R T H  
**Dakota**  
Be Legendary.™

Public Service Commission



**Julie Fedorchak**  
Chair



**Randy Christmann**  
Commissioner



**Brian Kroshus**  
Commissioner

**Period of July 1, 2019  
through June 30, 2021**

# **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; pipeline safety; 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 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](http://www.psc.nd.gov).



*1936 Public Service Commissioners*

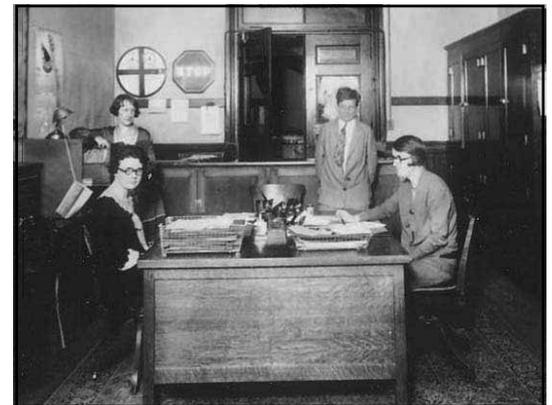
The Commission is comprised of three commissioners who are elected on a statewide basis to staggered six-year terms. The Commission had 43 authorized full-time employees throughout the biennium.

## 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 Julie Fedorchak



Julie Fedorchak has served on the Commission since 2012. She heads the business operations; pipeline, electric transmission and energy conversion siting; railroad; and consumer affairs portfolios and is the agency's lead for issues relating to the Midcontinent Independent System Operator (MISO).

Whether seeking a solution to mitigate red lights on wind farms that pollute North Dakota's night sky, or pushing for innovative ways to connect rural areas to natural gas service, Julie is constantly seeking to make government more responsive to North Dakota citizens. She led efforts to enhance the Commission's pipeline reclamation program; she developed and received legislative approval for a state rail safety program; and she is a tireless advocate for reliable, affordable utility services. She also reinstated the Commission's consumer affairs portfolio to provide greater public awareness, participation and transparency in the work of the PSC.

Julie is president of the Organization of MISO States, vice chair of the National Association of Regulatory Utility Commissioners (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.

Julie was appointed to the Public Service Commission in December 2012 by Gov. Jack Dalrymple. In 2016 she was elected to a full six-year term. Julie is married to Mike Fedorchak of Minot. They have three children and live in Bismarck where they are involved in a number of activities and organizations.

# 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 113-year-old third generation cattle ranch west of Hazen, North Dakota. His wife, Bethanie, is a mortgage underwriter with American Bank Center. 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 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.

His portfolios include:

- Coal mining, reclamation, and abandoned mine lands
- Auctioneer and auction clerk licensing
- Telecommunications
- Wind and solar reclamation
- Southwest Power Pool (SPP)

## Commissioner Brian Kroshus



Brian was appointed to the Public Service Commission in March 2017 by Governor Doug Burgum and was elected by the voters in 2018 and re-elected in 2020. Brian has an extensive background in business, agriculture and energy.

Brian's portfolio at the Public Service Commission includes electric and gas economic regulation; pipeline safety and damage prevention; and weights and measures.

Born in Fargo and a graduate of North Dakota State University, Brian deeply values his North Dakota heritage. His agricultural upbringing, from time in 4-H and FFA to present day as an owner of a cattle and grain operation in western North Dakota, allows him to fully appreciate and effectively address landowner concerns. He recognizes the importance of creating a balance between responsible infrastructure development, economic growth and environmental stewardship in order to provide safe, reliable and affordable energy to North Dakota citizens and businesses.

Brian spent 30 years in private-sector business leadership and executive management including 20 years (1997-2017) with Lee Enterprises prior to his appointment to the Public Service Commission. During his time with Lee Enterprises, he was responsible for supervising business units throughout the U.S. as well as spending 17 years as publisher of Farm and Ranch Guide, 13 years as group publisher of Lee Agri-Media, the nation's largest network of agriculture publications, and 10 years as publisher of The Bismarck Tribune. He has been recognized nationally on numerous occasions for operational excellence.

Brian served as president of the Bismarck State College Foundation in 2012-2013 and co-chaired the United Way Missouri Slope Area Wide Annual Gift Giving Campaign in 2009. He has served as a board member and trustee for numerous organizations including United Way, Sanford Health Foundation, Bismarck-Mandan Chamber, Bismarck-Mandan Development Association, Lewis and Clark Fort Mandan Foundation, Capitol Gallery and Bismarck State College Foundation.



**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 930 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 18 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
- 22% of all formal cases were closed in less than 30 days
- 24% 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:

<b>DIVISION</b>	<b>CASES</b>
<b>Compliance</b>	
Auctioneer	46
Gas Safety	11
Railroad	12
Weights & Measures	164
<b>Public Utilities</b>	
Electric	197
Gas	42
Pipeline	95
Telecomm	309
Miscellaneous	2
<b>Reclamation</b>	40
<b>Abandoned Mine Lands</b>	10
<b>Miscellaneous</b>	2
<b>TOTAL</b>	<b>930</b>

## 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 Statement

The mission statement of the Public Service Commission is to fulfill its statutory mandates by protecting the public interest and regulating utilities, mining companies, weights and measures devices, railroad safety and licensees in a fair, efficient, responsive, and cooperative manner. Regulatory initiatives assure that:

- Utility customers receive reliable and safe service at reasonable and just rates.
- Mined coal lands are reclaimed to provide a safe and productive environment now and in the future.
- License and permit holders and operators of commercial weighing and measuring devices operate in a safe and fair manner.
- Railroad safety is enhanced and maintained through inspection and compliance programs.

## 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.

The Commission recorded 27,677 informal complaints, inquiries and public input during the biennium. A large majority of the contacts included public input for siting cases submitted through organized groups. The majority of informal complaints involved billing disputes, electric disconnects, and quality of service complaints.

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 Fedorchak held the Consumer Affairs portfolio

during this biennium and works 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 2019 and 2020 public contact report was released showing data and trends relating to complaints and input received for each year. This report is released annually. In addition, an internal monthly report was started to keep Commissioners and Directors informed of public contacts being received each month.
- A new public comment recording system was developed and implemented which is used by staff to record any kind of contact from the public. The new system has greater flexibility for reporting data and developing reports, including the monthly and year-end reports.
- News releases continue to be sent out before each public 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](http://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 1,246 followers.
- Consumer Affairs worked closely with the Commission during COVID restrictions to help educate about ways to participate in public meetings via telephone, webcast and written comments. The Commission was able to continue with public meetings and hearings using technology. Anyone who wanted to testify during the hearings could do so via telephone or by submitting written comments and company witnesses could testify remotely. All hearings were broadcast and the Commission has continued to expand their broadcast capability when possible for remote hearings.

## 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.

### 2019-2021 Financials

Revenue	General	Federal	Special
Licensing	\$36,180		
Federal Government		\$8,036,969	
Fines	\$152,050		
Interest on Investments			\$39,986
Coal Mining Fees	\$27,110		
Filing Fees*	\$8,200		
Scale Inspection Fees	\$73,579		\$14,468
Utility Valuation Reimb.			\$4,535
Misc. Revenue	\$60,493		
Trsf. From Hwy Tax. Dist. Fund			\$589,018
Trsf. From General Fund			\$77,358
<b>Total</b>	<b>\$357,613</b>	<b>\$8,036,969</b>	<b>\$725,364</b>

Note: Information is based on the June 2021 4911AA PeopleSoft Reports.

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

## 2019-2021 Budget

Expenses by Line Item	Appropriated	Expended	Unexpended
Salaries and Wages	\$9,495,560	\$8,653,658	\$841,902
Operating Expenses	\$1,763,826	\$1,281,817	\$482,009
Capital Assets	\$25,000	\$24,458	\$542
Grants	\$20,000	\$15,900	\$4,100
AML Construction	\$6,000,000	\$3,619,693	\$2,380,307
Rail Fund	\$900,000	\$0	\$900,000
Litigation Fund	\$430,000	\$7,306	\$422,694
Rail Safety Program	\$589,018	\$503,314	\$85,704
Grain Insolvency Litigation	\$100,000	\$77,358	\$22,642
<b>Total</b>	<b>\$19,323,404</b>	<b>\$14,183,504</b>	<b>\$5,139,900</b>
Funding Source	Appropriated	Expended	Unexpended
General	\$6,714,928	\$6,184,746	\$530,182
Federal	\$10,894,458	\$7,419,752	\$3,474,706
Special	\$1,714,018	\$579,006	\$1,135,012

Note: Information is based on the June 2021 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

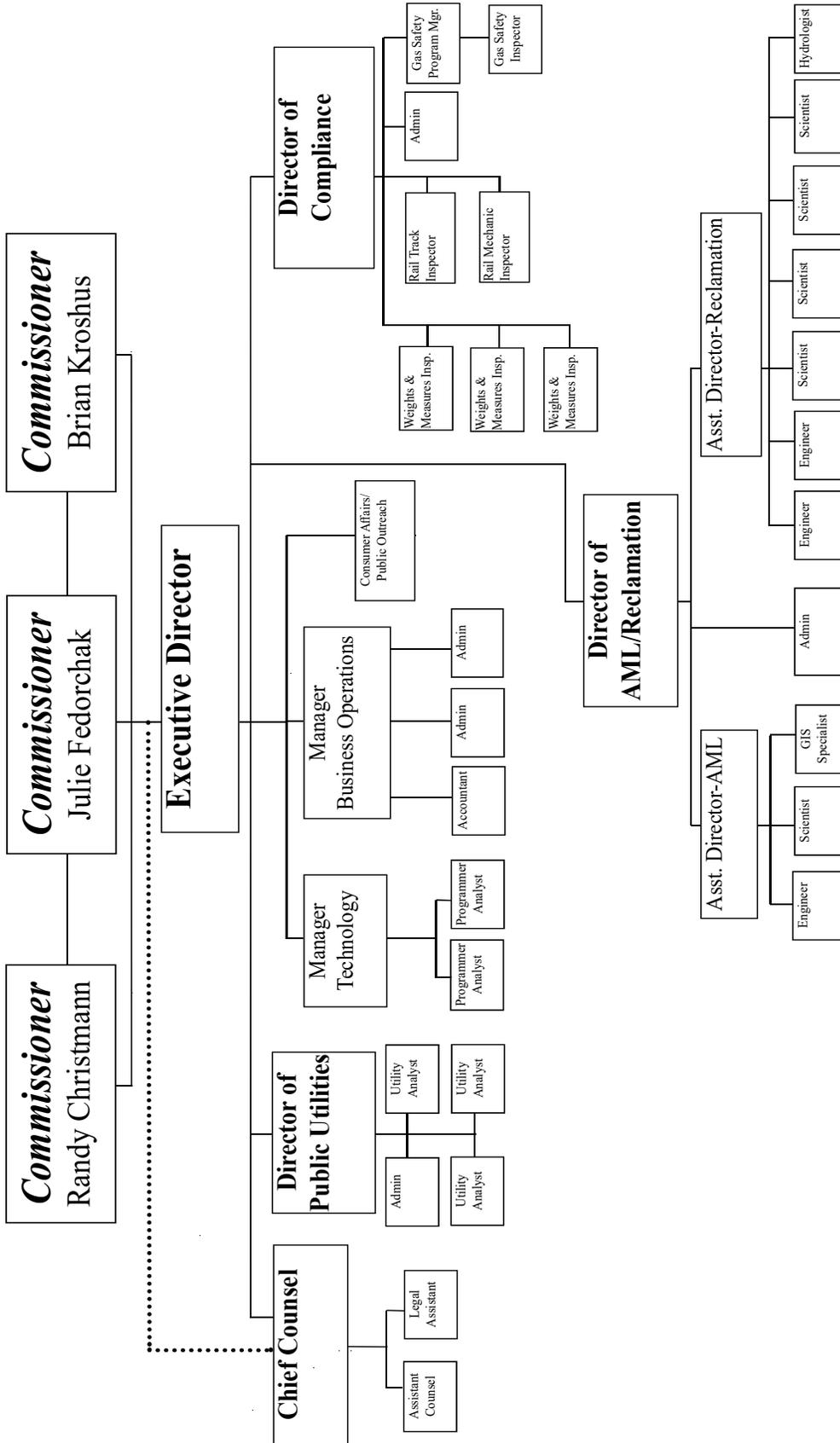
The mission of the Legal Division is to provide high quality legal representation, advice and counsel to the Commission and various divisions and to fulfill staff functions for divisions as situations warrant and time allows. Duties include rate case advocacy, appellate representation of the Commission, 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

2021



# 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.
- Enforces violations of the state’s One-Call Excavation Notice System statute.

## Mission Statement and Goals

The mission statement of the division is to provide utility customers with reliable and safe service at reasonable and just rates.

### Goals include:

- Establish and maintain a fair and reasonable regulatory environment in which utility services are provided.
- Provide information to consumers and the public to inform them of their rights and responsibilities.
- Protect North Dakota’s environment and safety by maintaining effective oversight of the construction of energy conversion and transmission facilities.

## 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
8/26/2020	Montana-Dakota Utilities Co.	Natural Gas Rate Increase	\$7.7	\$6.9	5/5/2021

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
4/26/2021	Northern States Power Company	Solar Facility – Sherburne County, MN	Add 400MW electric solar generation	Pending
3/2/2021	Northern States Power Company	Northern Wind Facility	Add 120MW electric wind generation	Pending
2/15/2021	Otter Tail Power Company	Advanced Metering Infrastructure	Add advanced metering system to facilitate demand side management	9/22/2021
10/30/2020	Northern States Power Company	Heartland Divide Wind II	Add 200MW Purchase Power Agreement	Pending
10/13/2020	Northern States Power Company	Four Repower Wind Projects	Repowering of 4 existing, company-owned wind facilities – 650 MW	Pending
8/30/2019	Northern States Power Company	Mower Co. Wind Facility	Add 98.9MW electric wind generation	8/26/2020
8/28/2019	Montana-Dakota Utilities Co.	Heskett 4	Add 88MW simple cycle combustion turbine electric generation	8/5/2020

## 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:

- Dakota Natural Gas, LLC's June 1, 2020, application to construct and operate facilities to provide natural gas service to parts of Traill County. (Case #PU-20-244)
- Montana-Dakota Utilities Co.'s August 28, 2019, application regarding an 88MW simple cycle combustion turbine to provide electricity to customers on its integrated system. (Case #PU-19-307)
- Otter Tail Power Company's August 20, 2019, application authorizing the acquisition of certain equipment owned by Central Power Electric Cooperative at the Bottineau, Wahpeton and Rugby substations and a four-mile segment of a 69 kV Rolette transmission line. (Case #PU-19-298)

## 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 2019-2021 biennium, the Commission received for approval 22 interconnection agreements and 39 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 581 telecommunications companies are self-registered.

## Damage Prevention Program

During the 2019-21 biennium, 50 third-party complaints were filed with the Commission alleging violations of North Dakota Century Code Chapter 49-23, the One-Call Excavation Notice System. Commission Advocacy Staff filed 10 formal complaints during this biennium. The Commission completed 51 complaint proceedings resulting in penalties totaling \$57,400. Of that amount, \$7,500 in penalties were against underground facility operators and \$49,900 in penalties were against excavators. The Commission believes these cases bring a greater industry awareness of the One-Call law.

The Commission has participated in the U.S. Department of Transportation's One-Call Grant every year since 2015. As a result of the annual grant, approximately 12 to 18 roadside advertising billboards are placed each year in major markets throughout North Dakota to promote "Call Before You Dig" to reduce third-party damage to underground facilities in the state. The Commission also participates in 811 Day held at the State Fair in Minot.

## 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 11 pipelines, 2 gas processing plants, 2 wind farms, and 3 electric transmission lines. The Commission received 1 electric generation facility, 4 electric transmission line and 3 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 3 gas or oil processing plants. The Commission received formal requests for jurisdictional determination from Dakota Natural Gas LLC, Bayou Midstream LLC and Northern States Power Company.

<b>Energy Conversion and Transmission Facility Siting Activities During the Biennium</b>					
<b>Case No.</b>	<b>Applicant</b>	<b>Description</b>	<b>Date of Application</b>	<b>Date of Order</b>	<b>Estimated Investment</b>
PU-19-204	Dakota Access, LLC	6,000 HP pump station	6/20/2019	2/19/2020	\$40,000,000
PU-19-284	Ashtabula Wind, LLC	Ashtabula Wind Energy Center Repower (Siting Exclusion Certification)	7/15/2019	12/3/2019	Unknown
PU-19-283	ONEOK Rockies Midstream, L.L.C.	Bear Creek Gas Plant Expansion (Siting Exclusion Certification)	7/17/2019	8/21/2019	Unknown
PU-19-294	Denbury Green Pipeline – North Dakota, LLC	12-inch Cedar Hills Pipeline	8/8/2019	4/1/2020	\$9,200,000
PU-19-302	Basin Electric Power Cooperative	230 kV Leland Olds Station to Logan (Siting Exclusion Certification)	8/26/2019	N/A	Unknown
PU-19-308	Hess Tioga Gas Plant LLC	Tioga Gas Plant Expansion (Siting Exclusion Certification)	8/29/2019	N/A	Unknown
PU-19-320	Hess North Dakota Pipelines LLC	North Hofflund Valve Site Tie In (Siting Exclusion Certification)	9/5/2019	N/A	Unknown
PU-19-358	ONEOK Rockies Midstream, L.L.C.	Demicks Lake Gas Processing Plant (Siting Exclusion Certification)	11/4/2019	N/A	Unknown
PU-19-368	ONEOK Bakken Pipeline, L.L.C.	16-inch NGL Pipeline	11/25/2019	4/1/2020	\$100,000,000

Case No.	Applicant	Description	Date of Application	Date of Order	Estimated Investment
PU-19-369	Whiting Oil and Gas Corporation	Robinson Lake Oil Conditioning Plant	11/25/2019	4/29/2020	\$7,200,000
PU-19-376	Northern Divide Wind, LLC	200 MW Wind Energy Center	12/5/2019	6/10/2020	\$300,000,000
PU-19-377	Northern Divide Wind, LLC	345 kV Transmission Line	12/5/2019	6/10/2020	\$30,000,000
PU-20-18	ONEOK Bakken Pipeline, L.L.C.	Pump Station Additions	1/10/2020	2/3/2021	\$20,000,000
PU-20-22	Liberty Midstream Solutions, LLC	8-inch Residue Gas Pipeline	1/17/2020	5/13/2020	\$4,600,000
PU-20-82	OE2 North LLC	B. Sanderson Gas Processing Plant	2/20/2020	5/13/2020	\$150,000,000
PU-20-85	Belle Fourche Pipeline Company	10-inch Crude Oil Pipeline (Siting Exclusion Certification)	2/21/2020	N/A	Unknown
PU-20-86	Montana-Dakota Utilities Co.	88 MW Simple Cycle Combustion Turbine (Siting Exclusion Certification)	2/24/2020	N/A	Unknown
PU-20-161	Andeavor Field Services, LLC	Skunk Hill Station to Belfield Oil Terminal Pipeline	3/30/2020	6/10/2020	Unknown
PU-20-247	OE2 North LLC	8" NGL and 20" Residue Gas Pipelines	6/3/2020	8/26/2020	\$6,000,000

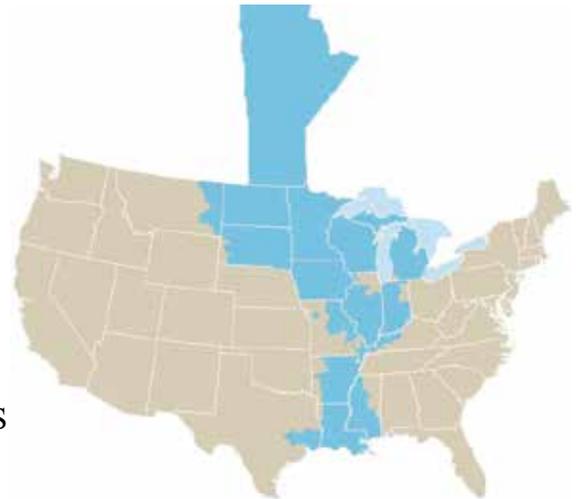
Case No.	Applicant	Description	Date of Application	Date of Order	Estimated Investment
PU-20-342	Montana-Dakota Utilities Co.	Mandan to Ellendale Transmission System Upgrade (Siting Exclusion Certification)	7/16/2020	Pending	Unknown
PU-20-360	ONEOK Rockies Midstream, L.L.C.	Stateline to Riverview NGL Pipeline (Siting Exclusion Certification)	8/4/2020	N/A	Unknown
PU-20-381	NuStar Pipeline Operating Partnership L.P.	10" North System Pipeline Relocation	8/28/2020	1/6/2021	\$4,100,000
PU-20-408	Great River Energy	230 kV Transmission Line (Siting Exclusion Certification)	9/28/2020	N/A	Unknown
PU-20-430	Bridger Pipeline LLC	8-inch Crude Oil Pipeline	10/21/2020	5/19/2021	\$21,000,000
PU-20-445	ONEOK Rockies Midstream, L.L.C.	Cherry Creek Pipeline (Siting Exclusion Certification)	11/11/2020	N/A	Unknown
PU-21-48	Bridger Pipeline LLC	16-inch Crude Oil Pipeline	1/27/2021	Pending	\$122,000,000
PU-21-49	Basin Electric Power Cooperative	230 kV Transmission Line	1/27/2021	6/23/2021	\$57,400,000
PU-21-121	Bowman Wind, LLC	208.7 MW Bowman Wind Project	3/30/2021	Pending	\$420,000,000
PU-21-131	Ashtabula Wind II, LLC	Ashtabula II Energy Center (Siting Exclusion Certification)	4/1/2021	N/A	Unknown

Case No.	Applicant	Description	Date of Application	Date of Order	Estimated Investment
PU-21-130	Ashtabula Wind I, LLC	Ashtabula I Wind Energy Center (Siting Exclusion Certification)	4/1/2021	N/A	Unknown
PU-21-139	Basin Electric Power Cooperative	230 kV Transmission Line (Siting Exclusion Certification)	4/14/2021	N/A	Unknown
PU-21-150	Dakota Gasification Company	Carbon Dioxide Gas Pipeline	4/23/2021	7/28/2021	\$25,000,000
PU-21-151	Montana-Dakota Utilities Co.	230 kV Transmission Line	4/26/2021	Pending	\$1,325,000
PU-21-353	Hiland Crude, LLC	2.9-Mile Epping Delivery Crude Oil Pipeline	6/30/2021	Pending	\$5,400,000

## 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.



*Midcontinent ISO Footprint*

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.

The Commission advanced several policy initiatives during the biennium. The Commission held a Technical Workshop with stakeholders and MISO after the February 2021 rolling blackout event to advance reliability initiatives. The Commission also worked with its regulated utilities on enhanced transmission line ratings to better utilize the existing infrastructure. The Commission weighed in with MISO on policy matters relating to cost allocation and the planning for regional transmission buildouts, resource accreditation, and the effect such planning and changes have on the utility fleet that the Commission regulates. In collaboration with OMS, the Commission led the development and implementation of policy issues to protect the public interest, enhance transparency and competitive regional markets, and ensure that costs to ratepayers are reasonable.

### 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 11 state regulatory agencies having jurisdiction within the region served by the SPP and provides a means for these regulatory agencies to share resources.

## Major Challenges

### 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.

The Commission faced a new challenge during this biennium that threatened to force North Dakota into mandatory ten-digit dialing. Due to the FCC rolling out a new three-digit code (988) for use as a suicide prevention hotline, any area code that is utilizing a 988 central office code (prefix) would have to convert to ten-digit dialing to avoid anyone dialing a 988 number from being sent to the suicide prevention hotline. Once the Commission learned of this and the fact that there were 32 phone numbers utilized in North Dakota's 988 prefix, we immediately began working with the telecommunications providers to have the telephone numbers reassigned to new numbers. Once all numbers were reassigned and the code was returned, North Dakota was removed from the mandatory ten-digit dialing transition list.

### 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.

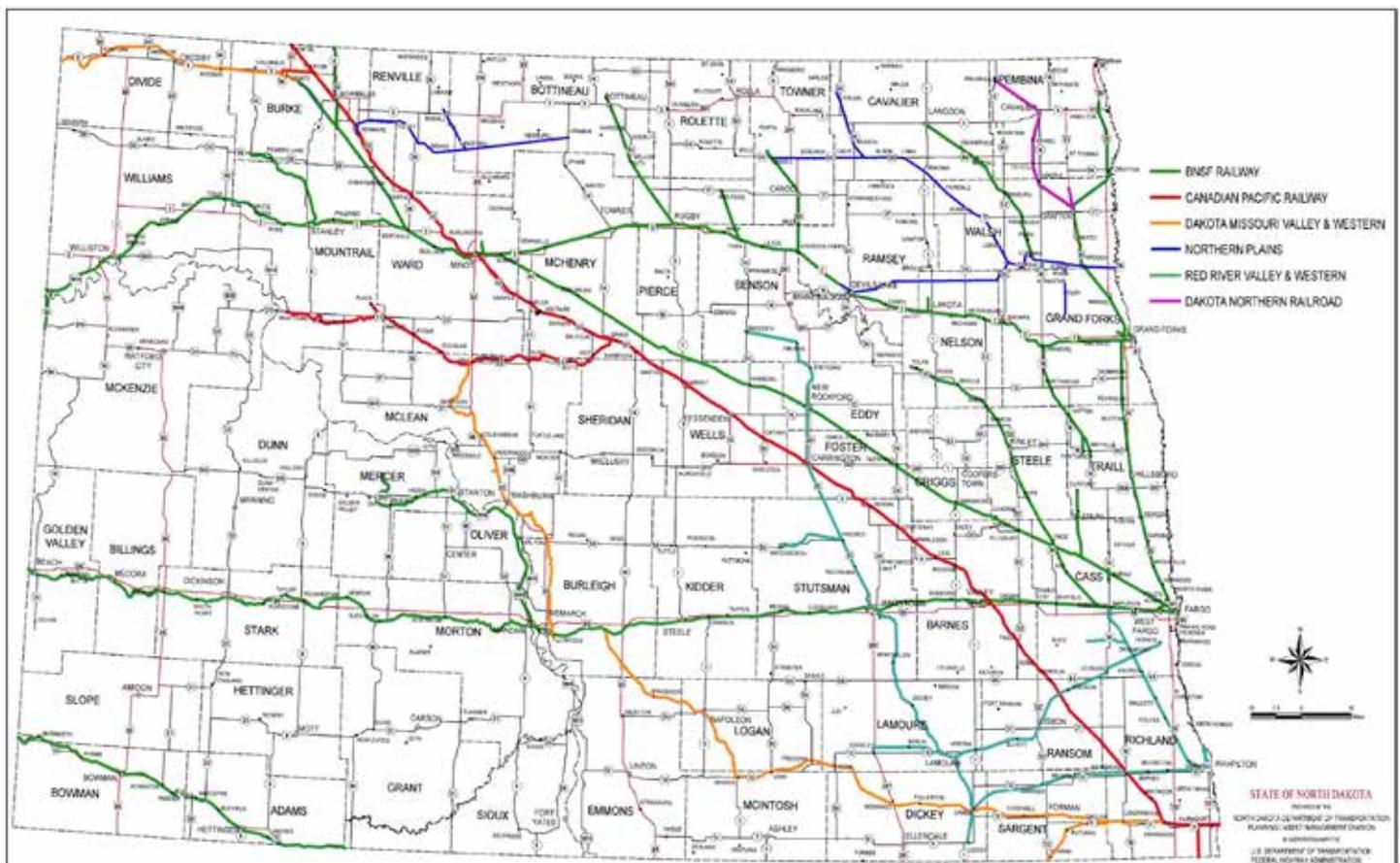
# Compliance Division

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 device owners, operators, registered service companies, and registered service persons;
- Intrastate gas transmission and distribution system operators; and
- Auctioneers and auction clerks.

The division employed 9 FTEs and 1 temporary employee 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 2.6 FTEs 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, during the biennium:

<b>Rail Complaints</b>	<b>2019-2021</b>
Abandonment	4
Blocked Crossings	14
Clearance	1
Rail Crossing	6
Rail Fences	5
Rail Information (Current/Historical)	4
Rail Safety	2
Right of Way	2
Sales and Leases	2
Train Noise Horns	4
Utility Crossing	1
Weed Control	1
<b>Total</b>	<b>46</b>

Additionally, the Commission takes a proactive approach to safety and stakeholder concerns. Once a year, the Commission hosts a railroad safety and stakeholder discussion. Railroad officials, along with stakeholders from around the state, are invited to 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 Commission's Railroad Safety pilot program has operated for three bienniums with great success.

The four-year pilot program was established by the North Dakota 64th Legislative Assembly. The 66th Legislative Assembly reappropriated funding to the program and subsequently extended it for an additional biennium by the North Dakota 67th Legislative Assembly.



*"First Responders Train During Derailment Simulation"*

The Rail Safety Program works in cooperation with the FRA. The program

employs 2.6 FTEs in two of the six FRA inspection disciplines: 1) track and 2) motor power and equipment (mechanical). The other four inspection disciplines are: operating practices, signal and train control, hazardous materials (HAZMAT), and grade crossing.

The Commission's track inspector resigned in November 2020. The vacancy left by this resignation was filled in April 2021, with a goal of inspector certification by 2022. Additionally, the Commission plans on having the mechanical inspector obtain a second inspection discipline certification in HAZMAT during the 2021-23 biennium.

The Commission's inspectors are state employees who are trained and certified by the FRA to inspect and enforce federal law and are authorized to inspect all equipment and track utilized by class 1 and short line railroads operating in North Dakota.

## Mission Statement and Goals

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. The intent is to directly reduce fatalities and injuries in addition to economic losses and environmental impacts. This is achieved through the following strategies:

- Expand safety inspections of track infrastructure to include main line, sidings and industrial spurs, railroad equipment and cars.

- Utilize enforcement actions to include education, notification, and penalties in regard to compliance with safety standards.
- Work with railroads and shippers to upgrade safety and community relations.
- Ensure crude oil/HAZMAT routes are inspected regularly, as well as components and equipment used to transport/carry commodities.
- Serve as a safety resource and provide guidance regarding federal and state laws for private industry terminals and switching yards.

## Inspections

State rail safety inspectors have jurisdiction within their respective disciplines throughout North Dakota. They conduct inspections on all 3,500+ miles of track, class 1 and short line locomotives and rolling stock. 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 FRA 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.

		2019-2021 Biennium
<b>Mechanical Inspector</b>	Inspection Days	242
	Units Inspected*	48,361
	Defects	1,912
	Violations	12

<b>Track Inspector</b>	Inspection Days	209
	Units Inspected**	4,109
	Defects	849
	Violations	3

\* 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.

When compared to the 2017-19 biennium, the number of inspection days decreased. This is due to three main issues:

- The program experienced personnel changeover. The previous track inspector resigned in November 2020 and a new track inspector was hired in April 2021. The inspector must complete the FRA certification training program before they can work independently. Expected training completion and subsequent certification is anticipated in early 2022.
- The program is investing in current employees to expand regulatory oversight. The mechanical inspector started FRA certification training in January 2021 to carry a second discipline in HAZMAT. Expected training completion and subsequent certification is anticipated in the Fall 2021. This training process is in-depth and thorough, thereby limiting the number of mechanical inspections the inspector can complete during the training process.
- Out of an abundance of caution, the Commission scaled back inspection activities due to the health emergency declared by the Governor due to COVID-19 in early 2020.

## Weights and Measures Program

The Commission ensures the 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. Additionally, the Commission maintains all working standards used to inspect the accurate operation of weighing and measuring devices.

As of June 30, 2021, there were 24,722 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 191 registered service persons employed by 52 registered service companies. In addition to testing devices, the Commission also has a quality assurance (QA) program that is currently being implemented with one of the three full-time state inspectors. The 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	14,741	4,305	0	24,038
Counter/Platform Scale	3,880	4,442	0	3,104
Pipeline/Transport Meter	218	30	0	590
Motor Truck Scale	1,081	0*	158	2,058
Hopper Scale	1,142	0*	75	2,002
Deck/Dormant Scale	1,047	0*	149	1,842
Auxiliary Beam	15	0*	0	9
Livestock Scale	81	0*	20	164
Track/Hanging Scale	83	106	0	54
Onboard Weigh System	1	0	0	2
Ag Chemical	172	0	0	338
Anhydrous Meter	172	0	0	338
LPG Meters	511	0	0	849
Bulk Delivery	1,539	0	0	1,764
RR Track Scale	39	0	0	126
<b>Total:</b>	<b>24,722</b>	<b>8,883</b>	<b>402</b>	<b>37,278</b>

\*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 \$88,047.

## Pandemic Response

Many of the devices tested by Commission inspectors are found in grocery stores, butcher shops, and meat processing facilities. Out of an abundance of caution and for the health and safety of not only the inspectors, but the public as well, the Commission scaled back testing of weighing and measuring devices due to the state of emergency declared by the Governor because of the health crisis precipitated by COVID-19. To ensure no business was adversely affected during this unprecedented time, the Commission issued a General Advisory pausing the running of the fifteen-month device testing and certification period set forth in N.D. Admin. Code § 69-10-01-02.3 from March 13, 2020, through May 31, 2020, for all weighing and measuring devices.

## Program Changes

On January 1, 2020, the Commission amended multiple sections of N.D. Admin. Code Article 69-10, Case No. WM-20-369. These changes encompassed adopting newer versions of handbooks published by the National Institute of Standards and Technology, which prescribe how tests on weighing and measure devices are conducted, in addition to design and functionality requirements of these devices. Furthermore, updates were made to allow an additional type of foundation for truck scales along with recognizing and implementing a requirement that all new weighing and measuring devices installed within the state have undergone and passed National Type Evaluation Program certification with the goal being uniformity of device use and quality across the country. Requirements Registered Service Companies and Registered Service Persons must meet to test weighing and measuring devices were also updated.

The following summarizes legislative changes made to the weights and measures program during the 67th Legislative Assembly:

- Commission testing fees increased for all weighing and measuring devices depicted in the chart below. The fees had not been increased since 2003.

<b>Service</b>	<b>Old Fee</b>	<b>New Fee</b>
Test overhead monorail, track, dormant, deck, and hanging scale of one thousand pounds [453 kilograms] or less capacity	<del>\$53.00</del>	\$95.00
Test movable platform scale	<del>\$11.00</del>	\$20.00
Test counter or computing scale	<del>\$11.00</del>	\$20.00
Test hanging scale of fifty pound [22.68 kilogram] capacity or less	<del>\$11.00</del>	\$20.00
Test a retail motor fuel device	<del>\$11.00</del>	\$20.00
Test or calibrate weighing and measuring standards, per metrologist, per quarter hour or fraction thereof	\$17.00	\$17.00
Test mobile delivery gasoline and fuel oil meter	<del>\$24.00</del>	\$45.00
Test gasoline, LPG, or fuel oil meter on common carrier pipelines, or any other meter used in loading railway cars, transports, or other conveyances	<del>\$53.00</del>	\$95.00
Test propane, ag chemical, or liquid fertilizer meter	<del>\$39.00</del>	\$70.00
Test or calibrate weighing and measuring devices other than the above and those set by rule, per inspector per quarter hour or fraction thereof	<del>\$11.00</del>	\$20.00
Witnessing any of the above tests	50% of applicable fee	

- Implementation of an annual permit fee of \$100 for all Registered Service Companies.
- Implementation of an annual permit fee of \$50 for all Registered Service Persons.
- Implementation of a Registered Service Person testing fee not to exceed \$25 per test.
- Budgetary changes will allow the Commission to fund the weights and measures program from fees collected instead of general fund dollars.

## Gas Pipeline Safety Program

North Dakota must submit annual Certification with the Secretary of Transportation to assume safety responsibility with respect to an intrastate pipeline facility or intrastate pipeline transportation. The Commission has submitted annual certification to assume safety responsibility regarding intrastate 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. The Commission has not submitted a certification for hazardous liquids pipeline facility safety.

Under the authority provided by North Dakota Century Code section 49-02-01.2, the Commission has 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 August 20, 2020, Case No. GS-20-370.

During the 2019-21 biennium, the gas pipeline safety inspectors conducted inspections of five distribution system operators, ten transmission system operators, one liquefied natural gas facility operator, and seven gathering system operators on a combined total of over 4,150 miles of natural gas pipeline. The total number of inspection days are illustrated below:

<b>Pipeline Inspections by Type</b>	<b>2019-2021</b>
Standard Inspection – Records Audit	217
Compliance Follow-up	9.5
Design / Testing and Construction	52
Investigating Gas Explosion Incidents	8
Onsite Operator Training (Seminars)	0
Operator Qualifications	61.5
Integrity Management	50
Damage Prevention Activities	0
<b>Total</b>	<b>398</b>

## **Program Changes**

The following summarizes legislative changes made to the gas pipeline safety program during the 67th Legislative Assembly:

- Authorization for one additional FTE to function as a gas pipeline safety inspector, which is necessary to keep up with growing operations within the state.

## **Licensing Programs**

Licensing employed 0.6 FTEs and 1 Temporary Employee during the biennium.

### **Mission Statement and Goals**

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

- Working with industry and the Legislature on updating and modifying auctioneer and auction clerk laws and rules to ensure laws and rules are consistent with emerging trends and advancements within this industry.
- Providing education to additional governmental agencies, industry groups, and stakeholders on statutory requirements of licensees.

## **Grain Warehouse and Grain Buyer Licensing and Inspection**

The 66th Legislative Assembly transferred regulatory authority over the grain licensing and inspection program and management of the credit-sale contract indemnity fund to the Department of Agriculture effective July 1, 2019. The Commission was charged with final completion of the Midwest Grain Trading and NoDak Grain insolvencies during this biennium.

### **Insolvencies**

Two insolvencies occurred during the 2017-19 biennium, both in November 2018. Hunter Hanson d/b/a Midwest Grain Trading was a roving grain buyer operating out of Devils Lake, ND, and Hunter Hanson d/b/a NoDak Grain operated two licensed public grain warehouses, one at Tunbridge, ND, and the other at Rohrville, ND. Combined, a total of 59 claims were filed with the Commission totaling more than \$11.9 million in losses. The Commission filed the Report and Recommendation of Trustee in District Court in October 2019. District Court held the hearing in June 2020 upholding the Report and Recommendation. All payments to claimants were completed in December 2020 and all outstanding bills were settled in January 2021 closing the insolvency cases.

### **Licensee Data**

At the end of the biennium, the Commission had 312 licensed auctioneers (a reduction of 6.8% from last biennium) and 149 licensed auction clerks (a reduction of 2.6% from last biennium).

### **Financial Data**

Revenues generated for auctioneer and auction clerk license fees received during the biennium totaled \$36,180. Additionally, the Commission received and investigated six informal complaints. Upon investigation, no violations were found, and no formal complaints were filed as a result.

## **Program Changes**

The following summarizes legislative changes made to the auctioneer & auction clerk licensing program during the 67th Legislative Assembly:

- The licensing fee for both new and renewal auctioneer and auction clerk license types increased from \$35 to \$50.
- The late fee effective date moved from license renewals received after January 31st to license renewals received after December 31st.
- The Commission received authorization to run state and national criminal background checks on all new applicants.
- The amount of personal funds an auction clerk may keep in the trust account to cover service charges related to the trust account increased from \$100 to \$1,000.

# 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 2019-21 biennium.

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.



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

## Mission Statement and Goals

The mission of the Reclamation Division is to administer the surface coal mining and reclamation program mandated by state and federal law to achieve optimum results in a cost effective and fair manner; and to ensure that mining operations subject to this program are conducted in such a way that they:

- 1) Are environmentally sound and minimize adverse effects;
- 2) Protect public interests and the rights of property owners;
- 3) Return mined lands to beneficial uses; and,
- 4) Restore the productivity of mined lands having agricultural uses to premine levels.

## Related goals are to:

- Continually carry out the mine permitting, inspection and bond release activities in a manner that provides the required protection to the environment and property owners while being responsive to needs of the mining industry;
- Continually evaluate and adjust the regulatory program to achieve the optimum balance among environmental protection, least-cost industry operations and landowner pursuit of agricultural interests;
- Continue to explore the scientific, engineering and statistical underpinnings of the regulatory program and make every effort to see that improvements resulting from that exploration are made at both the state and federal level;
- Promote public awareness of the regulatory program through increased contact with relevant organizations and potentially affected landowners; and,

- Maintain maximum staff effectiveness by providing training and other opportunities for professional growth.

## Key 2021 Legislation

There were two legislative bills passed during the 2021 session that directly affect the coal regulatory program.

- HB 1061 was introduced by the Commission and proposed two changes to the surface mining law. First, it changed the time in which mining companies must submit permit renewal applications from 120 days to 180 days. The second amendment changed the timing for scheduling an informal conference from 30 days to 45 days. This bill easily passed both houses and was signed by the Governor. A program amendment will now be submitted to the Office of Surface Mining.
- 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. It also easily passed both houses and was signed by the Governor. A program amendment will now be submitted to the Office of Surface Mining.

## Major Accomplishments and Activities

Significant coal mine permitting activities during the 2019-21 biennium:

- 1) One new permit application was approved. This permit consolidated the acreage of five previously approved permits into a single permit.
- 2) Fourteen significant permit revisions were received and/or approved. Significant revisions are subject to the same public notice and comment period as new permit applications.
- 3) Forty-four insignificant permit revisions were received and/or approved.
- 4) Nine permit renewals were received and/or approved.
- 5) Five bond release applications were received and/or approved. Final bond release was approved on 628 acres. The Commission's jurisdiction terminates upon final bond release.
- 6) As of June 30, 2021, there were 134,282 acres under permit for surface coal mining and reclamation operations.
- 7) At the end of the biennium, permits were held by eight companies for eight mines. Of the eight mines, seven are active and the other one was inactive and in a 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; Dakota Westmoreland Corporation which owns and operates the Beulah Mine; and The Falkirk Mining Company which owns and operates the Falkirk Mine. 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. Reclaimed acreage is also still under permit at the former Gascoyne Mine that was owned and operated by the Knife River Corporation.

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 2019-21 biennium:

- 1) 1,069 inspections were conducted on the inspectable units that currently total 26.
- 2) 208 complete inspections were conducted (complete inspections cover all aspects of the mining and reclamation operations being conducted).
- 3) 861 partial inspections were conducted.



*Dragline at the Freedom Mine northwest of Beulah*

One Notice of Violation (NOV) was issued to a mining company during the 2019-21 biennium and \$1,500 in civil penalties were assessed and collected for the violation.

Two new permit applications were pending at the beginning of the 2019-21 biennium – one was subsequently withdrawn and one was approved during the biennium. The following new permit applications were pending as of June 30, 2021:

- 1) An application from South Heart Coal, LLC, to permit 4,581 acres for a proposed mine southwest of South Heart (Stark County) was filed in March 2010. The Reclamation Division was waiting for the applicant to respond to the second technical review letter that was sent in July 2012. An informal conference was also held on this application on June 28, 2011. The applicant formally withdrew the permit application in May 2021.
- 2) The Coteau Properties Company filed an application for a new permit in December 2018. This new permit application consolidates five existing “paper” permits into a single electronic permit consisting of 5,272 acres. No previously unpermitted acreage was proposed to be permitted with this permit application. The new permit was approved on February 17, 2021. Coteau subsequently submitted permit revisions to terminate the 5 permits that were “re-permitted” with Permit NACT-1801. Those 5 permit revisions were not yet approved at the end of the biennium.

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.

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.

Training opportunities were limited during the biennium due to the COVID-19 pandemic.

## Major Challenges

**Permitting Federal Coal:** Leasing and permitting of federal coal have become much more time consuming and uncertain in recent years. Approximately 15 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 actually 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 will prepare the draft mine plan decision documents.

During the 2019-21 biennium there were a number of federal leases issued, primarily at the Center and Coyote Creek Mines. In addition, lease applications were submitted for the Freedom and Falkirk Mines and those lease applications are still pending. Staff reviewed a number of permit revisions dealing with the mining of federal coal during the 2019-21 biennium and prepared associated draft mine plan decision documents that are associated with those revisions.

**Mining Company Bankruptcy and Permit Transfers:** During the previous 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).

**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. While this amount has been adequate, it is imperative that at some point the federal grant amount will have to increase to account for inflation and other increased program costs.

**COVID-19 Pandemic:** The Reclamation Division was affected by the COVID-19 pandemic. Nearly all staff worked remotely during the early stages of the pandemic. The biggest challenge with working remotely

was the various computer applications that staff use for permit review. As time went on, many of the connection issues were resolved. The number of mine inspections were curtailed in the early stages of the pandemic, but returned to normal after several months.

## **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.

Staff turnover due to retirements is an ongoing concern. Two retirements took place during the 2019-21 biennium and several more are anticipated in the 2021-23 biennium. This is rather significant considering that the Reclamation Division consists of 9.5 total staff.

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 filed a request for an informal conference on a significant permit revision and renewal during the 2019-21 biennium. The informal conference was held and the permit revision and renewal were approved. The landowner then requested a formal hearing on the matter. The formal hearing was held and the Commission upheld the revision and renewal approval.

# Abandoned Mine Lands (AML) Division



*Working to Mitigate a 40-foot Highwall at Regent*

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



*PSC Staff Using a Borehole Camera to Inspect Underground Mine Workings at Noonan*

## Mission Statement and Goals

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.

Related goals are to:

- 1) Reclaim abandoned mine land sites found on the North Dakota AML Inventory;
- 2) Reclaim hazardous abandoned mine sites not currently on the AML Inventory but discovered through investigation, exploratory drilling, or reports from the public;
- 3) Respond rapidly to AML emergencies as the AML Division's highest work priority and promptly reclaim emergency sites to eliminate imminent mine-related hazards;
- 4) Use AML funds as efficiently as possible and to seek additional funding sources, engage in

partnerships, increase public awareness, and maintain professional contacts through continued membership in organizations such as the National Association of Abandoned Mine Lands and Interstate Mining Compact Commission;

- 5) Maintain funds in our state reclamation set-aside account to address abandoned mine land hazards after the end of the federal program.

## **Key 2021 Legislation**

No legislation was passed during the 2021 legislative session that affected the Abandoned Mine Lands Program.

## **Major Accomplishments and Activities**

The Commission received two annual grants from the federal Office of Surface Mining Reclamation and Enforcement (OSMRE) during the 2019-21 biennium for North Dakota's AML program. In March 2020, the Commission received a grant for \$2,823,000 and, in 2021 the grant amount was \$2,829,000. 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. Congress passed legislation in late 2006 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 Sept. 30, 2021. This will provide funding for North Dakota's AML Program through 2022. 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).

During the 2019-21 biennium, major underground mine reclamation projects were conducted to inject cementitious grout or foamed sand into underground mine voids beneath public roads and both residential and commercial sites near Noonan (Divide County), and Williston (Williams County). The goal is to stabilize the mine and prevent a collapse that could endanger people and damage property. Two exploratory drilling projects were conducted near Belfield, Beulah, Garrison and Williston 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 at ten abandoned surface mines in Hettinger, Morton and Stark Counties.

Sinkhole filling projects were conducted during the 2019-21 biennium to fill approximately 270 hazardous sinkholes caused by underground mine collapse at numerous sites in western North Dakota. Emergency projects were conducted to fill extremely hazardous sinkholes caused by an underground mine collapse along North Dakota Highway 36 near Wilton and Highway 200 near Beulah. Another emergency project was undertaken in conjunction with the State Water Commission to reduce the hazard of an imminent embankment breach of an abandoned mine impoundment southeast of Tioga in Williams County.

In 2020, The Carrick Mine AML Project was awarded the Western Regional States and Tribes Reclamation Award from OSMRE. The AML Awards were established in 1992 to recognize exemplary reclamation projects that reclaim abandoned coal mine sites. Projects in five categories are recognized for reclamation excellence. The directors of state and tribal reclamation programs and OSMRE managers vote to determine awardees.

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. (States are no longer allowed to place additional federal grant funds

into the set-aside account as the result of federal legislation enacted in December 2006 that re-authorized and extended the AML Program.)

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 2019-21 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. All in-person classes were canceled beginning in March 2020 through the end of the biennium due to COVID-19.

## **Major Challenges**

The collection of the federal reclamation fee that funds the AML Program is scheduled to end September 30, 2021. Unless re-authorization of the fee is enacted by Congress, it is expected that about \$40 million of reclamation work will not be completed at sites on the current inventory of abandoned coal mines in North Dakota. The current inventory does not include all of the abandoned mines in North Dakota.

While over \$40 million in reclamation is yet to be completed in North Dakota, the remaining sites are smaller in size than previous project sites. Project managers are including several sites in each project design.

Work will continue to update and complete a GIS-based inventory of abandoned coal mine information and to include detailed mine information on the North Dakota GIS Hub and the Commission's website.

## **Trends**

As construction work is completed at the larger AML sites, project design and management will include multiple 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, flyash and an uptick in the oil-producing areas in western North Dakota. Staff continues to seek less costly alternatives to accomplish reclamation at abandoned mine sites.

The AML Division continues to increase its use of technology on AML reclamation projects. Currently, the AML Division has an Unmanned Aerial Vehicle (UAV or drone) to aid in site investigations, surveying, and recording pre- and post-reclamation site conditions. The use of the drone has been restricted by a Presidential Executive Order placing a ban on the use of federal funds for the purchase or operation of Chinese and foreign entity UAVs.

## **Major Cases**

No significant cases involving the AML Program occurred during the 2019-21 biennium.

## 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

