

**Minutes of the Meeting of the
Board of University and School Lands
April 30, 2020**

The April 30, 2020 meeting of the Board of University and School Lands was called to order at 9:00 AM in the Coteau Meeting Room of the State Capitol by Chairman Doug Burgum.

Members Present:

| | |
|-----------------|--------------------------------------|
| Doug Burgum | Governor |
| Alvin A. Jaeger | Secretary of State |
| Wayne Stenehjem | Attorney General |
| Kelly Schmidt | State Treasurer |
| Kirsten Baesler | Superintendent of Public Instruction |

Department of Trust Lands Personnel present:

| | |
|------------------|------------------------------|
| Jodi Smith | Commissioner |
| Kristie McCusker | Paralegal – via telephone |
| Catelin Newell | Administrative Staff Officer |
| Mike Shackelford | Investment Division Director |

Guests in Attendance:

| | |
|----------------------|--------------------------|
| Leslie Bakken Oliver | Governor's Legal Counsel |
|----------------------|--------------------------|

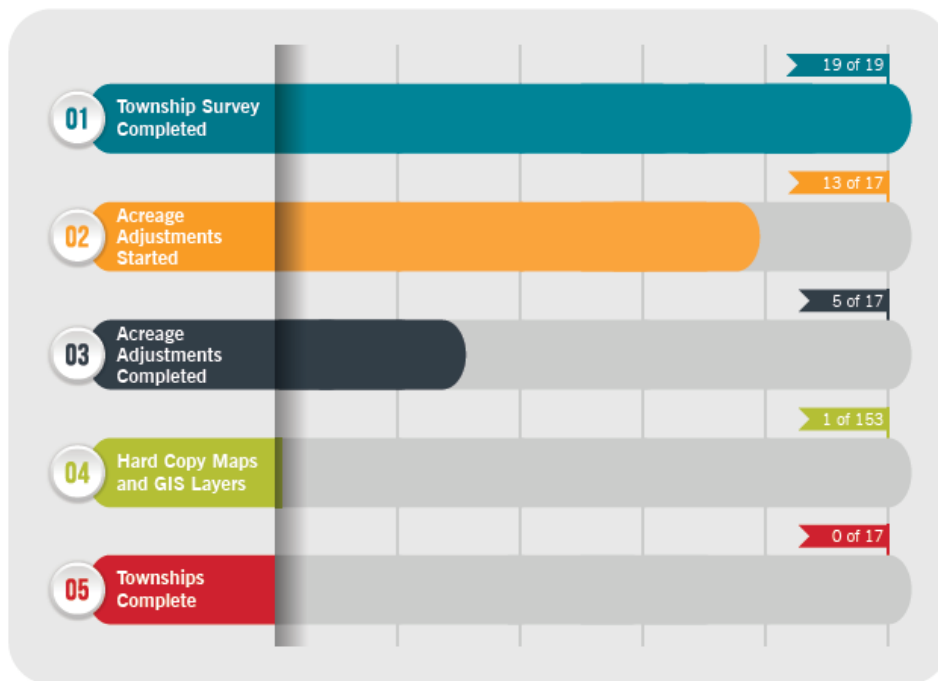
A P P R O V A L O F M I N U T E S

A motion to approve the minutes of the April 8, 2020 meeting was made by Attorney General Wayne Stenehjem and seconded by Secretary Alvin Jaeger and the motion carried unanimously on a voice vote.

R E P O R T S

Acreage Adjustment Survey

Senate Bill 2211 of the Sixty-Sixth Legislative Assembly amended N.D.C.C. ch. 61-33.1 relating to the ownership of mineral rights of land subject to inundation by Pick-Sloan Missouri basin project dams. Under N.D.C.C. § 61-33.1-03(8), the Department executed a contract with Kadrmas, Lee & Jackson, Inc. "to analyze the final review findings and determine the acreage on a quarter-quarter basis or government lot basis above and below the ordinary high water mark as delineated by the final review findings of the industrial commission." The contract's scope of work concludes twelve months from the date of execution, at a total cost of \$1,088,635.



Extension Report

In January 2020, North Dakota Administrative Code § 85-06-01-06 was enacted. It provides the petroleum industry the option to request an extension of their lease.

Since March 2020, one operator filed for an extension. Sinclair Oil and Gas of Salt Lake City, Utah, received a second six-month extension on four leases in Section 16-147N-98W, McKenzie County. They have a permit to drill the Renae 16-21-H Well.

INVESTMENTS

RVK Contract Renewal

The Board's relationship with RVK began in 2013 when the firm was chosen through a competitive hiring process by the Board to submit a written report addressing various investment issues, such as, investment policies and procedures, asset allocation policy, transitioning from the old asset allocation plan to the new asset allocation plan, and analysis of the cash-like funds.

In January 2014, the Board entered into another agreement with RVK to implement the recommendations that resulted from of RVK's 2013 investment study and to provide performance monitoring services to the Board. This agreement was extended six months to provide for the completion of all searches and the adoption of an Investment Policy Statement by the Board

(04/30/20)

In July 2015 the Board directed the Commissioner to enter into an agreement with RVK for traditional investment consultant services. The initial two-year contract with RVK was for a fee of \$145,000 per year and concluded in August 2017. During the August 2017 Board meeting, a one-year extension of the contract was awarded to RVK with a fee increase of 3% for a total of \$149,350. This fee included four personal visits per year during which representatives of RVK have reviewed quarterly investment performance with the Board, advised on asset allocation and asset class structure issues, reviewed investment policy, information and guidance in three manager searches, and provided the Board with educational presentations and summaries.

In June 2018 the Board directed the Commissioner to enter into another agreement with RVK for investment consultant services. The two-year contract with RVK increased the fee by approximately 3% for a total of \$153,800 in year one and \$158,400 in year two; the current agreement will expire in August 2020. The agreement was substantially similar to the previous contract, which included four personal visits per year, a review quarterly investment performance, advice on asset allocation and asset class structure issues, review of investment policy, information and guidance in manager searches, guidance with the dismissal of one manager, and providing the Board with educational presentations and information.

Department staff previously conducted an internal assessment of similar sized permanent trust investment consulting practices throughout the western U.S. That review involved discussions with permanent trust investment officers in New Mexico and Oklahoma, as well as gathering data about other permanent trust investment programs. During that research it was found that many investment programs maintain consultant relationships for extended periods of time, for as long as the consultant continues to provide the desired services in an efficient and effective manner at a reasonable price. Consultants are trusted partners and they help shape programs over time. This philosophy is followed by the Oklahoma and New Mexico permanent trusts investment offices, and it is also followed by North Dakota's State Investment Board.

Research into other state permanent trust investment programs indicates that RVK is the consultant of choice for five of the seven largest permanent trust investment programs. The states that currently work with RVK are Montana, New Mexico, North Dakota, Oklahoma and Wyoming. The fees paid by each of those states is measurably more than North Dakota has paid historically; if fees are dollar weighted to consider the amount of asset under consultation, the fee being proposed by RVK is less than half what other states pay. The average fee paid to RVK by other permanent trusts is approximately \$325,000 per year.

RVK has \$67.4 billion in permanent trust assets under consultation from the five states noted above. Additionally, RVK is a Greenwich Quality Leader among large US investment consultants for the last two consecutive years. Greenwich Associates, a trusted independent investment research firm, conducted interviews with over 1,000 senior professionals of 924 large plan sponsors and ranked opinions of their investment consulting relationships on a series of key metrics, including, but not limited to:

- Understanding Clients' Goals and Objectives
- Advice on Long-term Asset Allocation
- Proactive Advice and Innovative Ideas
- Credibility with the Board and/or Investment Committee
- Knowledge of Investment Managers
- Advice on DC Plan Structure and Design
- Satisfaction with Manager Recommendations
- Responsiveness to Client Requests and Needs
- Competitive Fees

Based upon staff's review of other state programs and satisfaction with the services provided by RVK over the past five years, the Commissioner and staff recommend the Board continue contracting with RVK for investment consulting services.

The proposed contract is substantially similar to the previous contract with the following changes:

1. A contract that extends for three years with an optional two-year extension by mutual consent of the Board and RVK instead of a two-year contract with no optional extensions. Extending from September 2020 to August 2023, and optionally, from September 2023 to August 2025.
2. The fee for each year that increases as follows: \$163,000 in FY 2020, \$168,000 in FY 2021, \$173,000 in FY 2022, and optionally: \$178,000 in FY 2024 and \$183,000 in FY 2025. Each year's fee increase is approximately 3% over each prior year.
3. RVK would make six personal visits each year instead of four to better communicate with the Board and department staff.
4. The new agreement would list in more detail the services expected and provided in the annual fee and provide more detail on the additional cost of services not provided in the annual fee. The previous contract did not list all the services included in the annual fee and was silent on the exact fee for most additional services.

Due Diligence: The Department contacted three other investment consultants to request written proposals for general consulting services. Two of the three consultants responded with written proposals (see attached proposals from Cambridge Associates and Aon); the third consultant did not respond. After careful consideration of each proposal and the proposed contract with RVK the Department staff determined that it was in the best interests of the trusts that RVK continue as the general investment consultant under the terms of the proposed contract.

Motion: The Board authorizes the Commissioner to enter into an agreement with RVK for comprehensive investment advisory services, including investment performance monitoring, assistance with investment manager searches, ongoing due diligence, investment advice and educational efforts, such agreement to be subject to final approval by the Attorney General.

| Action Record | Motion | Second | Aye | Nay | Absent |
|----------------------------|--------|--------|-----|-----|--------|
| Secretary Jaeger | | X | X | | |
| Superintendent Baesler | | | X | | |
| Treasurer Schmidt | X | | X | | |
| Attorney General Stenehjem | | | X | | |
| Governor Burgum | | | X | | |

The following documents were presented to the Board for review and are available at the Department up on request: Draft RVK Contract, Cambridge Associates Proposal, Aon Proposal.

Investment Policy Statement Update

On April 8, 2020 the Board approved a new Strategic Asset Allocation (SAA) for the permanent trust funds. As a result of the new SAA the Investment Policy Statement (IPS) must be approved.

The substantive changes as a result of the new SAA to the IPS are reflected in the new asset class targets including the elimination of the Diversified Inflation Strategies asset classes, addition of Private Equity and Private Infrastructure asset classes, the addition of an Opportunistic Investments asset class, and language added to allow for temporary deviations from policy targets

and ranges during the transitional period to the new portfolio structure. The changes are reflected in the chart below:

| Asset Class | OLD Strategic Asset Allocation Target | NEW Strategic Asset Allocation Target | CHANGE |
|---------------------------------------|---------------------------------------|---------------------------------------|--------|
| Broad US Equity | 18.5% | 19% | +0.5% |
| Broad International Equity | 18.5% | 19% | +0.5% |
| Fixed Income | 23% | 22% | -1% |
| Absolute Return | 15% | 15% | - |
| Real Estate | 15% | 15% | - |
| Diversified Inflation Strategy | 10% | N/A | -10% |
| Private Equity | N/A | 5% | +5% |
| Private Infrastructure | N/A | 5% | +5% |
| Opportunistic Investments | N/A | 0% | +0-5% |

Additionally, RVK and the staff recommend the Board review Opportunistic Investments. although there is no strategic asset allocation target to opportunistic investments, we believe that the current economic crisis is likely to provide a robust opportunity set for skilled asset managers in distressed credit. We would like to discuss with the Board the potential of allowing in policy “up to 5%” in Opportunistic Investments. Opportunistic Investments, being episodic in nature, will be evaluated as opportunities are identified. A number of potential opportunities have appeared in recent weeks related to recent dislocations in credit markets, and potential for distressed debt situations. This is reflected on page 17-18 of the IPS.

The substantive changes for 2020 include the following:

1. Strategic Asset Allocation (IPS pages 17-18) – IPS is updated to reflect the new SAA percentages approved on April 8, 2020. It also adds language granting the commissioner authority to implement the transition to the new SAA. Finally, it adds Opportunistic Investments to the SAA and language regarding its implementation (as discussed above).
2. Benchmarks (IPS page 19) – Benchmarks for the new asset classes are added:
 - a. Private Equity benchmark will be the Cambridge US Private Equity Index
 - b. Private Infrastructure it adds the MSCI World Infrastructure Index
3. Permitted Investments (IPS pages 19-21) – IPS is updated to add the newly approved assets to the list of permitted investments.

Per the Board’s Policy Introduction/Amendment/Passage the Board may take emergency measures:

The Board may, upon determination that an emergency or other circumstance requiring expeditious action exists, waive the requirement of a second reading and immediately approve the Measure following the introduction and first reading.

The Department staff believe it is in the best interest of the trusts to adopt the proposed Investment Policy Statement utilizing the emergency measure as state in the Board policy.

Motion: The Board authorizes the Commissioner to update the Investment Policy Statement as attached, use the benchmarks recommended by RVK, and add Opportunistic Investments to the Permitted Investments list as described in the updated Investment Policy Statement. Per Board Policy, the Board waives the requirement of a second reading and immediately approves the updated Investment Policy Statement.

| Action Record | Motion | Second | Aye | Nay | Absent |
|----------------------------|--------|--------|-----|-----|--------|
| Secretary Jaeger | X | | X | | |
| Superintendent Baesler | | X | X | | |
| Treasurer Schmidt | | | | X | |
| Attorney General Stenehjem | | | X | | |
| Governor Burgum | | | X | | |

The Investment Policy Statement (redline version) and Opportunistic Investments were provided to the Board for review and are available at the Department upon request.

Strategic Asset Allocation Transition Plan

On April 8, 2020 the Board approved a new Strategic Asset Allocation (SAA) for the permanent trust funds. The Board requested a transition plan for the implementation of the new SAA. In accordance with the approval, RVK has completed a transition plan summary and is reflected in the weekly schedule of transition-related items (Attachment).

Following are the items that have been identified as necessary to address in order to implement the transition from the current targets to the newly approved targets:

1. Investment Policy – the Investment Policy Statement is to be updated to reflect the newly-approved targets, including the elimination of the Diversified Inflation Strategies asset classes, addition of Private Equity and Private Infrastructure asset classes, the addition of an Opportunistic Investments asset class, and language added to allow for temporary deviations from policy targets and ranges during the transitional period to the new portfolio structure.
2. New Asset Class: Private Equity – the Board approved a 5% target—approximately \$225M based on current asset values—to Private Equity in the Permanent Trust Funds portfolio. The inclusion of the Private Equity asset class necessitates that a number of key items are addressed, including a pacing study, the establishment of criteria for and issuance of a Request for Proposal (RFP), a review of RFP responses, interviews with potential candidates, and a recommendation to the Board.
3. New Asset Class: Private Infrastructure – the Board approved a 5% target—approximately \$225M based on current asset values—to Private Infrastructure in the Permanent Trust Funds portfolio. The inclusion of the Private Infrastructure asset class necessitates that a number of key items are addressed, including the establishment of criteria for and issuance of an RFP, a review of RFP responses, interviews with potential candidates, and a recommendation to the Board.
4. New Asset Class: Opportunistic Investments – although there is no strategic asset allocation target to opportunistic investments, we believe that the current economic crisis is likely to provide a robust opportunity set for skilled asset managers in distressed credit. We would like to discuss with the Board the potential of allowing

in policy “up to 5%” in Opportunistic Investments. Opportunistic Investments, being episodic in nature, will be evaluated as opportunities are identified. A number of potential opportunities have appeared in recent weeks related to the re-establishment of the Term Asset-Backed Security Loan Facility (“TALF”) by the Fed, recent dislocations in credit markets, and potential for distressed debt situations.

5. Existing Asset Class: Fixed Income – the Board approved a 1% reduction in the target to Fixed Income in the Permanent Trust Funds portfolio. In addition, given the extreme adjustment in valuation and yield levels we recommend formally reviewing the structure of the fixed income portfolio.
6. Existing Asset Class: Public Equity – the Board approved a 1% increase to public equity—0.5% each to Broad US Equity and Broad International Equity—in the Permanent Trust Funds portfolio. Given current volatility in public equity markets, a framework for systematically rebalancing to the new targets will be developed.
7. Removed Asset Class: Commodities – the Board approved the removal of Commodities from the Permanent Trust Funds portfolio. At current asset levels, this represents an approximately \$145M liquidation. Commodities will be liquidated gradually over a period of time to allow for best execution by the manager. We believe this liquidation can happen in the relative near-term as commodities are not income producing by their nature and predicting their long-term price behavior is difficult at best. The proceeds will be a source of funds for systematic rebalancing to new equity targets, and it is also expected that the Northern Trust (NT) Short Term Investment Fund (STIF) will also be used as short-term holding vehicle.
8. Removed Asset Class: Treasury Inflation-Protected Security (TIPS) - the Board approved the removal of TIPS from the Permanent Trust Funds portfolio. At current asset levels, this represents an approximately \$100M liquidation. The TIPS portfolio will be fully liquidated as expediently as is feasible. The proceeds will be a source of funds for systematic rebalancing to new equity targets, and it is also expected that the NT STIF will also be used as short-term holding vehicle.
9. Removed Asset Class: Natural Resource Equities – the Board approved the removal of TIPS from the Permanent Trust Funds portfolio. At current asset levels, this represents an approximately \$70M liquidation. Given the current depressed valuations of natural resource equities, a framework will be developed in order to systematically liquidate the portfolio based on prices and/or market conditions.
10. Removed Asset Class: Master Limited Partnerships (MLP) – the Board approved the removal of TIPS from the Permanent Trust Funds portfolio. At current asset levels, this represents an approximately \$85M liquidation. Given the current depressed valuations of MLPs, a framework will be developed in order to systematically liquidate the portfolio based on prices and/or market conditions.

The Weekly Schedule of Transition Related Items was provided to the Board for review and is available at the Department upon request.

LITIGATION

Wilkinson Litigation

Case: William S. Wilkinson, et. al. v. Board of University & School Lands, Brigham Oil & Gas, LLP; EOG Resources, Inc.; Case No. 53-2012-CV-00038

Date Filed: January, 2012

Court: Williams County District Court

Judge: Paul Jacobson

Attorney: Jennifer Verleger/Matthew Sagsveen/David Garner

Opposing Counsel: Josh Swanson/Rob Stock, Lawrence Bender, Lyle Kirmis

Issues: The Wilkinson lawsuit was filed on January 10, 2012. The Plaintiffs assert that they own minerals in a 200 acre tract west of Williston. This suit was initially filed in state court as a quiet title action. The Attorney General's Office filed an Answer and Counterclaim on February 27, 2012.

On July 1, 2014, the Plaintiffs filed an amended complaint in the case and added claims of unconstitutional takings, conversion, constructive trust and unjust enrichment, civil conspiracy and deprivation of rights under 42 U.S.C. § 1983. Plaintiffs assert in their amended complaint that the Board should be issuing leases on the west side of the Highway 85 bridge pursuant to the Phase II Investigation – the estimated location of the ordinary high watermark (OHWM) prior to inundation of Lake Sakakawea – rather than the Phase I Delineation – current location of the OHWM. Plaintiffs argue that the subject property is located under Lake Sakakawea, which did not exist at statehood, and thus the state did not acquire title to it as sovereign lands. Therefore, the State's title to the Missouri River is limited to the channel as it existed prior to inundation of Lake Sakakawea as determined by the Phase II investigation.

In January of 2016, the State Engineer sought and was granted intervention. A joint motion for summary judgment was filed by the Board and the State Engineer on March 1, 2016. On May 18, 2016, the district court granted the motion for summary judgment finding that: (1) the subject property is located along the Missouri River, which is no doubt navigable; (2) The Phase I Delineation should be used to determine the OHWM for the subject property rather than the Phase II Investigation, and therefore the property is determined to be sovereign land of the state of North Dakota; (3) to the extent Plaintiffs are aggrieved by the Phase I Delineation, they must exhaust their administrative remedies through the State Engineer before making a claim in district court; and (4) there are no grounds to support Counts II through VII. Plaintiffs filed a notice of appeal on June 1, 2016. Both EOG Resources, Inc. and Statoil Oil and Gas LP filed cross-appeals.

On September 28, 2017, the North Dakota Supreme Court reversed the district court's decision and remanded the case back to the district court. The Supreme Court held that:

1. Surface ownership could not be determined without the United States as a party to the action;
2. N.D.C.C. ch. 61-33.1 has a retroactive clause and the district court did not have an opportunity to determine if it applies and governs ownership of the minerals at issue;

(04/30/20)

3. A “takings” analysis must be conducted if the district court determines the State owns the disputed minerals; and
4. The district court erroneously made findings of disputed fact.

History:

Due to the passage of S.B. 2134, the District Court ordered the case stayed and all deadlines be held in abeyance until the final review findings under S.B. 2134 are issued by the North Dakota Industrial Commission (NDIC). Plaintiff, after NDIC issued the review findings, requested a status conference with the Court to set a new trial date and other deadlines. The Board and State Engineer filed a Motion for Continued Stay of Proceedings on October 11, 2018. The telephonic status conference scheduled for November 2, 2018 was cancelled. A Hearing on the Motion for Continued Stay was held November 30, 2018. Defendants submitted a proposed Order and the Judge asked for Plaintiffs to submit a proposed Order, which was filed December 4, 2018. The Court issued its Order on December 12, 2018, denying the Motion for Continued Stay and requiring the parties confer on a scheduling order and submit a Rule 16 scheduling order by January 26, 2019. The State filed a Motion for Proposed Scheduling Order on January 28, 2019, and Plaintiffs filed a notice of hearing on January 31, 2019, and filed their Response to State’s Motion for Proposed Scheduling Order and Plaintiffs’ Request for Rule 16(F) Sanctions on February 1, 2019. State Defendants filed a Reply Brief in Support of Motion for Proposed Scheduling Order on February 8, 2019. Statoil & Gas LP filed a Response to State’s Motion for Proposed Scheduling Order and Plaintiff’s Proposed Scheduling Order on February 11, 2019. Plaintiffs scheduled a hearing in District Court on the Motion for Scheduling Order which was held March 5, 2019, at 2:00 p.m. The District Court didn’t rule on the scheduling motions but granted Plaintiffs’ request to file a motion for Summary Judgment within 30 days of the hearing. On April 15, 2019, Plaintiffs’ filed with the District Court a Notice of Motion, Motion for Summary Judgment, Brief in Support of Motion for Summary Judgment, Affidavit of Joshua Swanson, Notice of Hearing (requesting a hearing be held at the earliest possible date available on the Court’s calendar), and proposed Order Granting Plaintiffs’ Motion for Summary Judgment. On April 17, 2019, Plaintiffs’ filed a Notice of Hearing scheduling a hearing for 2:00 p.m. on July 30, 2019 before the Honorable Paul W. Jacobson, at the Williams County Courthouse, Williston. The parties entered into a Stipulation Extending Time to Respond to Plaintiffs’ Motion for Summary Judgment and Plaintiffs’ Time to Reply which was entered May 1, 2019. The Order Extending Time to Respond was entered May 2, 2019, extending Defendants’ time to respond to June 14, 2019, and extending Plaintiffs’ deadline to file reply to July 1, 2019. On June 10, 2019 Statoil & Gas LP filed its Opposition to Plaintiffs’ Motion for Summary Judgment. Also, on June 10, 2019, the Stipulated Motion to Dismiss Defendant XTO Energy Inc. was filed in which Plaintiffs, Cross-claimant EOG, and Defendant XTO stipulated and requested the Court dismiss XTO from the action with prejudice and without costs and disbursements to any party, as it holds no ownership interest in, right to, claim or title to any mineral interests as alleged by Plaintiffs. The Board of University and School Lands filed its Brief in Opposition to Plaintiffs’ Motion for Summary Judgment on June 14, 2019. Also filed on June 14, 2019 where the State Engineer’s Response to Brief in Opposition to Plaintiffs’ Motion for Summary and the Response of EOG Resources, Inc., to Plaintiffs’ Motion for Summary Judgment. On June 17, 2019, the Court entered its Order Dismissing Defendant XTO Energy, Inc. from the Action. On July 1, 2019, Plaintiff’s filed their Reply Brief in Support of Motion for Summary Judgment. The hearing on the Motion for Summary Judgment was held on July 30, 2019. Order Granting Plaintiffs’ Motion for Summary Judgment was entered on September 6, 2019. The proposed

(04/30/20)

Judgment was submitted on September 12, 2019. The Judgment and Notice of Entry of Judgment were filed with the District Court on September 16, 2019. Board of University and School Lands' Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019. State Engineer's Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019. Notice of Appeal to North Dakota Supreme Court filed by Statoil Oil & Gas LP f/k/a Brigham Oil & Gas, LLP on November 27, 2019. Appellant's Initial Briefs were due December 12, 2019; however, a Joint Motion for Extension of Time to File Briefs was filed and an extension was granted on December 13, 2019, with all briefs being due to the Supreme Court as follows:

- Appellants' (including Board of University and School Lands) Initial Briefs - January 13, 2020;
- Appellees' Response Briefs – March 2, 2020; and
- Appellants' (including Board of University and School Lands) Reply Briefs – March 16, 2020.

On January 13, 2020, the Brief of Appellant, Board of University and School Lands was filed with the Supreme Court. Appellant North Dakota State Engineer's Principal Brief was also filed on January 13, 2020. Plaintiffs/Appellees response Brief filed with the Supreme Court on March 2, 2020. Plaintiffs/Appellees Response Brief filed with the Supreme Court on March 2, 2020. Reply Brief of Defendant and Appellant, Board of University and School Lands filed on March 16, 2020. Appellant North Dakota State Engineer's Reply Brief filed March 16, 2020.

**Current
Status:**

- **Supreme Court Argument held April 13, 2020.**

A D J O U R N

There being no further business, the meeting was adjourned at 9:40 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands