

**Minutes of the Meeting of the  
Board of University and School Lands  
November 26, 2019**

The November 26, 2019 meeting of the Board of University and School Lands was called to order at 9:01 AM in the Governor's Conference Room of the State Capitol by Chairman Doug Burgum.

**Members Present:**

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kirsten Baesler	Superintendent of Public Instruction
Kelly Schmidt	State Treasurer (Via phone)

**Department of Trust Lands Personnel present:**

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Kate Schirado	Administrative Assistant
Peggy Gudvangen	Accounting
Adam Otteson	Revenue Compliance
Tiffany Grossman	Attorney
Michael Shackelford	Investments
Vicki Siegel	Accounting

**Guests in Attendance:**

Dave Garner	Attorney General's Office
Leslie Bakken Oliver	Governor's Legal Counsel
Brent Sanford	Lt. Governor
Reice Haase	Governor's Office
Ryan Monson	Brady Martz and Associates
Charles Carvell	Attorney General's Office
Mark Hanson	Nilles Law Office (Via teleconference for Sorum case only)
Geoff Simon	Western Dakota Energy Association
Amy Sisk	Bismarck Tribune
Chris Friez	North American Coal
David Straley	North American Coal

**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 October 28, 2019 meeting was made by Secretary Alvin Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

## R E P O R T S

### Report of Encumbrances Issued by Land Commissioner 10/23/19 to 11/15/19

<p><b>Granted to:</b> For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p><b>CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK</b> Easement: Well-Directional Wellsite Location – Off Lease RW0007656 A – Common Schools MCK-153-94-16-NE4,NW4,SW4</p>
<p><b>Granted to:</b> For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p><b>XTO HOLDINGS, LLC, SPRING-TX</b> On-lease Act. Amend: Well-Horizontal Oil Well RW0008195 A – Common Schools DUN-148-97-36-SW4</p>
<p><b>Granted to:</b> For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p><b>ELKAN INC, WATFORD CITY-ND</b> Easement: Pipeline-Raw Water Pipeline RW0008480 A – Common Schools MCK-148-98-16-NE4</p>
<p><b>Granted to:</b> <b>ND</b> For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p><b>RESERVATION TELEPHONE COOPERATIVE, PARSHALL-ND</b> Easement: Communication-Buried Cable RW0008527 A – Common Schools MCK-149-104-36-ALL</p>
<p><b>Granted to:</b> For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p><b>HESS NORTH DAKOTA PIPELINES, LLC, HOUSTON-TX</b> Easement: Pipeline-Multiple Pipelines &amp; Communication Cable RW0008542 A – Common Schools WIL-156-95-16-ALL</p>
<p><b>Granted to:</b> <b>ND</b> For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p><b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b> Easement: Drop Line-Above Ground Electric Distribution Line RW0008548 A – Common Schools MCK-149-95-16-NW4</p>
<p><b>Granted to:</b> <b>ND</b> For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p><b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b> Easement: Electric-Above Ground Distribution Line RW0008587 A – Common Schools MCK-149-95-16-NW4</p>

**Granted to:** SHORELINE CONSULTING, SOUTH HEART-ND  
 For the Purpose of: Permit: Temporary Water Layflat Line  
 Right-of-Way Number: RW0008595  
 Trust: A – Common Schools  
 Legal Description: MOU-152-92-14-SE4

### Summary of Oil & Gas Lease Auction

On behalf of the Board of University and School Lands, the Department of Trust Lands conducted an oil and gas mineral lease auction on www.energynet.com which concluded on November 5, 2019.

There were 95 tracts offered, all received competitive bids. The highest bid per acre was \$663.00 for 160 net acres in Williams County.

#### Chart of County – Acres Auctioned – Bonus Received

November 2018					
	Total Acres		Total Bonus		Bonus/Acres
BILLINGS	4149.33	\$	365,822.58	\$	88.16
BURKE	1447.95	\$	34,602.97	\$	23.90
DIVIDE	240.00	\$	7,040.00	\$	29.33
MCKENZIE	2652.96	\$	109,695.13	\$	41.35
WILLIAMS	957.13	\$	356,231.73	\$	372.19
<b>GRAND TOTAL</b>	<b>9447.37</b>	<b>\$</b>	<b>873,392.41</b>	<b>\$</b>	<b>92.45</b>

#### Chart of Trust – Acres Auctioned

Tracts Offered	Trust	Acres
61	Common Schools	7235.63
1	School for the Deaf	21.75
1	State Hospital	80
30	Bank of ND	1989.99
2	NDSU	120
<b>95</b>		<b>9447.37</b>

There were 32 bidders registered, 23 of which submitted bids in the seven-day auction. Bidders were from 10 states (CA, CO, IN, MN, MT, ND, NV, TX, WA, and WY).

A total of \$873,393.41 of bonus was collected from the auction.

**North Dakota Board of University and School Lands Financial Position Report for period ended September 30, 2019 and were provided to the Board and are available from the Department.**

### Unclaimed Property Program Report

Unclaimed property is all property held, issued, or owing in the ordinary course of a holder's business that has remained unclaimed by the owner for more than the established time frame for the type of property. It can include checks, unpaid wages, stocks, amounts payable under the terms of insurance policies, contents of safe deposit boxes, etc.

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An owner is a person or entity having a legal or equitable interest in property subject to the unclaimed property law. A holder can include a bank, insurance company, hospital, utility company, retailer, local government, etc.

Since 1975, the Unclaimed Property Division (Division) of the Department of Trust Lands has been responsible for reuniting individuals with property presumed abandoned. The Division acts as custodian of the unclaimed property received from holders. The property is held in trust in perpetuity by the State and funds are deposited in the Common Schools Trust Fund. The 1981 Uniform Unclaimed Property Act created by the national Uniform Law Commission was adopted by the State in 1985.

For the month of October 2019, the Division received 1,058 holder reports with a property value of \$5,069,798 (the marked increase in holder reports is due to the November 1<sup>st</sup> reporting deadline) and paid 2,440 claims with a total value of \$1,130,154.

**Energy Infrastructure and Impact Office Program Report**

The Energy Infrastructure and Impact Office (EIIO) is a division within the Department of Trust Lands (Department). EIIO provides financial assistance to local units of government that are impacted by oil and gas activity. In turn, EIIO receives a portion of the Oil and Gas Gross Production Tax. The office has been a part of the Department since 1977 and was formally known as the Energy Development Impact Office created under N.D.C.C. ch. 57-62. Over the course of the past 40 years, EIIO has dispersed over \$624 million in funding.

The Oil and Gas Impact Grant Fund currently has 40 grants with a balance of \$17,164,734.70 as of November 15, 2019. The following shows grant activity for the last four months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants
7/31/2019	55	\$21,669,388.00
8/31/2019	51	\$19,963,193.67
10/11/2019	41	\$17,695,025.25
11/15/2019	40	\$17,164,734.70

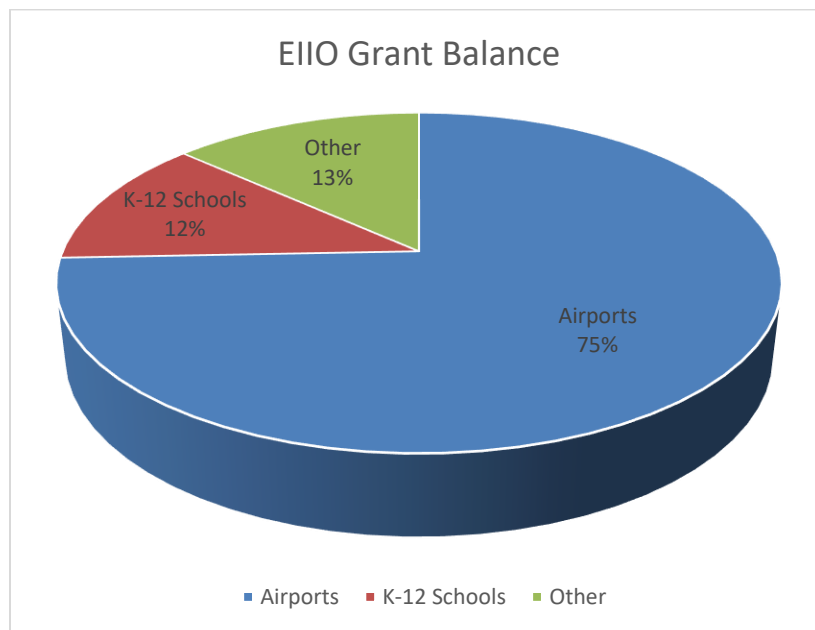
The Energy Impact Fund, established within Senate Bill 2013 as enacted by the Sixty-fifth Legislative Assembly, was created to supplement the Oil and Gas Impact Grant Fund for the 2017-2019 biennium. This fund currently has four grants with a balance of \$4,793,191.14 as of November 15, 2019. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the Commissioner of University and School Lands to transfer any unexpended funds remaining in the Energy Impact Fund when the fund is repealed on June 30, 2021, to the Oil and Gas Impact Grant Fund. The following shows grant activity for the last four months:

Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants
7/31/2019	4	\$4,971,638.80
8/31/2019	4	\$4,971,638.80
10/11/2019	4	\$4,940,103.06
11/15/2019	4	\$4,793,191.14

The Energy Infrastructure and Impact Office is currently managing 44 grants for a total of \$21,957,925.84. The following shows grant activity for the last four months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants	Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants	Total between both Funds
7/31/2019	55	\$21,669,388.00	7/31/2019	4	\$4,971,638.80	\$26,641,026.80
8/31/2019	51	\$19,963,193.67	8/31/2019	4	\$4,971,638.80	\$24,934,832.47
10/11/2019	41	\$17,695,025.25	10/11/2019	4	\$4,940,103.06	\$22,635,128.31
11/15/2019	40	\$17,164,734.70	11/15/2019	4	\$4,793,191.14	\$21,957,925.84

The chart below represents the remaining grant balances of the Oil and Gas Impact Grant Fund:



## Investment Update

### Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of October 31, 2019. The figures provided are unaudited.

Account/Asset Class	Long-Term Asset Allocation	10/31/19 Actual Allocation \$	10/31/19 Actual Allocation %	9/30/19 % Diff.
Large Cap US Equity	14.5%	\$ 726,857,170	14.7%	0.2%
Mid/Small Cap US Equity	4.0%	\$ 194,864,057	3.9%	-0.1%
International Equity	14.5%	\$ 737,484,432	14.9%	0.4%
Emerging Market Equity	4.0%	\$ 205,906,331	4.2%	0.2%
<b>Total Equities</b>	<b>37.0%</b>	<b>\$ 1,865,111,990</b>	<b>37.7%</b>	<b>0.7%</b>
Core Fixed Income	13.8%	\$ 744,257,916	15.0%	1.2%
Non-Core Fixed Income	9.2%	\$ 398,220,201	8.0%	-1.2%
<b>Total Fixed Income</b>	<b>23.0%</b>	<b>\$ 1,142,478,117</b>	<b>23.1%</b>	<b>0.1%</b>
<b>Total Absolute Return</b>	<b>15.0%</b>	<b>\$ 734,606,174</b>	<b>14.8%</b>	<b>-0.2%</b>
Commodities	3.0%	\$ 152,157,076	3.1%	0.1%
MLPs	3.0%	\$ 137,367,359	2.8%	-0.2%
TIPS	2.0%	\$ 97,805,272	2.0%	0.0%
Natural Resource Equities	2.0%	\$ 91,427,051	1.8%	-0.2%
<b>Total Inflation Strategies</b>	<b>10.0%</b>	<b>\$ 478,756,758</b>	<b>9.7%</b>	<b>-0.3%</b>
Core Real Estate	8.0%	\$ 392,016,685	7.9%	-0.1%
Core Plus Real Estate	7.0%	\$ 335,468,622	6.8%	-0.2%
<b>Total Real Estate</b>	<b>15.0%</b>	<b>\$ 727,485,307</b>	<b>14.7%</b>	<b>-0.3%</b>
<b>Total Asset</b>	<b>100.0%</b>	<b>\$ 4,948,438,346</b>	<b>100.0%</b>	

### Angelo Gordon (\$103.6 million, 2.1% of PTF assets as of 10/31/19)

#### Direct Lending Fund

The Angelo Gordon Direct Lending Fund III portfolio was initially funded in late-August 2018. Two \$18.75 million capital call was called with one funded last October 24, 2019 and another to be funded on November 21, 2019. After both funding, this would bring the total funded to Angelo Gordon at 81.50% of total capital commitment or \$122.25 million out of \$150 million.

According to Angelo Gordon, the Board's commitment should be fully drawn by late-2020.

#### Upcoming Investment Manager Meetings

There are no upcoming meetings with investment managers scheduled as of this time.

## OPERATIONS

### 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 Kadrmass, 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.

Survey graph and map were provided to the Board and are available upon request.

### **Audited Financial Statements for the Year Ended June 30, 2019**

Brady Martz Certified Public Accountants and Consultants has completed its review of the financial statements of the Department of Trust Lands for the year ended June 30, 2019 and provided an opinion on the fair presentation of the financial statements.

The draft report identified no audit findings or recommendations.

The electronic version of the audited financial statement had not been posted, but when it finalized it will be available on the State Auditor’s website at: [www.nd.gov/auditor/trust-lands-nddepartment](http://www.nd.gov/auditor/trust-lands-nddepartment) and on the Department of Trust Lands website at: [www.land.nd.gov](http://www.land.nd.gov).

Attachment – Department of Trust Lands Audited Financial Statement Fiscal Year 2019 were provided to the Board and are available upon request.

### **Board of University and School Lands Policy Manual**

The Board of University and School Lands currently has a Policy Manual (Board Policy Manual) which includes the following sections:

1. Governance
  - Policy
2. Surface Land Management
  - Surface Land Management Policy Manual
  - Fair Market Value (FMV) Policy
3. Investments
  - Loan Pool Policy
4. Minerals
  - Minerals Policy Manual  
Chapter 1 - Coal  
Chapter 2 – Oil and Gas

The Board also has an Investment Policy Statement that has not been officially included in the Board Policy Manual.

In House Bill 1300, the Sixty-fifth Legislative Assembly directed the Board of University and School Lands (Board) no longer be exempt from the Administrative Agencies Practice Act (Act). In Senate Bill 2264, the Sixty Sixth Legislative Assembly directed the Board be exempt from the adjudicative proceeding requirements and procedures under North Dakota Century Code §§ 28-32-21 through 28-31-51 of the Act.

Many of the current Board policies have been revised for inclusion in the proposed Administrative Rules, including the majority of both the Surface Land Management Policy Manual and the Minerals Policy Manual. Revisions to rules concerning General Administration and rules for Surface Land Management, Investments, and Minerals Management were reviewed by the Attorney General’s Office and are currently scheduled to be presented to the Administrative Rules

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Committee on December 3, 2019, to become effective January 1, 2020. If those rules become effective January 1, 2020, it will be necessary to simultaneously repeal the current Board Policy Manual and adopt the proposed revised Board Policy Manual, which would include Governance, Definitions, Fair Market Value Policy, Farm Loan Policy, and the Investment Policy Statement.

In addition to the repeal of those policies that will become part of the Administrative Rules, other non-substantive changes have been made as to removal of definitions no longer part of the Board Policy Manual, formatting, and abbreviations. Changes are noted in the red-lined version of the prior policies. The revised Board Policy Manual will incorporate those changes and will be provided at the December Board meeting.

If the Administrative Rules become effective January 1, 2020, the revised Board Policy Manual will simultaneously become effective. Should the Administrative Rules not become effective January 1, 2020, there will be no repeal of the current Board Policy Manual and the proposed revised Board Policy Manual will not be effective. Therefore, the repeal of the Board Policies is contingent on the Administrative Rules being adopted and the revised Board Policy Manual would take effect the date the Administrative Rules are implemented.

The Commissioner is requesting the Board provide input on the proposed revised North Dakota Board of University and School Lands Policies. This is the “first reading” of the proposed policies, with suggestions being taken into consideration and a “second reading” to occur on December 18, 2019.

Attachments were provided to the Board and are available upon request.

## I N V E S T M E N T S

### **Investment Policy Statement – Securities Litigation Update – First Reading**

Although it is the policy of the Board of University and School Lands (Board) to review the Investment Policy Statement (IPS) at least every four years, it is the practice of the Commissioner to review the IPS annually and more frequently, as needed.

At the September 26, 2019, Board meeting the current IPS was adopted. During the following weeks the Commissioner and staff continued to review the Securities Litigation and Shareholder Legal Action section of the IPS that requires a change.

The Commissioner’s discussions with the State Investment Board (SIB) and Retirement Investment Office (RIO) regarding a recent class action lawsuit revealed an opportunity to combine resources and assets on future class action lawsuits. Particularly, when taking on “lead plaintiff” status is determined to be advantageous to the trusts. This along with the onboarding of the securities litigation monitoring and claims filing service, Financial Recovery Technologies (FRT), as approved by the Board in August 2018, touched off a broader review of the securities litigation section.

FRT has reviewed and provided guidance on our policy as provided in our agreement.

As such, we are asking to revise the IPS’s Securities Litigation and Shareholder Legal Action section, specifically to:

1. Replace “custodian” with “designated agent” when referring to the monitoring of class action lawsuits.



2. Provide for more detailed expectations of the designated agent and for the department to monitor the designated agent's performance.
3. Expand the criteria for "active participation" in class action lawsuits and harmonizes the IPS securities litigation policy with SIB's to:
  - a. Clarify the Commissioner will only initiate active participation with the consent of the Board.
  - b. Set a dollar threshold of \$5,000,000 of estimated loss for active participation and allows for the combining of assets with SIB.
  - c. Review of the merits of the claim and the factual basis for the action.
  - d. Review of the defendant's or its insurer's ability to pay claims.
  - e. Consider of the potential costs of taking such action.
4. Engage specialized legal counsel in accordance with relevant statute.
5. Note the hiring of a securities litigation monitoring and claims filing firm (designated agent).
6. List the criteria for the Board to consider joining litigation in Non-US/Canada jurisdictions (language provided by FRT).

Attachment – Investment Policy Statement – Securities Litigation Section (redline version) were provided to the Board and are available upon request.

### **Investment Policy Statement – Proxy Voting Update – First Reading**

Although it is the policy of the Board of University and School Lands (Board) to review the Investment Policy Statement (IPS) at least every four years, it is the practice of the Commissioner to review the IPS annually and more frequently, as needed.

At the September 26, 2019 Board meeting the current IPS was adopted. During the following weeks the State Treasurer, Commissioner and staff have discussed modifying the proxy voting section of the IPS to ensure investment managers continue to vote shares in a manner that is to the best interest of the trusts as it relates to environmental, social and governance (ESG) issues. ESG has become a tool for some large investors who are pushing managers to use proxy votes to virtue signal, particularly on environmental issues related to oil and gas exploration and production.

As such, it is recommended the IPS's Proxy Voting section be revised. The revision makes clear that the Board expects proxy votes on behalf of the trusts to be:

1. "...in a manner consistent with the long-term interests and objectives of the investment program."
2. "...based solely on enhancing or protecting long-term value to the assets under its control and not on establishing or endorsing social policy."
3. "...only those factors that relate to the economic value of the Board's investments and shall not subordinate the interests of the Funds to unrelated objectives."

The revision also requires that:

1. "Managers shall submit written reports to the Commissioner by December 31 of each year advising of the manner in which each proxy was voted during the preceding calendar year and notify the Commissioner of controversial matters which may be subject to proxy voting."
2. "...the Commissioner [specifically the investment staff] shall regularly review related proxy votes by the Managers. Any proxy votes deemed by the Commissioner to be contrary to the interests of the Funds under the Board's responsibility, shall be fully explained by the Manager in writing and brought to the Board for its review."

If approved after a second reading, the Commissioner will transmit the new policy to all of the investment managers currently managing funds on the Board’s behalf.

Attachment – Investment Policy Statement – Proxy Voting Section (redline version) were provided to the Board and are available upon request.

**Capitol Building Fund Asset Management Agreement**

The Capitol Building Fund Asset Management Agreement (Agreement) is between the Capitol Grounds Planning Commission (Commission) and the Board of University and School Lands (Board) to manage the assets of the Capitol Building Fund (Fund).

In accordance with its duties under N.D.C.C. § 48-10-02 the Commission is formally entering into an asset management agreement with the Board. The Agreement acknowledges the establishment of an investment account maintained by the Board. It provides for the investment of assets in a manner similar to the Strategic Investment and Improvement Fund (SIIF) and other funds subject to regular legislative appropriations. The Fund is to be managed under the prudent investor rule, pursuant to N.D.C.C. §15-03-04.

Motion: **That the Board enter into the Asset Management Agreement with the Capitol Grounds Planning Commission to manage the assets of the Capitol Building Fund for the prudent investment of the fund assets in a manner similar to the SIIF.**

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

Attachment – Capitol Building Fund Asset Management Agreement provided to the Board and is available upon request.

**MINERALS**

**Federal Coal Exchange**

The Department of Trust Lands (Department) has been evaluating the potential of exchanging federal coal for coal owned and managed by the Board of University and School Lands (Board). This opportunity would provide mutual economic benefits for both the Federal Government and the Board by allowing both to control larger contiguous tracts and by potentially protecting more sensitive areas or points of historic significance. It would also allow for more efficient mining operations by the coal industry. The Department is currently working to determine appropriate acreage for the potential exchange. Once adequate acreage is identified, the Department will determine title on the tracts to ensure the Board has 100% ownership.

The Department’s next step will be to bring fully vetted tracts to the Board for review and approval. Once the Board has approved the potential coal exchange tracts, the Department will engage in a federal exchange process that will require federal approval.

**Motion: The Board grant approval for the Commissioner to identify potential tracts for a coal acreage exchange with the Federal Government. The identified tracts will be brought to the Board for approval prior to submission to the Federal Government.**

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

### **Performance Audit - Correction of Mineral Tracts Update**

One of the critical findings identified during the 2016 Performance Audit Report Number 3036c was the mistaken trust assignment for multiple mineral tracts.

A trust is assigned to every surface tract and mineral tract managed by the Board of University and School Lands (Board). Except in rare circumstances, when the state owns both the surface and mineral rights to a tract the same trust is assigned. The Department of Trust Lands (Department) land management information technology system contains information related to the tracts under the Board's management and a trust is assigned to each tract. The Department relies on these trust assignments in the databases to credit revenues generated by the tracts to the respective trusts.

When the Department began developing and transitioning to electronic databases in the 1980's, information related to tracts and the assigned trusts was manually entered. The Department has relied on the information in the databases as being correct. However, it appears there was confusion related to the trust names. When the trusts were originally established at statehood, one trust was designated as the "Industrial" trust and one was designated as the "Reform" trust. Thereafter, legislative changes renamed those trusts as follows: the "Industrial" trust was designated as the "Ellendale" trust and the "Reform" trust was designated as the "Industrial" trust. When the data was manually entered into the databases, the information was mistakenly entered based on the original designation, causing misallocation.

As a result of the audit finding, the Department commenced a detailed review of the historical records of all mineral tracts. The Department manages approximately 33,801 tracts; however, a full audit of the tracts identified as Bank of North Dakota or sovereign lands was not completed. Therefore, approximately 20,129 tracts were reviewed to determine accurate trust allocation.

The Department reviewed historical records to determine the investment income and operating expenses associated with the misapplied financial assets and reimbursed the appropriate trusts.

The Department worked with the Attorney General's Office to ensure that the mechanism of correcting net assets and past distributions when trusts were incorrectly assigned to tracts was being done consistently and appropriately.

To date, the agency has spent 3.5 years on this project, tracking 2,411 hours (or the equivalent of 1.2 full-time FTEs.) After historical records were reviewed it was found that 218 tracts were misallocated (0.01%), and 134 tracts need title curative. As a result of the title curative that has been completed to date, 13 new tracts have been added to the assets management by the Department and 53 tracts still need title examination. Additionally, these corrections resulted in \$2.6 million being reallocated to the proper trust.

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While all the tracts have been reviewed and all necessary trust adjustments have been completed, this project will be complete upon conclusion of the title curative and the index cards have been scanned.

LITIGATION

Vitesse Litigation

**Case:** Vitesse Oil, LLC; Vitesse Energy, LLC; and Iron Oil Operating LLC v. State of North Dakota; North Dakota Board of University and School Lands; and Jodi A. Smith, Commissioner of University and School Lands, Case No. 27-2019-CV-00266;

**Date Filed:** June 11, 2019

**Court:** McKenzie County District Court

**Judge:** Robin Schmidt

**Attorney:** David Garner

**Opposing Counsel:** Lawrence Bender, Spencer Ptacek

**Issues:** On June 7, 2019, the Attorney General’s Office was served with a complaint in the above referenced case. This case is requesting a judgment be entered under Chapter 32-12 of the North Dakota Century Code quieting title in Leases in favor of Plaintiffs; a judgment be entered under Chapter 32-12 of the North Dakota Century Code declaring that the Leases remain valid and in effect with respect to all of the Subject Lands based on the force majeure provision of the Board’s lease; that the Court enter a temporary restraining order, preliminary injunction, and permanent injunction, prohibiting Defendants from selling or attempting to sell new leases covering the oil and gas in and under the Subject Lands or otherwise interfering with Plaintiffs exclusive right to explore for and produce the same; and that Plaintiffs be awarded their costs and reasonable attorney fees.

**History:** The Summons and Complaint were served on the State of North Dakota and the Board of University and School Lands, by service on the Attorney General’s Office on June 7, 2019. The action was filed on June 11, 2019. The State’s Answer was filed with the District Court June 28, 2019. A scheduling conference was held on October 2, 2019. The parties will work on a scheduling order. Lessee’s Motion for Leave to Amend complaint filed October 14, 2019.

**Current Status:**

- Order Granting Plaintiffs’ Motion for Leave to Amend was entered on October 30, 2019.

**Continental Interpleader Litigation**

**Case:** **Continental Resources, Inc. v. North Dakota Board of University and School Lands, et al., Case No. 1:17-cv-00014**  
**Date Filed:** **December 23, 2016**  
**Court:** **Federal District Court, 8<sup>th</sup> Circuit**  
**Judge:** **Honorable Daniel Hovland**  
**Attorney:** **Charles Carvell, David Garner, and Jen Verleger**  
**Opposing Counsel:** **Lawrence Bender, David Ogden, Paul Wolfson, John S. Most**

**Issues:** In December 2016, Continental Resources, Inc. (Continental) brought an interpleader action against the Board of University and School Lands and the United States regarding certain lands underlying Continental operated wells located in McKenzie, Mountrail, and Williams Counties. This case involves a disagreement between the State and United States over the location of the ordinary high watermark—and consequently title to underlying minerals—on federally owned land along the now inundated historic Missouri River. Continental is requesting the Court determine the property interests for the disputed lands so that Continental can correctly distribute the proceeds from the affected wells. Continental has claimed that there is “great doubt as to which Defendant is entitled to be paid royalties related to the Disputed Lands.” Currently, Continental is paying the United States its full royalty based on the acreage it claims. The remaining royalty, over and above what is due the United States, is being escrowed with the Bank of North Dakota pursuant to the Board’s rules.

**History:** The United States removed this action to federal district court on January 11, 2017. The Board filed its answer to the complaint on February 13, 2017. The United States filed its answer to the complaint on May 12, 2017. An Amended Complaint was filed by Continental Resources on September 14, 2017. The United States filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction on October 18, 2017. In support of its motion, the United States alleges that it has not waived its sovereign immunity under the Quiet Title Act and that the interpleader action is moot under S.B. 2134.

The Board filed a response on December 20, 2017 opposing the motion to dismiss. Continental filed a response and the United States filed its reply. The United States filed a reply on March 16, 2018. The Board filed a Surreply to the Motion to Dismiss on April, 16, 2018. The Order Denying the United States’ Motion to Dismiss for Lack of Subject Matter Jurisdiction was entered on December 31, 2018. The Order provided that North Dakota and the United States confer and submit a proposed scheduling order to the Court no later than sixty days from the date of the order. On January 8, 2019 the United States filed its Motion to Stay Action Due to Lapse of Appropriations. On January 10, 2019, the Court granted the United States’ Motion and cancelled the January 24, 2019 scheduling conference. The Order stated the “action is stayed until appropriations are restored and Department attorneys and the Bureau of Land Management personnel are permitted to resume their usual civil litigation functions.” A January 10, 2019 docket entry provides “Deadlines and Hearings Terminated.” The United States filed a Notice of Restoration of Appropriations on January 28, 2019, which requested the Court set a new scheduling conference date. On January 30, 2019, the Court issued an order granting the motion for scheduling conference, requiring the parties submit a revised scheduling/discovery plan by March 15, 2019, and setting a telephonic scheduling conference for 10:00 a.m., March 18, 2019. The parties filed a Joint

Motion for Extension of Time to File Scheduling Proposal and Participate in Scheduling Conference on March 12, 2019, due to appointment of Magistrate Judge Clare Hochhalter, replacing Magistrate Judge Charles Miller, and the recusal of Shaun Pettigrew of the Environment and Natural Resources Division of the Department of Justice, with John S. Most as his replacement. The Court entered an Order granting the extension to April 12, 2019 and a scheduling conference was reset for April 15, 2019. The Scheduling Conference was held on April 15, 2019. On June 14, 2019, the Board of University and School Lands filed its Amended Answer to Amended Complaint with Statement of Claim. By August 13, 2019, the United States shall assert its claims, if any, to the disputed stake. After the August 13, 2019 filing, the proceedings will be stayed until September 19, 2019 or another date set by the Court. During the stay, the United States and the Board are to discuss whether the dispute that gave rise to the litigation can be resolved. By no later than September 19, 2019, the United States and Board shall inform the Court of the status of their discussions and the Court will consider a schedule for the case. A Status Conference was set for September 20, 2019 before Magistrate Judge Clare R. Hochhalter. On August 1, 2019, the Status Conference previously set for September 20 was reset to October 11, 2019 at 10 a.m. before Magistrate Judge Clare R. Hochhalter. On August 13, 2019, the United States filed a Motion for Extension of Time to Plead and Assert Affirmative Claims and the Motion was granted on the same day, giving the United States until August 27, 2019 to file. The United States filed their Answer to Amended Complaint on August 27, 2019. On October 3, 2019, Defendants filed a joint motion and memorandum for postponement of the October 11, 2019 status conference by 90 days. On October 4, 2019, the Court entered an Order granting the motion to continue status conference. Status conference was reset to January 13, 2020, at 9 a.m. via telephone before Magistrate Clare R. Hochhalter. United States Department of Justice advised it will be working with the United States Department of Interior – Bureau of Land Management regarding a settlement proposal.

**Current  
Status:**

- On November 8, 2019, the Board received an email from the US DOJ in response to the Board’s request that the federal government start settlement discussions by making a proposal to the Board. The email states the federal government believes its OHWM surveys are accurate, and cited N.D.C.C. § 61-33.1-06, which states: “Notwithstanding any provision of this chapter to the contrary, the ordinary high water mark of the historical Missouri riverbed channel abutting . . . public domain lands . . . must be determined by the branch of cadastral study of the [BLM] in accordance with federal law.” Relying on this statute, US DOJ suggests that the federal surveys are presumptively accurate, and then states: “we respectfully suggest that the best and most appropriate path forward would be for representatives of North Dakota to identify the specific areas where it believes the agency erred in identifying the OHWM and proffer the evidence on which it bases that belief. BLM would then assess that evidence in good faith to ascertain if a compromise, aimed at reducing litigation risk, is possible.”

**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;

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 Judgment was submitted on

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September 12, 2019. The Judgment and Notice of Entry of Judgment were filed with the District Court on September 16, 2019.

**Current Status:**

- **Board of University and School Lands' Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019.**

**Newfield Litigation**

**Case:** **Newfield Exploration Company, Newfield Production Company, and Newfield RMI LLC v. State of North Dakota, ex rel. the North Dakota Board of University and School Lands and the Office of the Commissioner of University and School Lands, a/k/a the North Dakota Department of Trust Lands, Civ. No. 27-2018-CV-00143**

**Date Filed:** **March 7, 2018**

**Court:** **District Court/McKenzie County**

**Attorneys:** **David Garner**

**Opposing**

**Counsel:** **Lawrence Bender - Fredrikson & Byron, P.A. and Michelle P. Scheffler – Haynes and Boone, LLP**

**Judge:** **Robin Schmidt**

**Issues:** Plaintiff is seeking a Declaratory Judgment that it is currently paying gas royalties properly under the Board's lease. Specifically, Plaintiff is asking the Court to order that gas royalty payments made by the Plaintiff be based on the gross amount received by the Plaintiff from an unaffiliated third-party purchaser, not upon the gross amount paid to a third party by a downstream purchaser, and that Plaintiff does not owe the Defendants any additional gas royalty payments based on previous payments.

**History:** A Complaint and Answer with Counterclaims have been filed. Newfield filed an Answer to Counterclaims. A Scheduling conference was held July 27, 2018. Plaintiffs' filed a Motion for Summary Judgment on August 13, 2018 and Defendants filed a Cross-Motion for Summary Judgment. Plaintiffs' Response was filed October 19, 2018 and Defendants' Reply was filed November 9, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019 at 1:30 p.m., McKenzie County. An Order on Cross Motions for Summary Judgment was issued on February 14, 2019, granting Plaintiff's motion for summary judgment and denying Defendants' motion for summary judgment. The Judgment was entered March 1, 2019, and the Notice of Entry of Judgment was filed March 4, 2019. Defendants have filed a Notice of Appeal to the North Dakota Supreme Court (Supreme Court). The trial scheduled in McKenzie County District Court for September 10 and 11, 2019 has been cancelled. Defendants/Appellants' Brief to the Supreme Court was filed April 29, 2019. Plaintiffs/Appellees filed their Brief of Appellees and Appendix of Appellees on June 7, 2019. Defendants/Appellants filed a reply brief on June 18, 2019. Oral Argument before the Supreme Court was held on June 20, 2019. On July 11, 2019, the Supreme Court entered its Judgment reversing the Judgment of the McKenzie County District Court. On July 25, 2019 Newfield filed Appellee's Petition for Rehearing. Also on July 25, 2019, a Motion for Leave to File Amicus Curiae Brief by Western Energy Alliance in Support of

Newfield was filed with the Supreme Court. On July 26, 2019, a Motion for Leave to File Amicus Curiae Brief by North Dakota Petroleum Council in Support of Newfield was filed with the Supreme Court. On August 20, 2019, the North Dakota Supreme Court requested Defendants file a Response to the Petition for Rehearing and the two Amicus Curiae Briefs no later than September 4, 2019. Defendants/Appellants filed their Response to Petition for Rehearing on September 4, 2019. A Corrected Opinion was filed by the North Dakota Supreme Court on September 9, 2019, changing the page number of a citation. On September 12, 2019, the North Dakota Supreme Court entered an order denying Newfield's Petition for Rehearing. On September 20, 2019, the opinion and mandate of the Supreme Court was filed with McKenzie County District Court. A Telephonic Status Conference was held October 8, 2019. On October 9, 2019, the District Court issued an Order Setting Briefing Schedule which ordered "the parties to file a brief regarding how they suggest the case proceed after the Supreme Court's decision."

**Current Status:**

- **The parties filed briefs with the District Court on November 6, 2019.**
- **Notice of Appearance for Michelle P. Scheffler of Hayes and Boone, LLP on behalf of Plaintiffs was filed November 7, 2019.**

## M I N E R A L S

### Repayment of Unpaid Gas Royalties

For over a decade, the Department of Trust Lands (Department) has persistently worked with operators to collect payment or establish escrow accounts for royalties from the production of minerals, in accordance with the Board of University and School Land's lease, rules, and policies.

In 2012, the Department sent letters to operators and lessees who reported deductions for royalties paid. In July 2017, letters were sent to all operators and lessees regarding the proper method to calculate gas royalties. Companies who were audited and found to be non-compliant with the proper calculation of gas royalties, as outlined in the July 2017 letter, received audit finding letters. All companies who have continued to be non-compliant have received additional communication regarding the proper calculation of gas royalties.

The Department's 2016 performance audit found the Department was not consistently issuing penalties and interest and recommended a policy be established. The Department adopted an internal policy regarding penalties and interest. Additionally, the Board of University and School Lands (Board) adopted a policy regarding penalties and interest, which is included in our proposed Administrative Rules.

Current Department and Board policy requires all late royalty payments be assessed the maximum interest (18%) under N.D.C.C. § 47-16-39.1, and penalty (12%) allowed. The Department's revenue compliance procedures are configured to calculate and generate interest and penalty notices in accordance with these policies.

Under the Board's rules and policies once penalties and interest over \$25,000 are assessed for late payment of royalties, only the Board can modify the amount.

N.D.C.C. § 47-16-39.1 provides interest may not be applied on royalties that were escrowed since this statute permits the suspension of interest payments “in the event of a dispute of title existing that would affect distribution of royalty payments . . . .”

**Recommendation: The Board delegates the Commissioner to determine gas royalty repayments as discussed.**

**No formal action was taken at this time.**

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

## LITIGATION

### Sorum Litigation

**Case:** Paul Sorum, et. al. v. State of North Dakota, et. al. – Civ. No. 09-2018-CV-00089  
**Tribunal:** Cass County District Court  
**Judge:** John C. Irby  
**Attorney:** Mark Hanson, Nilles Law Firm  
**Opposing Counsel:** Terrance W. Moore, Fintan L. Dooley

**Issues:** The Board was named as a defendant in the above reference case which was served on January 10, 2018. Plaintiffs have filed this action to challenge the Constitutionality of S.B. 2134 passed during the last legislative session and codified as N.D.C.C. ch. 61-33.1. Under the new legislation, “[t]he state sovereign land mineral ownership of the riverbed segments inundated by Pick-Sloan Missouri basin project dams extends only to the historical Missouri riverbed channel up to the ordinary high water mark.” N.D.C.C. § 61-33.1-02. S.B. 2134 established a process by which the Department of Mineral Resources is directed to procure a “qualified engineering and surveying firm” to “review the delineation of the ordinary high water mark of the corps survey segments” for the portion of the Missouri River designated as the “historical Missouri riverbed channel.” N.D.C.C. § 61-33.1-03(2), (3). Following a review process, which includes a public hearing and public comments, the North Dakota Industrial Commission must adopt final review findings which “will determine the delineation of the ordinary high water mark for the segment of the river addressed by the findings.” N.D.C.C. § 61-33.1-03(7). Plaintiffs’ complaint requests from the court a declaratory judgment finding that N.D.C.C. ch. 61-33.1 violates the Public Trust Doctrine and the Anti-Gift, Privileges and Immunities, and Local and Special Law Clauses of the North Dakota Constitution. Plaintiffs are also requesting the Court issue an injunction to prevent all state officials from further implementing and enforcing N.D.C.C. ch. 61-33.1.

**History:** An Answer was filed. Defendants filed a Motion to Dismiss, which was denied in April 2018. Petition for Supervisory Writ and Exercise of Original Jurisdiction was filed by Defendants and denied in May 2018. A Motion for Preliminary Injunction was brought

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by Plaintiffs and a hearing was held on May 21, 2018. An Order for Preliminary Injunction was filed June 26, 2018. A Scheduling Conference was held on September 6, 2018 and the following briefing deadlines were set: Summary Judgment Motions were filed October 22, 2018. Response Briefs were filed December 10, 2018. Reply Briefs were due December 21, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019. The Order on Cross-Motions for Summary Judgment was issued on February 27, 2019, and Defendants were directed to prepare the proposed Judgment. On March 6, 2019, Defendants filed their proposed Judgment. Plaintiff's filed a letter on March 7, 2019, advising the Court that they felt Defendants' proposed Judgment was deficient and that they would also be submitting a proposed Judgment. Plaintiff's proposed Judgment was filed March 8, 2019. Defendants filed a letter on March 8, 2019 advising the Court that they intended to submit a response to Plaintiffs' proposed Judgment within 14 days. On March 19, 2019, Defendants filed an Objection to Plaintiffs' Proposed Judgment. Thereafter, Plaintiffs filed a letter asking the Court not to rule on Defendants' Objection until Plaintiffs have had the opportunity to be heard and further, that Plaintiffs' intend to bring a Motion for Clarification concerning retroactive royalty refunds within 14 days. Plaintiffs filed their Response to Defendants' Objection to Proposed Judgment and Request for Clarification and their Amended Proposed Order and Judgment on March 29, 2019. Defendants filed their Objection to Plaintiffs' Proposed Order and Judgment (Plaintiffs' Amended Proposed) and Reply to Plaintiffs' Response to Defendants' Objection to Proposed Judgment and Request for Clarification on April 8, 2019. On April 25, 2019, Judge Irby entered an Order for Entry of Judgment ordering the Clerk to enter Defendants' Proposed Order as the Judgment of the Court. Judgment was entered on April 26, 2019. Plaintiffs' filed a Notice of Motion for Attorney Fees, Costs, and Service Award to Plaintiffs scheduling a hearing for 1:30 p.m. June 10, 2019 in Fargo. The Notice of Entry of Order on Cross-Motions for Summary Judgment, Order for Entry of Judgment, and Judgment was filed by Defendants on May 3, 2019. On May 15, 2019, Plaintiffs filed their Motion for Attorney Fees, Costs and Service Award to Plaintiffs and the Memorandum in Support of Motion, together with supporting documents. On May 20, 2019, Plaintiffs filed their Amended Motion for Attorneys Fees, Costs and Service Award to Plaintiffs. Defendants filed an Expedited Motion for Extension of Time to Respond to Plaintiffs' Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiffs and requested the June 10, 2019 hearing be postponed. Defendants filed, with the District Court, its Response to Plaintiffs' Memorandum in Support of Motion for Attorneys Fees, Costs and Service Award to Plaintiffs on June 12, 2019. Plaintiffs' filed their Reply Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiffs on June 19, 2019. A hearing on the motion for attorneys fees was held before the District Court on July 18, 2019. The State Defendants/Appellants filed a Notice of Appeal to the North Dakota Supreme Court (Supreme Court) on June 27, 2019. Plaintiff/Appellees/Cross-Appellants filed a Notice of Cross-Appeal dated July 10, 2019. Appellants' Briefs were due to the Supreme Court on August 6, 2019. On July 18, 2019, the parties filed a Stipulation and Joint Motion for Appellate Briefing Schedule with the Supreme Court to allow for a decision to be rendered in the District Court on the issue of attorneys fees prior to the briefs being due to the Supreme Court. On July 19, 2019, the Joint Motion for Appellate Briefing Schedule was denied and an Order of Remand was entered by the Supreme Court temporarily remanding the case to the trial court for the limited purpose of consideration and disposition of Plaintiffs' Motion for Attorney Fees, Costs and Service Award to Plaintiffs. The briefing schedule for briefs before the Supreme Court is stayed pending the District Court's disposition of the attorneys fees issue. On July 24, 2019, the District Court issued its Order on Plaintiffs' Motion for Attorney Fees, awarding attorney fees to Plaintiffs' attorneys and

service awards to Plaintiffs. An Amended Judgment was entered in the District Court on July 31, 2019. On August 1, 2019, State Defendants filed an Amended Notice of Appeal and the Order and Request for Transcript. Also on August 1, 2019, the Supreme Court provided its Notice of Filing Notice of Appeal. On August 7, 2019, the Amended Notice of Cross-Appeal was filed by Plaintiffs. The transcripts requested by the State Defendants of the January 4, 2019 summary judgment hearing and the July 18, 2019 hearing on attorney fees/costs/service award were filed with the North Dakota Supreme Court on October 4, 2019. In light of the filing of those transcripts, the Supreme Court's clerk has advised that the State Defendants' initial appellant brief is to be filed on November 13, 2019.

**Current  
Status:**

- **Brief of Defendants, Appellants and Cross-Appellees the State of North Dakota, the Board of University and School Lands of the State of North Dakota, the North Dakota Industrial Commission, the Hon. Douglas Burgum, in his Official Capacity as Governor of the State of North Dakota, and the Hon. Wayne Stenehjem, in his Official Capacity as Attorney General of North Dakota was filed with the Supreme Court on November 13, 2019.**
- **A Motion for Leave to File *Amicus Curiae* Brief by the North Dakota Petroleum Council in Support of the Constitutionality of N.D.C.C. ch. 61-33.1 was filed with the Supreme Court on November 13, 2019.**
- **The Supreme Court granted the North Dakota Petroleum Council's Motion for Leave to File *Amicus Curiae* Brief on November 14, 2019.**

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending and potential litigation. Executive session began at 10:14 AM.

**EXECUTIVE SESSION**

**Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board close the meeting to the public and go into executive session for purposes of attorney consultation relating to:**

- **Continental Resources, Inc. et al. Case No. 1:17-cv-00014**
- **William S. Wilkinson et al. Case No. 53-2012-CV-00038**
- **Newfield Exploration Company et al Civ. No. 27-2018-CV-00143**
- **Gas Royalty Repayment Penalty and Interest**
- **Paul Sorum et al. Civ. No. 09-2018-CV-00089**

<b>Action Record</b>	<b>Motion</b>	<b>Second</b>	<b>Aye</b>	<b>Nay</b>	<b>Absent</b>
Secretary Jaeger		X	X		
Superintendent Baesler			X		
Treasurer Schmidt			X		
Attorney General Stenehjem	X		X		
Governor Burgum			X		

**EXECUTIVE SESSION**

**Members Present:**

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kirsten Baesler	Superintendent of Public Instruction
Kelly Schmidt	State Treasurer (Via Phone)

**Department of Trust Lands Personnel present:**

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Kate Schirado	Administrative Assistant
Adam Otteson	Revenue Compliance

**Guests in Attendance:**

Brent Sanford	Lieutenant Governor
Leslie Bakken Oliver	Governor’s Legal Counsel
Reice Haase	Governor’s Office
Dave Garner	Attorney General’s Office
Charles Carvell	Attorney General’s Office (Continental Interpleader only)
Mark Hanson	Nilles Law Office (Via teleconference for Sorum only)

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The executive session adjourned at 11:03 AM and the Board returned to open session and the public was invited to return to the meeting. During the executive session, the Board was provided information regarding the Continental Interpleader and Newfield litigation.

**A D J O U R N**

There being no further business, the meeting was adjourned at 11:04 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands