

**Minutes of the Meeting of the
Board of University and School Lands
December 18, 2019**

The December 18, 2019 meeting of the Board of University and School Lands was called to order at 8:00 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
Kelly Schmidt	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction

Department of Trust Lands Personnel Present:

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Kate Schirado	Administrative Assistant
Adam Otteson	Revenue Compliance
Tiffany Grossman	Attorney
Michael Shackelford	Investments
David Shipman	Minerals
Rick Owings	EIIO
Mike Humann	Surface

Guests in Attendance:

Dave Garner	Attorney General's Office
Leslie Bakken Oliver	Governor's Legal Counsel
Brent Sanford	Lt. Governor
Josh Kevan	RVK
Ron Ness	ND Petroleum Council
Mark Hanson	Nilles Law Office (Via teleconference for Sorum case only)
Amy Sisk	Bismarck Tribune

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 November 26, 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 11/16/2019 to 12/10/2019

Granted to:	WEST DAKOTA WATER LLC, WILLISTON-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008589
Trust:	A – Common Schools
Legal Description:	MCK-149-98-16-NE4, NW4, SE4
(12/18/19)	

Granted to: **HILAND CRUDE LLC, HOUSTON-TX**
 For the Purpose of: Easement: Drop Line-Oil Gathering Pipeline
 Right-of-Way Number: RW0008603
 Trust: A – Common Schools
 Legal Description: WIL-157-99-36-SE4

Granted to: **AMES SAVAGE WATER SOLUTIONS LLC, WILLISTON-ND**
 For the Purpose of: Permit: Temporary Water Layflat Line
 Right-of-Way Number: RW0008621
 Trust: A – Common Schools
 Legal Description: WIL-158-95-36-NW4, SW4

Granted to: **WEST DAKOTA WATER LLC, WILLISTON-ND**
 For the Purpose of: Permit: Temporary Water Layflat Line
 Right-of-Way Number: RW0008623
 Trust: A – Common Schools
 Legal Description: WIL-156-97-16-S2SW4 LESS THE N 248 FT

Granted to: **ND GEOLOGICAL SURVEY, BISMARCK-ND**
 For the Purpose of: Permit: Rare Earth Elements Exploration
 Right-of-Way Number: RW0008630
 Trust: A – Common Schools
 Legal Description: SLO-136-102-16-NE4

Summary of Fall Surface Lease Auctions

The 2019 fall lease auctions were completed at the beginning of November. The following table is a summary of the fall lease results as compared to the last fall we leased which was 2017; every 5 years we have an “off” year that we do not hold fall auctions.

	2017	2019
Number of counties	40	34
Total tracts offered	891	1146
Number of tracts bid unleased	37	78
Number of tracts bid-up	115	146
Total amount of minimum advertised bids	\$1,689,266	\$2,546,925
Total amount received	\$1,875,340	\$2,418,748
Total amount collected over minimum bid	\$238,381	\$128,177

All payments from the fall auctions have cleared and no issues remain. Commissioner Smith has approved the leases on behalf of the Board of University and School Lands.

The 78 unleased tracts will be offered again in March of 2020 at the regional spring auctions.

North Dakota Game and Fish Department Request to Purchase Trust Land Under NDCC Ch 15-09

The North Dakota Game and Fish Department has submitted an application to the Board and University School Lands (Board) to purchase 114 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ section 16, T130N, R50W, Richland County for a shooting range and wildlife management area under authority of N.D.C.C. Chapter 15-09 which allows for the purchase of Trust land by public entities for public purposes. An appraisal has been requested from Richland County as required under N.D.C.C. Chapter 15-09 and a second appraisal will be completed by a qualified commercial real estate appraiser to determine the value of the property at its highest and best use.

Map was provided to the Board and is available upon request.

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.

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 November 2019, the Division received 647 holder reports with a property value of \$3,330,950.99 and paid 444 claims with a total value of \$201,550.86.

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 36 grants with a balance of \$15,477,345.77 as of December 9, 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
8/31/2019	51	\$19,963,193.67
10/11/2019	41	\$17,695,025.25
11/15/2019	40	\$17,164,734.70
12/9/2019	36	\$15,477,345.77

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 December 9, 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
8/31/2019	4	\$4,971,638.80
10/11/2019	4	\$4,940,103.06
11/15/2019	4	\$4,793,191.14
12/9/2019	4	\$4,793,191.14

The Energy Infrastructure and Impact Office is currently managing 40 grants for a total of \$20,270,536.91. 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
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
12/9/2019	36	\$15,477,345.77	12/9/2019	4	\$4,793,191.14	\$20,270,536.91

Investment Update

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of November 30, 2019. The figures provided are unaudited.

Account/Asset Class	Long-Term Asset Allocation	11/30/19 Actual Allocation \$	11/30/19 Actual Allocation %	11/30/19 % Diff.
Large Cap US Equity	14.5%	\$ 754,315,903	15.1%	0.6%
Mid/Small Cap US Equity	4.0%	\$ 202,207,970	4.1%	0.1%
International Equity	14.5%	\$ 749,251,190	15.0%	0.5%
Emerging Market Equity	4.0%	\$ 205,491,510	4.1%	0.1%
Total Equities	37.0%	\$ 1,911,266,573	38.3%	1.3%
Core Fixed Income	13.8%	\$ 731,839,196	14.7%	0.9%
Non-Core Fixed Income	9.2%	\$ 413,438,734	8.3%	-0.9%
Total Fixed Income	23.0%	\$ 1,145,277,930	22.9%	-0.1%
Total Absolute Return	15.0%	\$ 734,158,733	14.7%	-0.3%
Commodities	3.0%	\$ 152,034,281	3.0%	0.0%
MLPs	3.0%	\$ 132,922,285	2.7%	-0.3%
TIPS	2.0%	\$ 97,945,550	2.0%	0.0%
Natural Resource Equities	2.0%	\$ 91,541,188	1.8%	-0.2%
Total Inflation Strategies	10.0%	\$ 474,443,304	9.5%	-0.5%
Core Real Estate	8.0%	\$ 392,016,685	7.9%	-0.1%
Core Plus Real Estate	7.0%	\$ 335,468,622	6.7%	-0.3%
Total Real Estate	15.0%	\$ 727,485,307	14.6%	-0.4%
Total Asset	100.0%	\$ 4,992,631,847	100.0%	

Upcoming Investment Manager Meetings

The following meeting with investment manager were planned to discuss updates on strategy, compliance, and performance. Meetings will be held at DTL's conference room. Please inform the Commissioner ahead of time if you plan to attend, so that we can make sure enough presentation materials are available.

December 20, 2019, 9:00AM

Northern Trust Asset Management

SIIF/Capitol/Coal (\$727.4M, 100% of assets)

Diversified Inflation Strategies (\$97.9M, 2% of PTF Assets)

January 28, 2019, 9:00AM

DFA EM All Cap Core Fund (DFCEX)

Emerging Market Equity (\$102.8M, 2.1% of PTF assets)

O P E R A T I O N S

General Administration, Surface Land Management, Investments and Minerals Management Administrative Rules

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.

(12/18/19)

The Department of Trust Lands (Department) considered existing rules, together with policies and procedures, to incorporate necessary wording from those into rules which comply with the North Dakota Administrative Code.

Revisions to rules concerning General Administration and rules for Surface Land Management, Investments, and Minerals Management were posted on the Department’s website, publication of a notice of intent was completed, and copies of the rules were sent to sponsoring legislators. A public hearing on the rules was held August 28, 2019, where the Department received oral and written comments. The Department continued to receive comments until September 9, 2019. A summary of the written comments, together with the Department’s discussion and proposed revisions to the rules, was completed.

The Board approved the amended rules on September 26, 2019, which were then submitted for review by the Attorney General’s Office. The Attorney General’s Office reviewed the General Administration, Surface Land Management, Investments, and Minerals Management Administrative Rules. Those rules were presented to the Administrative Rules Committee on December 3, 2019 and will become effective January 1, 2020. A final version of the Administrative Rules will be posted on the Department’s website.

Board of University and School Lands Policy Manual

The Board of University and School Lands (Board) currently has a Policy Manual (Board Policy Manual). The Board also has an Investment Policy Statement that has not been officially included in the Board Policy Manual.

Many of the current Board policies have been revised for inclusion in the Administrative Rules, including the majority of both the Surface Land Management Policy Manual and the Minerals Policy Manual. Those rules were presented to the Administrative Rules Committee on December 3, 2019, and those rules are scheduled to become effective January 1, 2020. Thus, it is necessary to simultaneously repeal the current Board Policy Manual and adopt the proposed revised Board Policy Manual, which would include Governance and revisions to the following sections: General (Definitions), Surface Land Management (to remove those policies that were incorporated into Administrative Rules), Investments (revisions to the Farm Loan Policy and the Investment Policy Statement), and Minerals (to remove those policies that were incorporated into Administrative Rules). Changes were noted in the red-lined version of the prior policies which was presented to the Board on November 26, 2019. Those revised portions are attached and are before the Board for a second reading.

Motion: The Board adopt the proposed revisions to the North Dakota Board of University and School Lands Policy Manual to become effective January 1, 2020.

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

North Dakota Board of University and School Lands revised policies for placement in the revised Board Policy Manual were provided to the Board and are available upon request.

Energy Infrastructure and Impact Office (EIO) Contingency Grant

On September 26, 2019, the Board was presented that EIO plans to open a contingency grant round in December 2019, using funds from the \$2 million allocation appropriated by the Sixty-sixth Legislative Assembly. The grant round was opened on December 2, 2019, applications will be accepted through January 31, 2020, with scoring completed and the advisory committee meeting held in February 2020. A list of potential awards will likely be presented to the Board at the March 2020 Board meeting.

The Energy Infrastructure and Impact Office recommends the following members be re-appointed to serve on the Contingency Grant Advisory Committee:

Dan Kalil, Williston Township Supervisor- Williams County
 Jay Elkin, Stark County Commissioner- Stark County
 Gary Weisenberger, Mayor of Stanley- Mountrail County
 Philip Riely, Mayor of Watford City- McKenzie County
 Reinhard Hauck, Dunn County Commissioner- Dunn County
 Mark Spooner, Border Township Supervisor- Divide County
 Dave Wegner, Beach PSD #3 Superintendent- Golden Valley County
 Marcia Lamb, Billing County Auditor- Billings County

New appointment to the committee:

Kari Enget, Powers Lake Ambulance- Burke County

EIO Director Jodi Smith recommends re-appointment and appointment of these community leaders to the Contingency Grant Advisory Committee.

Motion: The Board approves the Contingency Grant Advisory Committee members, listed above, to make recommendations to the Land Board on contingency Energy Infrastructure and Impact grants.

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		

INVESTMENTS

Investment Policy Statement – Securities Litigation Update

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.

(12/18/19)

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).

Motion: The Board adopt the proposed North Dakota Board of University and School Lands Securities Litigation Policy.

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		

Redline version was provided to the Board and is available upon request.

M I N E R A L S

Determination of Cottonwood Lake Navigability, Williams County

The Department of Trust Lands (Department) received a written request addressed to the North Dakota State Water Commission and the Commissioner of the Board of University and School Lands (Board) from Kraken Oil & Gas II, LLC, dated November 15, 2019, requesting the State “either disclaim ownership based on non-navigability, or, if your initial determination is that the lake

may be navigable, to commence proceedings pursuant to the newly adopted provisions in NDCC ch. 61-33.”

The Sixty-Sixth Legislative Assembly passed House Bill 1202, an act to create and enact a new section to chapter 61-33 of the North Dakota Century Code, relating to determinations of navigability; to amend and reenact section 61-33-01 and subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code, relating to sovereign land management definitions; and to provide for a state engineer review of determinations of navigability.

Under N.D.C.C. § 61-33-02, “[a]ll sovereign lands of the state must be administered by the state engineer and the [Board] subject to the provisions of this chapter.” Under N.D.C.C. § 61-33-06, the Board “shall manage, operate, and supervise all properties transferred to it by this chapter; may enter into any agreements regarding such property; may enforce all subsurface rights of the owner in its own name; and may make and execute all instruments of release or conveyance as may be required pursuant to agreements made with respect to such assets, whether such agreements were made heretofore, or are made hereafter.” Under N.D.C.C. § 61-33-05, the State Engineer is tasked with making navigability determinations.

The State Engineer is currently soliciting proposals for the search, collection, and presentation of evidence necessary for the State Engineer to make and support a determination of navigability or non-navigability of certain lakes and streams in the state.

Motion: The Board formally request the State Water Commission determine the navigability of Cottonwood Lake in Williams County.

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		

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 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

(12/18/19)

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.**

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

(12/18/19)

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

(12/18/19)

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 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.**

(12/18/19)

MINERALS

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-complaint 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 assesses the maximum interest (18%) under N.D.C.C. § 47-16-39.1, and penalty (12%) allowed on all late royalty payments unless a request is made to the Commissioner to negotiate the interest rate. 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					

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending and potential litigation. Executive session began at 8:41 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:

- **Gas Royalty Repayment Penalty and Interest**

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		

EXECUTIVE SESSION

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
Kate Schirado	Administrative Assistant
Adam Otteson	Revenue Compliance
Kristie McCusker	Paralegal

Guests in Attendance:

Brent Sanford	Lieutenant Governor
Leslie Bakken Oliver	Governor's Legal Counsel
Dave Garner	Attorney General's Office
Mark Hanson	Nilles Law Office (Via teleconference for Sorum only)

The executive session adjourned at 10:00 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 Gas Royalty Repayment Penalty and Interest.

I N V E S T M E N T S

October Investment Reports – 3rd Quarter 2019

Josh Kevan from RVK will review the performance of the Board of University and School Land's (Board) investment program for the period ending October 31, 2019.

The first report to be reviewed is prepared by RVK to enable the Board to monitor and evaluate the collective performance of the permanent trusts' investments and the performance of individual managers within the program. In order to provide an overview of the program and highlight critical information, an executive summary has been incorporated into the Board report. A more comprehensive, detailed report is also available.

Next, Josh will touch on the performance of the Ultra-Short portfolio in which the Strategic Investment and Improvements Fund, the Coal Development Trust Fund and the Capitol Building Fund are invested.

RVK provided report copies to the Board and are available upon request.

Survey of Sovereign Wealth Funds

Josh Kevan from RVK will provide the Board some insight and perspectives from RVK's Survey of US Sovereign Wealth Funds.

RVK conducted a survey of US Sovereign Wealth Funds in order to gain additional understanding of the unique structures of the US based funds. The Survey covers the domestic peer group to the permanent trusts.

The presentation includes information gathered by RVK via the survey and interviews with senior investment staff across the various funds, RVK consulting teams that serve those funds, and publicly available data covering: fund objectives, assets allocation, performance, constraints, spending models, and governance and decision making structures.

RVK provided report copies to the Board and are available upon request.

A D J O U R N

There being no further business, the meeting was adjourned at 11:00 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

(12/18/19)