

**Minutes of the Meeting of the  
Board of University and School Lands  
January 28, 2016**

The January 28, 2016 meeting of the Board of University and School Lands was called to order in the Governor's Conference Room at 9:06 AM by Chairman Jack Dalrymple.

**Members Present:**

|                 |                                      |
|-----------------|--------------------------------------|
| Jack Dalrymple  | Governor                             |
| Alvin A. Jaeger | Secretary of State                   |
| Wayne Stenehjem | Attorney General                     |
| Kelly Schmidt   | State Treasurer (via telephone)      |
| Kirsten Baesler | Superintendent of Public Instruction |

**Department of Trust Lands Personnel present during open session:**

|                 |                                   |
|-----------------|-----------------------------------|
| Lance D. Gaebe  | Commissioner                      |
| Jeff Engleson   | Director, Investment Division     |
| Susan Dollinger | Unclaimed Property Administrator  |
| Levi Erdmann    | Investment Analyst                |
| Gerry Fisher    | Director, Grants and Claims       |
| Linda Fisher    | Deputy Commissioner of Operations |
| Mike Humann     | Director, Surface Division        |
| Taylor Lee      | Director, Revenue Compliance      |
| Catelin Newell  | Office Manager                    |
| Rick Owings     | Assistant Energy Impact Director  |

**Others in Attendance during open session:**

|                   |   |
|-------------------|---|
| Jennifer Verleger | North Dakota Office of the Attorney General |
| Mike Nowatski     | Forum Communications                        |
| John Harju        | Energy and Environmental Research Center    |
| Wes Peck          | Energy & Environmental Research Center      |
| Adele Sigl        | ND Department of Commerce                   |
| Sherry Leno       | ND Department of Commerce                   |
| Lonnie Grabowska  | ND Bureau of Criminal Investigation         |
| Savannah Schmidt  | ND Bureau of Criminal Investigation         |
| Ginny Peterson    | ND Bureau of Criminal Investigation         |
| Janelle Moos      | CAWS North Dakota                           |
| Lauren Donovan    | Bismarck Tribune                            |
| Bonnie Storbakken | Governor's Legal Counsel                    |
| Lynn Wolff        | Dakota Resource Council                     |
| Larry Heilmann    | Dakota Resource Council                     |
| Shelly Peterson   | ND Long Term Care Association               |
| Scott A Korom     | BARR Engineering                            |
| Windie Lazenko    | 4 Her HT Program                            |
| Dave Migler       | Pierce County                               |
| Duane Johnston    | Pierce County                               |
| Dwane R Hawk      | Pierce County                               |
| Levi Andrist      | GA Group PC                                 |
| Joel Gilbertson   | GA Group PC                                 |

## **APPROVAL OF MINUTES**

A motion to approve the minutes of the December 16, 2015 meeting was made by Secretary of State Al Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried on a voice vote.

## **ENERGY INFRASTRUCTURE AND IMPACT OFFICE**

### **Spending Plan Analysis**

Of the \$139.3 million appropriated in the 2015-2017 Biennium by the 2015 Legislature for grants, \$41,557,788 has been awarded. During Fiscal Year 2016 awards have included \$3.5 million to airports; \$3.7 million to emergency medical services; \$15 million to K-12 schools, \$7.8 million to law enforcement agencies, \$3 million to fire districts, \$2 million to local district health units, \$.5 million to a township, \$5 million to critical access hospitals and \$1 million to providers of services to individuals with developmental disabilities.

The Oil and Gas Impact Fund has received \$17,275,293.73 from Gross Production Tax collections from July 2015 to December 2015. As of January 20, 2016, \$17,238,367.26 has been reimbursed to grantees.

At its December 2015 meeting the Board requested legal advice regarding the priority of allocations of Oil and Gas Impact Grant Funds (OGIGF) made by the 2015 Legislature in HB 1176, SB 2199, SB 2284 and SB 2015. Lower than forecast distributions of Gross Production Tax (GPT) into the OGIGF necessitated this review. To date, the OGIGF has received 72% of expected funding and EIO projections indicate that the OGIGF may reach only 50% of the \$140 million appropriated.

The Board reviewed a January 22, 2016 legal memo prepared by Assistant Attorney General Christopher Harvey.

The legal review indicated that in HB 1176 Section 5, subsection 4 one-half of funding must be provided to critical access hospitals in January of each fiscal year of the biennium. Given this language and that \$5 million has already been distributed in January 2016, an additional \$5 million will need to be distributed in January 2017 to critical access hospitals. Similar language exists in Section 5 subsection 10 for providers serving individuals with developmental disabilities, which requires an additional \$1 million be distributed in January of 2017 to providers.

The legal interpretation further found that language in SB 2199 regarding \$750,000 for Human Trafficking and SB 2284 and regarding the \$250,000 for Sexual Assault Examiner Programs need to be funded. These apportionments are part of the \$10 million designated for law enforcement within HB 1176, section 5, subsection 3.

### Revised Spending Recommendation

The Director estimated that just that just over \$65 million would be collected during the biennium. The following recommendations of possible awards based upon funding availability and required and discretionary grant areas was presented:

| B 1176,<br>Section 5,<br>Subsection | Entities  | Legislative<br>Designated<br>Amounts | Awarded &<br>Projected<br>for FY16 | Projected for<br>FY17 | Projected<br>Total for<br>2015-2017<br>Biennium | Legal Advice   |
|-------------------------------------|---|--------------------------------------|------------------------------------|-----------------------|---|--|
| 1                                   | Airports  | \$48,000,000                         | \$8,718,820                        |                       | \$8,718,820                                     | Not mandatory  |
| 2                                   | K-12 Schools                                      | \$30,000,000                         | \$15,000,193                       |                       | \$15,000,193                                    | Not mandatory  |
| 3                                   | Law Enforcement                                   | \$10,000,000                         | \$8,745,771                        | \$96,809              | \$8,842,580                                     | SB 2199 Human Trafficking \$750,000, SB 2284 Sexual Assault Examiner Programs \$250,000 Required |
| 4                                   | Critical Access Hospitals                         | \$10,000,000                         | \$5,000,000                        | \$5,000,000           | \$10,000,000                                    | 1/2 required each January of the Biennium  |
| 5                                   | Bowman & Divide Counties (equal)                  | \$8,000,000                          | \$0                                | \$4,000,000           | \$4,000,000                                     | Not mandatory  |
| 6                                   | EMS   | \$6,000,000                          | \$3,696,195                        |                       | \$3,696,195                                     | Not mandatory  |
| 7                                   | Eligible Political Subs, 7 low producing counties | \$5,000,000                          | \$2,500,000                        |                       | \$2,500,000                                     | Not mandatory  |
| 8                                   | Nursing Homes/Basic Care/Home Health & Hospice    | \$4,000,000                          | \$2,100,000                        |                       | \$2,100,000                                     | Not mandatory  |
| 9                                   | Fire Protection Districts                         | \$3,000,000                          | \$3,000,000                        |                       | \$3,000,000                                     | Not mandatory  |
| 10                                  | Providers Serving Developmentally Disabled        | \$2,000,000                          | \$1,000,000                        | \$1,000,000           | \$2,000,000                                     | 1/2 required each January of the Biennium  |
| 11                                  | Domestic Violence Sexual Assault Organizations`   | \$2,000,000                          | \$2,000,000                        |                       | \$2,000,000                                     | Not mandatory  |
| 12                                  | Local District Health Units                       | \$2,000,000                          | \$2,000,000                        |                       | \$2,000,000                                     | Not mandatory  |
| 13                                  | City of Stanley                                   | \$1,700,000                          | \$0                                | \$850,000             | \$850,000                                       | Not mandatory  |
| 14                                  | City of Kenmare                                   | \$500,000                            | \$0                                | \$250,000             | \$250,000                                       | Not mandatory  |
| 15                                  | City of Berthold                                  | \$200,000                            | \$0                                | \$100,000             | \$100,000                                       | Not mandatory  |
| 16                                  | City of Burlington                                | \$100,000                            | \$0                                | \$50,000              | \$50,000  | Not mandatory  |
|                                     | Un-Designated Discretionary                       | \$6,800,000                          | \$500,000                          |                       | \$500,000                                       | Not mandatory  |

**\$139,300,000    \$54,260,979    \$11,346,809    \$65,607,788**

The Director suggested that any funds which accumulate in the fund over this amount be designated for airports and/or contingency use.

While the director suggested this revised grant plan, the Chairman indicated a preference to table action in anticipation of a revised State revenue forecast scheduled for the following week. No action was taken on the recommendation and action will be considered after OGIGF revenue forecast information is learned.

### Domestic Violence Shelter Grant Recommendations

The 2015 Legislature apportioned \$2 million of OGIGF for grants to domestic violence sexual assault organizations located in oil-producing counties. The legislation dictates that applicants secure local matching funds of at least two dollars of nonstate funds for each dollar of grant funds.

In June 2015 the Board made appointments to the Domestic Violence Grants Advisory Committee to assist in formulating recommendations of grants. The committee includes:

Adele Sigl, Department of Commerce  
 Bonnie Malo, Department of Commerce  
 Sherry Leno, Department of Commerce  
 Janelle Moos, CAWS of ND  
 Mary Dasovick, Department of Health  
 Mallor Sattler, Department of Health  
 Lori Mickelson, Attorney General's Office

Grant applications were accepted through January 4, 2016. A total of three applications were received requesting \$2.1 million.

The Domestic Violence Grants Advisory Committee and the Energy Infrastructure and Impact Office in coordination with the Department of Commerce offered the following grant recommendations:

| Name                                   | City      | Project      | Long Description  | Recommended Amount |
|--|-----------|--------------|---|--------------------|
| DOMESTIC VIOLENCE CRISIS CENTER        | MINOT     | NEW BUILDING | SERVICES HAVE EXPANDED TO MEET THE EVER INCREASING NEEDS OF VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, DATING VIOLENCE, STALKING AND HUMAN TRAFFICKING IN NORTH CENTRAL ND | \$500,000          |
| FAMILY CRISIS SHELTER                  | WILLISTON | NEW BUILDING | SHELTER IS TOO SMALL TO MEET THE NEEDS OF STAFF AND CLIENTS, ADDED POPULATION DUE TO OIL ACTIVITY HAS CAUSED THE SHELTER TO BURST AT THE SEAMS                                | \$750,000          |
| DOMESTIC VIOLENCE & RAPE CRISIS CENTER | DICKINSON | NEW BUILDING | INFLUX OF PEOPLE COMING TO THE AREA CAUSED BY OIL ACTIVITY HAS CREATED AN INCREASE IN NEEDS FOR SERVICES.   | \$750,000          |
|  |           |              |   | \$2,000,000        |

In accordance with the Chairman's request to delay action until the State Revenue forecast, the Board took no action on the recommendations. It will consider options once the grant fund's revenue is estimated.

### Sexual Assault Nurse Examiner Programs

In Senate Bill 2284, the 2015 Legislature designated \$250,000 for grants through the domestic violence and rape crisis programs to community-based or hospital based sexual assault nurse examiner programs. According to the legal review previously discussed, this \$250,000 must be awarded by the Board.

Grant applications were accepted in December 2015, with a total of 7 applications received requesting \$309,733. Grant requests were to enhance the quality and quantity of sexual assault nurse examiner services. The Board reviewed summaries of the applications.

A subcommittee of the Attorney General's Drug and Violent Crime Policy Board met January 13, 2016 to formulate recommendations. Based upon that committee's suggestions, Attorney General Stenehjem offered the following recommended awards for adoption by the Board:

### Sexual Assault Nurse Examiner Grants

| Applicant                                | City        | Project  | Amount Recommended |
|--|-------------|--|--------------------|
| CENTRAL DAKOTA FORENSIC NURSE EXAMINERS  | BISMARCK    | TRAVEL, TRAINING, CONTRACTED SERVICES, EQUIPMENT, SUPPLIES | \$171,060          |
| MERCER COUNTY                            | STANTON     | EQUIPMENT & SUPPLIES                                       | \$10,131           |
| DAKOTA CHILDREN'S ADVOCACY CENTER        | BISMARCK    | CONTRACTED SERVICES, TRAINING & EQUIPMENT                  | \$27,419           |
| JAMESTOWN REGIONAL MEDICAL CENTER        | JAMESTOWN   | TRAVEL & TRAINING  | \$12,785           |
| DOMESTIC VIOLENCE AND ABUSE CENTER, INC. | GRAFTON     | TRAVEL & TRAINING  | \$6,886            |
| FAMILY CRISIS SHELTER                    | WILLISTON   | TRAVEL & TRAINING, SUPPLIES                                | \$14,486           |
| ALTRU HEALTH SYSTEM                      | GRAND FORKS | TRAVEL & TRAINING  | \$5,000            |
|  |             |  | \$247,767          |

**Motion: The Board awarded \$247,767 from the Oil and Gas Impact Grant Fund to the providers of sexual assault nurse examiner services to victims as identified in the seven award recommendations in the preceding list. With this action, the Board affirmed that \$247,767 of the \$250,000 designated for sexual assault nurse examiner programs by the 2015 Legislative Assembly has been met. This leaves a balance of \$2,233 for future awards.**

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

### Human Trafficking Victim Treatment and Support Services Grant Recommendations

The 2015 Legislature designated \$750,000 in Senate Bill 2199 for grants to organizations which provide prevention and treatment services related to human trafficking victims in hub cities located in oil-producing counties.

Grant applications were accepted December 4, 2015 through December 31, 2015, with a total of 5 applications received requesting \$1,112,934. The Board reviewed summaries of the applications.

A subcommittee of members the Drug and Violent Crime Policy Board and the Attorney General's Commission met January 14, 2016. The committee reviewed applicants' plans for the development and implementation of direct care, emergency or long term crisis services, residential care, training of law enforcement and victim service providers, support of advocacy services, and programs promoting outcomes for victims. The following list of recommended awards was developed by the committee and is offered for adoption by the Attorney General:

### Human Trafficking Victim Treatment and Support Services Grant Recommendations

| Applicant                       | City      | Project  | Amount Recommended |
|---------------------------------|-----------|--|--------------------|
| YOUTHWORKS-BISMARCK             | BISMARCK  | STAFFING, TRAVEL, TRAINING, EQUIPMENT LEASE, SUPPLIES, CONSULTING, VARIOUS ITEMS | \$314,786          |
| LEGAL SERVICES OF NORTH DAKOTA  | BISMARCK  | STAFFING, TRAVEL, TRAINING, LITIGATION EXPENSES                                  | \$79,398           |
| MINOT COMMUNITY FOUNDATION      | MINOT     | STAFFING, TRAVEL, TRAINING, SUPPLIES, CONSULTING                                 | \$109,900          |
| DOMESTIC VIOLENCE CRISIS CENTER | MINOT     | STAFFING, TRAVEL, TRAINING, SUPPLIES, VARIOUS ITEMS                              | \$71,892           |
| FAMILY CRISIS SHELTER           | WILLISTON | STAFFING, TRAVEL, TRAINING, SUPPLIES   | \$79,448           |
|                                 |           |  | \$655,424          |

**Motion: The Board awarded \$655,424 from the Oil and Gas Impact Grant Fund to the providers of human trafficking services to victims as identified in the five award recommendations in the preceding list. With this action, the Board affirms that \$655,424 of the designated \$750,000 for human trafficking programs by the 2015 Legislative Assembly has been met. The remaining balance for future grants is \$94,576.**

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

### **Cancellation of 2012 and 2013 Grants**

Cancellation notices were sent in January 2015 for grants made in Fiscal Year 2012 which still had unused award balances. EIIO staff worked with the political subdivisions to use remaining funds. Listed below are FY 2012 grants recommended for cancellation.

Cancellation notices were sent January 2016 for grants made in FY 2013. In consultation with the political subdivisions, the EIIO has received confirmation that cancelation is acceptable for the following FY 2013 grants.

The EIIO recommended cancelation of the following grants and balances of EIIO awards issued during the 2011-2013 biennium:

| Political Subdivision        | Year | Amount Awarded | Amount Paid    | Balance             | Project  |
|------------------------------|------|----------------|----------------|---------------------|--|
| CITY OF PLAZA                | 2012 | \$1,149,967.00 | \$1,119,404.07 | \$30,562.93         | ROBYN PARK HOUSING DEVELOPMENT                           |
| TIOGA TOWNSHIP               | 2012 | \$50,000.00    |                | \$50,000.00         | 67TH ST UPGRADE  |
| CHATFIELD TOWNSHIP           | 2012 | \$2,250.00     | \$2,055.46     | \$194.54            | DUST CONTROL - ROAD BARRICADES                           |
| DALEN TOWNSHIP               | 2012 | \$6,250.00     |                | \$6,250.00          | WILLIAMSON ROAD PROJECT                                  |
| CITY OF MINOT                | 2012 | \$88,000.00    | \$87,951.00    | \$49.00             | FOAM TRAILER   |
| CITY OF DICKINSON            | 2012 | \$10,512.00    | \$10,510.07    | \$1.93              | OILFIELD EMERGENCY TRAINING CLASSES                      |
| CITY OF MANDAN               | 2012 | \$2,256.00     | \$679.12       | \$1,576.88          | LARGE VEHICLE EXTRICATION CLASS                          |
| MARMARTH RURAL FIRE DISTRICT | 2012 | \$20,000.00    | \$17,295.00    | \$2,705.00          | COMPLETE TYPE 4 ENGINE                                   |
| CITY OF CROSBY               | 2013 | \$125,000.00   |                | \$125,000.00        | CROSBY DAYCARE FACILITY                                  |
| DUNN COUNTY                  | 2013 | \$40,309.00    | \$40,305.53    | \$3.47              | EMERGENCY RESPONSE VEHICLES                              |
| CITY OF MARMARTH             | 2013 | \$2,850.00     | \$2,301.92     | \$548.08            | OFFICE COMPUTER  |
| MCKENZIE COUNTY              | 2013 | \$25,000.00    |                | \$25,000.00         | MCKENZIE COUNTY HIGHWAY AND STREET SIGNAGE               |
| SIOUX TOWNSHIP               | 2013 | \$80,000.00    |                | \$80,000.00         | ROADWAY DUST CONTROL                                     |
| BILLINGS COUNTY              | 2013 | \$51,814.00    | \$51,810.00    | \$4.00              | EMERGENCY REQUEST - VEHICLE PURCHASE DUE TO BLOWN ENGINE |
|                              |      |                |                | <b>\$321,895.83</b> |  |

**Motion: The Board canceled the 14 identified FY 2012 and FY 2013 grants for a total of \$321,895.83; with this action, the Board declared these funds available within the Oil and Gas Impact Grant Fund for future grants.**

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

### **Reduction in Grant for City of Killdeer**

In July 2015 during the law enforcement grant round, the City of Killdeer was provided grant #G160148 in the amount of \$272,996. The grant was approved for salary and fringe benefits for one officer; overtime for personnel; personal safety equipment; and housing for officers.

Killdeer requested that the grant be reduced by \$54,000, which is the portion of the award for housing assistance. The city indicated that it has purchased housing and was already providing a rent discount to its police officers.

**Motion: The Board reduced the award amount for grant #G160148 for the City of Killdeer by \$54,000 to a grant amount of \$218,996. Subsequently the Board declared these funds as available within the oil and gas impact grant fund for future grants.**

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

### **Cancellation of Flood-Impacted Political Subdivision Infrastructure Development Grants (FIPSIDG)**

During the 2011 Special Legislative Session, in SB 2371 \$30 million was appropriated for grants to flood-impacted political subdivisions.

In 2012, the Board approved 141 grants totaling \$29,895,080. In August, 2015, the Board set a December 31, 2015 deadline for remaining FIPSIDG funds to be distributed. Notices were sent to political subdivisions with remaining balances.

The FIPSID grants proposed to be canceled:

| Political Subdivision | Grant Number | Award Amount   | Amount Paid    | Balance      | Project Description                      |
|-----------------------|--------------|----------------|----------------|--------------|--|
| BURLEIGH COUNTY       | F120200      | \$1,179,726.00 | \$1,092,338.74 | \$87,387.26  | TAVIS ROAD GRADE RAISE & PUMPING STATION |
| CITY OF MINOT         | F120804      | \$750,000.00   | \$578,446.29   | \$171,553.71 | HOME ACQUISITION                         |
| LAKE GEORGE TOWNSHIP  | F120347      | \$19,579.00    |                | \$19,579.00  | GRADE RAISE                              |
| LITTLE DEEP TOWNSHIP  | F120345      | \$7,380.00     |                | \$7,380.00   | GRADE RAISE                              |
| MCHENRY COUNTY        | F120312      | \$30,000.00    |                | \$30,000.00  | BRIDGE REPAIR                            |
| MCHENRY COUNTY        | F120319      | \$7,000.00     | \$6,000.00     | \$1,000.00   | LAND FOR NEW CO SHOP                     |
| MCHENRY COUNTY        | F120327      | \$5,000.00     |                | \$5,000.00   | GRADE RAISE                              |

| Political Subdivision              | Grant Number | Award Amount | Amount Paid  | Balance      | Project Description                             |
|------------------------------------|--------------|--------------|--------------|--------------|---|
| MCHENRY COUNTY                     | F120328      | \$5,000.00   |              | \$5,000.00   | BRIDGE REPAIR                                   |
| MCHENRY COUNTY                     | F120330      | \$9,000.00   |              | \$9,000.00   | GRADE RAISE                                     |
| MCHENRY COUNTY                     | F120331      | \$153,636.00 |              | \$153,636.00 | GRADE RAISE                                     |
| MCHENRY COUNTY                     | F120336      | \$2,500.00   |              | \$2,500.00   | GRADE RAISE                                     |
| MINCO TOWNSHIP                     | F120122      | \$2,000.00   |              | \$2,000.00   | CULVERT REPLACEMENT                             |
| RENVILLE COUNTY                    | F120602      | \$257,263.00 | \$252,146.01 | \$5,116.99   | REPAIR COUNTY OWNED FACILITIES MOUSE RIVER PARK |
| RENVILLE COUNTY                    | F120604      | \$476,500.00 |              | \$476,500.00 | GRADE RAISE                                     |
| VOLTAIRE TOWNSHIP                  | F120354      | \$10,000.00  |              | \$10,000.00  | GRADE RAISE                                     |
| WYNDMERE TOWNSHIP                  | F120716      | \$898.00     |              | \$898.00     | CULVERT INSTALLATION                            |
| Total Recommended for Cancellation |              |              |              | \$986,550.96 |   |

The political subdivisions have been contacted and are in agreement with the cancelation of these grants. The EIO recommended the listed grants be canceled.

**Motion: The Board canceled the 16 identified Flood-Impacted Political Subdivision Infrastructure Development Grants with an unreimbursed total balance of \$986,550.96.**

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

## SURFACE MANAGEMENT

### **EERC Deep Bore Research Project Request for Surface Use Section 36, Township 154 N, Range 73 W, in Pierce County**

In September 2015, the Board learned of a potential request by the Energy and Environmental Research Center (EERC) for the use of a tract of Pierce County trust land proposed for a US Department of Energy funded geologic study. As a result, the Board directed that it be involved in all reviews of the project and that no action be taken without its consultation.

John Harju, the EERC's Associate Director for Strategic Partnerships, met with the Board to discuss the DOE's recent announcement of the approval of a project to conduct a deep bore test site on Board managed school trust land in the east half of Section 36, Township 154 N, Range 73 W, in Pierce County.

The Board did not act on the information or the anticipated request for use of the land. It informally registered concern with the proposed project and the Board directed the EERC representatives to seek local support and approval, and to investigate all regulatory permits and approvals necessary before a land use easement would be considered.



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

### Asset Allocation

The Board reviewed the status of the asset allocation of the permanent trusts as of December 31, 2015.

| Account/Asset Class               | Long-Term<br>Asset Allocation | Interim Target<br>Allocation | Interim %<br>+/- Weight | 12/31 Actual<br>Allocation \$ | 12/31 Actual<br>Allocation % |
|-----------------------------------|-------------------------------|------------------------------|-------------------------|-------------------------------|------------------------------|
| Large Cap US Equity               | 13.5%                         | 14.0%                        | 3.7%                    | \$ 481,547,673                | 13.8%                        |
| Small Cap US Equity               | 3.5%                          | 3.7%                         | 5.7%                    | \$ 119,950,794                | 3.4%                         |
| International Equity              | 12.0%                         | 12.4%                        | 3.3%                    | \$ 442,863,502                | 12.7%                        |
| Emerging Market Equity            | 3.0%                          | 3.2%                         | 6.7%                    | \$ 106,676,916                | 3.1%                         |
| <b>Total Equities</b>             | <b>32.0%</b>                  | <b>33.3%</b>                 | <b>4.1%</b>             | <b>\$ 1,151,038,886</b>       | <b>33.0%</b>                 |
| Domestic Investment Grade         | 14.2%                         | 15.8%                        | 11.3%                   | \$ 545,334,298                | 15.6%                        |
| High Yield FI                     | 3.0%                          | 3.2%                         | 6.7%                    | \$ 108,188,051                | 3.1%                         |
| International/Global FI           | 5.8%                          | 6.3%                         | 8.6%                    | \$ 217,766,519                | 6.2%                         |
| <b>Total Fixed Income</b>         | <b>23.0%</b>                  | <b>25.3%</b>                 | <b>10.0%</b>            | <b>\$ 871,288,869</b>         | <b>25.0%</b>                 |
| <b>Total Absolute Return</b>      | <b>20.0%</b>                  | <b>21.0%</b>                 | <b>5.0%</b>             | <b>\$ 729,077,026</b>         | <b>20.9%</b>                 |
| Commodities                       | 3.0%                          | 3.1%                         | 3.3%                    | \$ 113,216,996                | 3.2%                         |
| MLPs                              | 3.0%                          | 3.1%                         | 3.3%                    | \$ 111,936,018                | 3.2%                         |
| TIPS                              | 2.0%                          | 2.1%                         | 5.0%                    | \$ 76,385,266                 | 2.2%                         |
| Natural Resource Equities         | 2.0%                          | 2.1%                         | 5.0%                    | \$ 63,396,529                 | 1.8%                         |
| <b>Total Inflation Strategies</b> | <b>10.0%</b>                  | <b>10.4%</b>                 | <b>4.0%</b>             | <b>\$ 364,934,810</b>         | <b>10.5%</b>                 |
| Core Real Estate                  | 8.0%                          | 8.0%                         | 0.0%                    | \$ 313,979,375                | 9.0%                         |
| Core Plus Real Estate             | 7.0%                          | 2.0%                         |                         | \$ 57,473,808                 | 1.6%                         |
| <b>Total Real Estate</b>          | <b>15.0%</b>                  | <b>10.0%</b>                 | <b>-33.3%</b>           | <b>\$ 371,453,183</b>         | <b>10.7%</b>                 |
| <b>Total Asset</b>                | <b>100.0%</b>                 | <b>100.0%</b>                |                         | <b>\$ 3,487,792,774</b>       | <b>100.0%</b>                |

### Funding Status of Real Estate

At present, just less than 10% of the permanent trusts' 15% allocation to real estate has been funded. Based upon communications with managers, the estimated remaining commitment time-frames will be:

- Jamestown                      \$17.8 million                      end of January, 2016
- Prologis                         \$75.0 million                      beginning 2nd qtr. 2016 (100%)
- JP Morgan                      \$113.0 million                      2nd qtr. 2017

### Northern Trust Custody and Securities Lending Agreements

The Department has worked with RVK to review the custody and securities lending arrangements with Northern Trust.

As a result of this review, updated contracts and new fees schedules were negotiated and signed for both custody and securities lending. The new agreements should result in reduced custody fees and increased revenue from the securities lending program.

### Summary of Investment Fees Paid in FY 2015

A report of investment fees and expenses paid during the fiscal year ended June 30, 2015 was presented to the Board and is available at the Department. The pooled investments of the permanent trusts paid \$12,153,882 during the fiscal year, the equivalent of 0.355% of the average assets during the year.

During this time the Coal Development Trust Fund paid \$55,465 in investment management fees and \$11,965 in custody fees. This Fund's expenses were 0.25% of the average value of assets.

### Securities Lending Report

A report describing the performance and status of the Board's securities lending program, as facilitated by Northern Trust, for the fiscal year ended June 30, 2015, was presented to the Board.

The Board's investment policy statement specifies that any securities lending program in which the Board engages should utilize a high-quality and conservative collateral re-investment approach that safeguards the return of principal and maintains adequate daily liquidity to support trade settlement activity and portfolio restructuring activities.

During fiscal year 2015, the Land Board's securities lending program achieved these goals.

### Review of Draft Performance Audit Reports

Unclaimed Property Division  
Energy Infrastructure and Impact Office

As directed by the Legislative Audit and Fiscal Review Committee, the State Auditor's Office has been conducting a performance examination of the Department. The identified audit objectives include:

- the effectiveness of Unclaimed Property administration,
- the effectiveness of Energy Infrastructure and Impact Office grants administration, and
- the effectiveness and efficiency of the Department of Trust Lands in obtaining, accounting for, and use of resources.

Since the audit commenced in January 2015, nearly all Department personnel have been interviewed, surveyed or tapped for information; most processes and practices have been examined; thousands of pages of documents and electronic files have been reviewed, and the auditors have had unfettered access to operating systems and databases.

On January 15, 2016 the State Auditor's Performance Audit Division presented draft reports of its audit findings for Unclaimed Property and the Energy Infrastructure and Impact Offices. Department responses to the findings are to be returned to the auditor on February 16, 2016.

The draft report and the Department proposed responses are considered a part of the draft report and a confidential record according to N.D.C.C. § 54-10-26.

**Motion: As the State Auditor's Office performance audit report regarding the Department is deemed confidential while in draft form according to N.D.C.C. § 54-10-26, the Board will enter executive session, permitted under N.D.C.C. § 44-04-19.2(1), to review and discuss the confidential draft audit report.**

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

At 10:10 AM the Board entered executive session for review the State Auditor's Office audit report and Department responses to it, which are deemed confidential while in draft form.

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#### EXECUTIVE SESSION

##### **Members Present:**

|                 |                                      |
|-----------------|--------------------------------------|
| Jack Dalrymple  | Governor                             |
| Alvin A. Jaeger | Secretary of State                   |
| Kelly Schmidt   | State Treasurer (via telephone)      |
| Kirsten Baesler | Superintendent of Public Instruction |
| Wayne Stenehjem | Attorney General                     |

##### **Department of Trust Lands Personnel Present:**

|                 |                                   |
|-----------------|-----------------------------------|
| Lance D. Gaebe  | Commissioner                      |
| Jeff Engleson   | Director, Investment Division     |
| Susan Dollinger | Unclaimed Property Administrator  |
| Levi Erdmann    | Investment Analyst                |
| Gerry Fisher    | Director, Grants and Claims       |
| Linda Fisher    | Deputy Commissioner of Operations |
| Taylor Lee      | Director, Revenue Compliance      |
| Catelin Newell  | Office Manager                    |
| Rick Owings     | Assistant Energy Impact Director  |

##### **Others in Attendance:**

|                   |                                |
|-------------------|--------------------------------|
| Chris Harvey      | Office of the Attorney General |
| Bonnie Storbakken | Governor's Legal Counsel       |

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No action was taken during the Executive Session which was adjourned at 11:16 AM and the Board returned to open session and the public was invited to return to the meeting

## REPORTS

### **February Oil and Gas Lease Offerings with the Live Auction and EnergyNet**

The Board reviewed the list of oil and gas tract leases that will be offered during quarterly oil and gas lease auction on February 2, 2016; as well as the list of 22 leases will be offered for online bidding starting on February 4, 2016.

The online auction is part of a review to examine the benefit and feasibility of converting all oil and gas lease auctions to this method. Previous online auctions have proven successful, but the Department arranged an additional set of comparison auctions for verification. The online will conclude on February 11, 2016.

### **Summary of Assets for Period Ended October 31, 2015**

The Summary of Assets report was reviewed by the Board.

### **Report of Easements Issued by Land Commissioner (12-14-15 through 01-12-16)**

|                     |   |
|---------------------|---|
| <b>Granted to:</b>  | <b>ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT</b> |
| For the Purpose of: | Easement: Drop Line-Gas Gathering Pipeline    |
| Legal Description:  | WIL-154-99-16-NW4                             |

|                     |   |
|---------------------|---|
| <b>Granted to:</b>  | <b>ONEOK BAKKEN PIPELINE LLC, SIDNEY-MT</b> |
| For the Purpose of: | Easement: Gas Gathering Pipeline            |
| Legal Description:  | MCK-148-98-16-NE4                           |

|   |   |
|---|---|
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b><br>Easement: Drop Line-Buried Electric Distribution Line<br>MCK-149-95-36-LOTS 3, 4 |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>WHITE ROCK OIL&amp;GAS LLC, DALLAS-TX</b><br>Permit: Access Road<br>BIL-142-101-36-ALL   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>PARADIGM MIDSTREAM SERVICES ND LLC, IRVING-TX</b><br>Easement: Drop Line-Oil Gathering Pipeline<br>MCK-153-95-16-NW4                       |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b><br>Easement: Drop Line-Buried Electric Distribution Line<br>DUN-147-96-36-NW4       |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b><br>Easement: Drop Line-Buried Electric Distribution Line<br>MCK-153-97-16-NW4       |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b><br>Easement-Amend: Electric Transmission Line<br>MCK-153-97-16-NW4                  |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>TESORO HIGH PLAINS PIPELINE CO LLC, SAN ANTONIO-TX</b><br>Easement-Amend: Pump Station<br>MCK-147-104-36-SE4                               |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>HUNT OIL COMPANY, DALLAS-TX</b><br>Easement-Amend: Drop Line-Pipeline<br>DIV-160-101-36-SE4  |

The following letters of permission were issued to groups wishing to use school trust lands under the Board's policy for access to trust lands by organizations. Fees may be charged for this use.

|   |   |
|---|---|
| <b>Granted to:</b><br>For the Purpose of:<br><br>Legal Description: | <b>PURITY OILFIELD SERVICES LLC, BISMARCK-ND</b><br>Letter of Permission: Access to School Land for the purpose of<br>laying temporary surface frac water pipeline<br>MCK-153-97-36-SE4 |
| <b>Granted to:</b><br>For the Purpose of:<br><br>Legal Description: | <b>MBI ENERGY SERVICES, KILLDEER-ND</b><br>Letter of Permission: Access to School Land for the purpose of<br>laying temporary surface frac water pipeline<br>MCK-149-98-16-NE2          |

## A D J O U R N

There being no further business, the meeting was adjourned at 11:20 AM.

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Jack Dalrymple, Chairman  
Board of University and School Lands

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Lance D. Gaebe, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
February 25, 2016**

The February 25, 2016 meeting of the Board of University and School Lands was called to order in the Governor's Conference Room at 9:09 AM by Chairman Jack Dalrymple.

**Members Present:**

|                 |                                      |
|-----------------|--------------------------------------|
| Jack Dalrymple  | 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:**

|                 |                                   |
|-----------------|-----------------------------------|
| Lance D. Gaebe  | Commissioner                      |
| Susan Dollinger | Unclaimed Property Administrator  |
| Levi Erdmann    | Investment Analyst                |
| Gerry Fisher    | Director, Grants and Claims       |
| Linda Fisher    | Deputy Commissioner of Operations |
| Mike Humann     | Director, Surface Division        |
| Taylor Lee      | Director, Revenue Compliance      |
| Catelin Newell  | Office Manager                    |
| Rick Owings     | Assistant Energy Impact Director  |

**Others in Attendance:**

|                   |                                      |
|-------------------|--------------------------------------|
| Kyle Wanner       | North Dakota Aeronautics Commission  |
| Ken Munson        | City of Ray                          |
| Lonni Fleck       | City of Ray – Interstate Engineering |
| Janelle Moos      | CAWS North Dakota                    |
| Ryan Skor         | State Treasurer's Office             |
| Blake Crosby      | ND League of Cities                  |
| Micah Rorie       | Dakota Access, LLC                   |
| Michael Futch     | Dakota Access, LLC                   |
| Marcia Beard      | RVK                                  |
| Kristen Steffens  | RVK                                  |
| Bonnie Storbakken | Governor's Legal Counsel             |
| Jason Nisbet      | Governor's Office                    |
| Joel Gilbertson   | GA Group PC                          |
| Levi Andrist      | GA Group PA                          |
| Nick Smith        | Bismarck Tribune                     |
| Mike Nowatski     | Forum News Service                   |
| James MacPherson  | Associated Press                     |

**APPROVAL OF MINUTES**

A motion to approve the minutes of the January 28, 2016 meeting was made by Secretary of State Al Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried on a voice vote.

## ENERGY INFRASTRUCTURE AND IMPACT OFFICE

### Revenue Forecast and Spending Plan

Of the \$139.3 million appropriated for grants during the 2015-2017 Biennium, \$42,406,979 has been awarded. Details of grants requested and remaining in various categories were provided to the Board and are available at the Department.

### Revised Revenue

The February 1, 2016 revised State revenue forecast projects that the Oil and Gas Impact Grant Fund (OGIGF) will receive only \$28.6 million of the \$140 million appropriated for the biennium.

In December 2015, the Board requested legal advice regarding the priorities of allocations of OGIGF grants made by the 2015 Legislature in HB 1176, SB 2199, SB 2284 and SB 2015.

The Assistant Attorney General interpretation is that HB 1176 Section 5; subsection 4 requires that one-half of funding must be provided to critical access hospitals in January of each fiscal year of the biennium. Five million dollars has already been distributed in January 2016, an additional \$5 million will need to be distributed in January 2017 to critical access hospitals.

Similar language exists in Section 5 subsection 10 for providers serving individuals with developmental disabilities, which requires an additional \$1 million be distributed in January of 2017 to providers.

The legal analysis further finds that language in SB 2199 regarding \$750,000 for Human Trafficking and in SB 2284 regarding the \$250,000 for Sexual Assault Examiner Programs need to be funded. Grant were provided in January 2016 for these areas and \$2,233 remains to be awarded for sexual assault examiner programs and \$94,576 will need to be awarded for human trafficking service providers. An overview of the awards-to-date and commitments remaining to be made per legal advice was provided to the Board.

Including the \$42.4 million awarded to-date, the additional \$6.1 million required awards and projected biennial administrative costs of \$.62 million, \$49.12 million is the projected total of OGIGF committed in the 2015-17 biennium. The revised forecast projects the fund will receive \$28.6 million resulting in a projected biennial shortfall of \$20.52 million.

The Energy Impact Office has contacted all grantees with open grants, who were cautioned against starting projects or making commitments due to the expected revenue shortfall.

Status of all grants approved during the current and previous biennium as of February 18, 2016:

- There are 246 entities holding at least one grant with a remaining balance, all have been telephoned
- There are 443 grants with an open balance, there is a total of \$89,697,783.36 committed to these grants
- Of these, 12 grants are to 10 entities legally required to receive grants, total balances \$903,191
- In 63 grants, awardees have not made a commitment or signed a contract etc., total \$7,396,006.77
- According to the contacts, 16 grants totaling \$111,433.39 could possibly be canceled.
- The EIIO identified another possible \$517,980 which could possibly be canceled.

- 250 grants for a total of \$50,737,603.31 have initiated commitments, signed contracts, or have projects underway, etc.
- 76 grants have at least a partial commitment and contacts were not able to clearly identify if an obligation exists. These grants have a total balance of \$28,535,705.97.
- Entities not reached or awaiting responses have 38 awards with balances totaling \$2,917,033.92, thus not categorized.

The table below identifies by type, awards with projects without a current commitment:

| Type                   | Fiscal Year 2016 |                          | Past Biennia |                          | Total of All Awards Without Commitments |                          |
|------------------------|------------------|--------------------------|--------------|--------------------------|---|--------------------------|
|                        | # of Awards      | Amount of Award Balances | # of Awards  | Amount of Award Balances | # of Awards                             | Amount of Award Balances |
| County-Law Enforcement | 3                | \$659,960.00             | 0            | \$0.00                   | 3                                       | \$659,960.00             |
| Fire                   | 4                | \$201,230.04             | 2            | \$407,280.57             | 6                                       | \$608,510.61             |
| School District        | 14               | \$1,804,255.84           | 7            | \$181,901.87             | 21                                      | \$1,986,157.71           |
| Township-Roads         | 1                | \$500,000.00             | 25           | \$1,999,280.62           | 26                                      | \$2,499,280.62           |
| EMS                    | 1                | \$200,000.00             | 1            | \$300,000.00             | 2                                       | \$500,000.00             |
| County-EMS             | 0                | \$0.00                   | 0            | \$0.00                   | 0                                       | \$0.00                   |
| County-Truck           | 0                | \$0.00                   | 0            | \$0.00                   | 0                                       | \$0.00                   |
| Airport                | 0                | \$0.00                   | 1            | \$858.52                 | 1                                       | \$858.52                 |
| City-Infrastructure    | 0                | \$0.00                   | 0            | \$0.00                   | 0                                       | \$0.00                   |
| City-Law Enforcement   | 0                | \$0.00                   | 0            | \$0.00                   | 0                                       | \$0.00                   |
| City-Fire              | 0                | \$0.00                   | 1            | \$11,940.00              | 1                                       | \$11,940.00              |
| City-EMS               | 1                | \$29,299.31              | 0            | \$0.00                   | 1                                       | \$29,299.31              |
| City-Miscellaneous     | 0                | \$0.00                   | 0            | \$0.00                   | 0                                       | \$0.00                   |
| Higher Education       | 0                | \$0.00                   | 1            | \$800,000.00             | 1                                       | \$800,000.00             |
| Social Services        | 0                | \$0.00                   | 0            | \$0.00                   | 0                                       | \$0.00                   |
| County-Roads           | 0                | \$0.00                   | 1            | \$300,000.00             | 1                                       | \$300,000.00             |
| County-Miscellaneous   | 0                | \$0.00                   | 0            | \$0.00                   | 0                                       | \$0.00                   |
| Park District          | 0                | \$0.00                   | 0            | \$0.00                   | 0                                       | \$0.00                   |
|                        | <b>24</b>        | <b>\$3,394,745.19</b>    | <b>39</b>    | <b>\$4,001,261.58</b>    | <b>63</b>                               | <b>\$7,396,006.77</b>    |

Except for the most critical requests, reimbursements totaling \$12,164,457.68 from past biennium grants have been held for payment. Of grants in the current biennium, requests for payment of \$2,610,607.68 have been received, as of February 18, 2016.

Some grants provided in 2013-2015, including \$13.6 million remaining for the Williston Airport are not expected to be used until 2017. These funds can be used in the near-term to support reimbursement requests.

Legal Counsel is reviewing the legislative authority to carry forward the obligation or appropriation of grants to the subsequent biennium.

It was recommended that the Board suspend grants for projects which awardees have indicated have not yet started, totaling \$7,396,006.77. Additionally all remaining scheduled grants in the remainder of the biennium should be suspended until additional funding is available.

**Motion: The Board suspended the distribution of \$7.4 million in grants on projects identified by awardees as not started or where no commitments have been made; commitments to these suspended grants remain as grant obligations awaiting funds. The remaining scheduled and uncompleted grant rounds for the 2015-2017 biennium be placed on hold.**

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

## S U R F A C E   M A N A G E M E N T

### **Land Sale Policy – Addition of Sale Procedure for High Value Land**

In March of 2015 the Board modified its policy related to the sale of trust land. The new policy related to no-net-loss of leasable trust land; donation of land to trusts; and the prospect of selling land that has changed from agricultural to a higher value land.

The Board has previously reviewed options to sell high value land in proximity to Bismarck, Williston, Dickinson and Minot. A proposed process that details nomination, earnest deposit and appraisal for selling high value land was presented for Board review and consideration.

The proposed changes involved an addition to paragraph 202 B 3 of the Board's land sale policy. The procedure would be added as an addendum to the land sale policy.

**Motion: The Board approves the proposed addition to paragraph 202 B 3 of its Land Retention Sales Policy and it approves the adoption of the High Value Land Sales Procedure as presented.**

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

The approved Land Retention and Sales policy and High Value Land Sales Procedure are available at the Department.

### **Intent to Sell Land –Section 36, T139N, R80W, Burleigh County (East Bismarck)**

In 2014, the Board authorized a market analysis relating to possible land sales of parcels of Section 36, T139N, R80W, Burleigh County. In 2015, the Board reviewed a Kadmas, Lee & Jackson report and recommendations on subdividing the property for potential sale.

On January 11, 2016 representatives of the Department along with Joel Quanbeck of KLJ met with officials and staff from the City of Bismarck, Burleigh County, Bismarck Parks and Recreation and



Bismarck Mandan Development Association to discuss how Section 36 could be developed if the property were to be sold. Topics included existing public and private easements; the extension of Divide Avenue; storm water detention/retention plans, park district interest in portions of the property; and the Board's legal process of selling the land.

There is not an immediate plan for extension and completion of Divide Avenue along the north side of Section 36 and the city has only recently initiated a storm water master plan study, which is anticipated to be completed at the end of 2016. Thus there is no advantage in holding the property in anticipation of completion of the Divide Avenue project or storm water detention/retention purposes. For property dedication purposes it would work best for the city if the property were privately held.

**Motion: This property has high value because of its location and its potential for real estate development but the trusts cannot realize this value except through a sale. Therefore it is the Board's intent to sell all or portions of Section 36, T139N, R80W, Burleigh County using the Kadrmas, Lee & Jackson recommendation for the subdivision of tracts indicated on the attached map.**

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

The Section 36 East Bismarck Sale Division Concept map provided to the Board is available at the Department.

## MINERALS MANAGEMENT

### **Approval of BNI Coal Lease (142-84 Sec. 29: S2)**

The Board manages 50% of the minerals within two quarters in Township 142N, Range 84W, Section 29: S½, in Oliver County equaling 160 net mineral acres. Action was requested to complete the process of leasing trust coal minerals to BNI Coal.

According to the Board's rules and policies of leasing coal, a lease auction and hearing was conducted on January 28, 2016. No public comment on this matter was made. Seeing no objection to the proposed coal leasing, the Department moved to auction bidding, and BNI Coal was the sole bidder. The terms offered by BNI conform to the terms set out by the Board on December 16, 2015:

\$0.20 royalty per ton of coal mined, a \$5.00 per acre yearly rental payment, and a one-time payment of \$100.00 per net mineral acre for the standard Board coal lease, with a term of 15 years with an option to extend for an additional 15 years.

**Motion: The Board authorize the Commissioner to issue to BNI Coal two leases for the right to produce coal minerals within Township 142N, Range 84W, Section 29: S2 tracts with a \$0.20 royalty per ton of coal mined, a \$5.00 per acre yearly rental payment, and a one-time payment of \$100.00 per net mineral acre for the standard Department coal lease, with a term of 15 years with an option to extend for an additional 15 years.**

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

## O P E R A T I O N S

### **Continuing Appropriation Policy – Contracted Royalty Audits**

State law permits the Board to declare certain trust or fund management expenditures as continuing appropriation expenses. In May of 2011, the Board adopted a motion affirming several specific costs as continuing appropriations.

### **Costs of Contracted Royalty Audits**

The Department employs three FTEs involved in revenue compliance and royalty collections. These professionals oversee procedures to assure the timely and accurate accounting of all royalties, bonuses, rentals, and other revenues received by the Department. To supplement these efforts, the Department has initiated procurement for the services of one or more professional royalty auditing firms to assist in the verification of compliance with the Board's lease terms, rules, state law and payment expectations and cost allowances.

The planned RFP will require that the firms identify an hourly rate, so that costs can be managed. The procurement process will be designed to generate a list of several qualified firms that can be activated as needed and as available.

North Dakota Century Code Sections 15-04-24, 15-07-22 and 15-05-19 permit the Board to determine certain expenditures as necessary to manage, preserve, and enhance the value of the trust land and mineral assets, to be considered as continuing appropriation expenses. The costs of external royalty audit firm work to verify royalty payments on behalf of the permanent trusts and the sovereign assets is necessary to preserve and enhance the value of the mineral assets, and the Board can affirm that the costs are a continuing appropriation.

The Commissioner recommended the approval of the contract royalty auditor costs as additional to the continuing appropriation items it approved in 2011 and for it to consider the amended list as standing Board policy.

The following (except for the underlined) is a summation of the action taken in 2011:

**Board of University and School Lands  
Continuing Appropriation Authority Policy**

Continuing appropriation authority is provided in state law for certain operating expenditures.

**A. Unclaimed Property - Continuing Authority.**

Unclaimed property expenses as outlined in NDCC Section 47-30.1-23 may be paid under continuing appropriation authority including, but not limited to: payments of claims, service charges for address verification and updates, advertising costs, audit services, legal costs and outreach efforts.

**B. Grant Land, Non-Grant Land and Mineral Leases - Continuing Authority.**

NDCC Sections 15-04-24, 15-07-22 and 15-05-19 permit expenditures to be considered as continuing appropriation expenditures. These sections appropriate annually the expenses determined by the Board as necessary to manage, preserve, and enhance the value of the trust land and mineral assets.

Specifically authorized by the Board as continuing appropriation authority:

1. Salaries and travel expenses for temporary field men who conduct inspections to ensure rangeland integrity and surface reclamation.
2. Advertising surface and mineral lease auctions. Section 15-04-09 of the NDCC requires the Board to publish multiple notices of surface and mineral leases auctions. Advertising of the lease auctions are done to ensure the trusts receive competitive bids to enhance the trusts' value.
3. Legal expenditures that are incurred by a specific trust or trusts to maintain their value and integrity.
4. Costs of hiring independent contract firms to perform accounting, audit, compliance review or collection efforts to ensure the proper payment of oil, gas, coal or other mineral royalty.

**Motion: The Board adopted the continuing appropriation policy presented herein, including the inclusion of continuing appropriation authority for the costs of royalty auditors contracted to help manage, preserve and enhance the value of the trust assets.**

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

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

### **RVK Investment Performance Report – 4th Quarter 2015**

Kristen Steffens and Marcia Beard from RVK reviewed the performance of the permanent trust funds' pool of investment assets for the period ending December 31, 2015. The report is available at the Department.

### **Asset Class Review - Equities**

RVK's Kristen Steffens and Marcia Beard reviewed the permanent trusts' equity portfolio, as part of the Board's quarterly review of investment asset classes in which the permanent trust funds participate.

The majority of the trusts' equity exposure is achieved through passive index funds, though the Board has directed trusts' investments into an active domestic small cap portfolio and two active emerging market equity funds.

The presentation evaluated the asset class as a whole, as well as the specific strategies and managers.

### **Asset Allocation**

The Board reviewed the status of the asset allocation of the permanent trusts as of January 31, 2016.

In early February, 2016, an additional \$17.8 million was moved From the Payden & Rygel Low Duration Fund to the Jamestown Premier Property Fund, completing the funding of that \$75.0 million real estate portfolio.

As money is called to fund the real estate mandates, the permanent trusts' equity, fixed income, absolute return, and diversified inflation strategies target allocations will be adjusted down towards long-term target allocations. Ten percent of the permanent trusts' planned 15% policy allocation to real estate has been funded. The remaining real estate commitments are anticipated to be funded on the following timeframe:

- Prologis                      \$75.0 million                      beginning 2<sup>nd</sup> qtr. 2016 (100%)
- JP Morgan                      \$113.0 million                      2nd qtr. 2017

### **Strategic Investment and Improvements Fund- Update**

The Strategic Investment and Improvements Fund (SIIF) holds the assets and collects the revenues earned from sovereign mineral acres, including those formerly owned by the Bank of North Dakota and State Treasurer, as well as the minerals located under navigable rivers and lakes. The SIIF also receives a portion of the oil and gas production and extraction taxes collected by the State. It is invested in a conservative, short-term fixed income portfolio.

|  | 12/31/15<br>Asset Balances | Yield/Total Return<br>for Qtr. Ended 12/31/15 |
|--|----------------------------|---|
| <b><u>Strategic Investment and Improvements Fund</u></b> |                            |   |
| Loan Guarantee – Fuel Production                         | \$ 18,125,000              | 0.61% Yield                                   |
| Investments/Cash   | <u>348,546,000</u>         | -0.22%  |
| <b>Total</b>   | <b>\$ 366,671,000</b>      |   |

- Many changes occurred within the SIIF during the first six months of the biennium, as legislation passed by the 64<sup>th</sup> Legislative Assembly became effective.
- \$150 million of school construction loans were transferred to the newly created School Construction Assistance Loan Fund (SCALF) in July 2015. SB 2039 gave control of the SCALF to the BND; contingent on voter approval of a constitutional measure in November 2016. The Board will manage the SCALF until it is determined if it will be transferred to the BND after the election.
- The medical facilities infrastructure fund, which had been managed by the BND but owned by the SIIF, became a revolving fund managed by the BND in July 2015. The approximately \$50 million of loans and assets in this Fund will no longer be paid back to the SIIF
- The funds set aside to guarantee a loan for the Dakota Spirit AgEnergy biomass fuel production facility earned an annualized yield of approximately 0.55% during the quarter. This program will earn a modest amount of income going forward, as it is invested in short-term bonds.
- During the quarter ended December 31, 2015, the SIIF earned about \$23.3 million, with the majority (almost \$20 million) coming from mineral royalties.
- The latest projections indicate that the SIIF will receive about \$30.7 million of gross production and oil extraction taxes during the biennium. This is down from legislative projections of over \$200 million of tax revenues.
- The new Northern Trust Investments (NTI) Ultra-Short account was funded in mid-July 2015 with \$250 million of SIIF cash.
- The NTI Ultra-Short portfolio earned a total return of -0.22% during the quarter ended December 31, 2015; it has earned a return of +0.13% since its August 1, 2015 inception date.

The following table shows the transfers from the SIIF during the first six months of fiscal year 2016:

| Amount         | Bill (Agency)         | Purpose  |
|----------------|-----------------------|--|
| \$237 million  | SB 2103 - surge (DOT) | Balance of distributions to counties for road and bridge infrastructure needs. |
| \$13,125,322   | HB 1014 - (NDIC)      | Balance of funding for new core library  |
| \$ 650,000     | HB 1285 - (Commerce)  | Grants to domestic violence organizations                                      |
| \$3.75 million | HB 1018 - (Commerce)  | Partial transfers of funding to enhanced use lease grant program at GFAB       |
| \$3 million    | HB 1020 -(NDSU)       | Partial transfer of funding for veterinary diagnostic laboratory project       |

An additional \$101.60 million of appropriated transfers are scheduled to come from the SIIF over the remainder of the 2015-2017 biennium:

| Amount          | Bill (Agency)   | Purpose   |
|-----------------|---|---|
| \$7.0 million   | HB 1012 - (DOT)   | One-time funding for DOT's short line railroad program          |
| \$3.75 million  | HB 1018 - (Commerce)  | Balance of funding for enhanced use lease grant program at GFAB |
| \$15.0 million  | HB 1020 - (Extension Ser.)                                    | Balance of funding for veterinary diagnostic laboratory project |
| \$50.0 million  | HB 1443 - (BND)   | Transfer to BND infrastructure revolving loan fund              |
| \$25.85 million | SB 2015 - (DOT) CONTINGENT on Excess General Fund Collections | Enhance state highway investment                                |

### School Construction Assistance Loan Fund (SCALF)

As of December 31, 2015, the SCALF consisted of \$149.9 million of school construction loans and approximately \$48,000 of cash on the outstanding loan balance. The cash represents principal and interest payments received on gross production backed school construction loans since the loan program was turned over to the SCALF in July, 2015.

### Coal Development Trust Fund - Update

The **Coal Development Trust Fund (CDTF)** is a permanent fund from which the Board issues loans to energy impacted counties, cities and school districts as provided in NDCC Section 57-62-03 and lends to school districts pursuant to NDCC Chapter 15-60. The Board is responsible for investing all funds that have not been loaned to political subdivisions. As directed in the Constitution, the income earned by the CDTF is transferred to the General Fund each year. The CDTF has historically been invested in a conservative short-term fixed income portfolio.

|   | 12/31/15<br>Asset Balances | Yield/Total Return<br>for Qtr. Ended 12/31/15 |
|---|----------------------------|---|
| <b><u>Coal Development Trust Fund</u></b> |                            |   |
| School Construction Loans                 | \$ 49,740,000              | 1.67% Yield                                   |
| Coal Warrants                             | 13,636,000                 | 3.37% Yield                                   |
| Investments/Cash                          | 4,159,000                  | -0.22%  |
| <b>Total</b>                              | <b>\$ 67,535,000</b>       |   |

- During the quarter, a \$6.0 million school construction loan to Fargo PSD #1 was funded out of the CDTF. At quarter's end, only about \$260,000 of loan authority remained within the \$50 million cap for school construction loans. No new coal impact loans were funded during the quarter.
- The investable balance of the CDTF was less than \$4.2 million on December 31, 2015, as school construction loan and coal impact loan balances both reached 20 year highs.
- In September 2015, the assets of the Coal Development Trust Fund were transferred to the new NTI Ultra-Short portfolio, where they are now commingled with the assets of the SIIF and the Capitol Building Fund.
- ♦ The NTI Ultra-Short portfolio earned a total return of -0.22% during the quarter ended December 31, 2015; it has earned a return of +0.13% since its August 1, 2015 inception date.

### Capitol Building Fund - Update

The Capitol Building Fund is a Constitutional fund created for the construction and maintenance of "public buildings at the capital." It generates revenues from almost 10,000 surface and 27,700 mineral acres it owns. The fund is invested in conservative, short-term fixed income portfolio.

The Capitol Grounds Planning Commission (CGPC) has official control over the Capitol Building Fund; the Land Board is responsible for investing the assets on behalf of the CGPC.

|                                     | 12/31/15<br>Asset Balance | Total Return<br>Qtr. Ended 12/31/15 |
|-------------------------------------|---------------------------|-------------------------------------|
| <b><u>Capitol Building Fund</u></b> |                           |                                     |
| Investments/Cash                    | \$ 6,609,000              | -0.22%                              |

The 64<sup>th</sup> Legislative Session appropriated approximately \$5.7 million from the Capitol Building Fund:

- \$4.0 million for a new Governor's residence (SB 2304)
  - \$1.4 million for capitol building entrance and signage projects (SB 2015)
  - \$310,000 for legislative wing electrical and ceiling repairs (SB 2015)
- In addition to the specific appropriations noted above, NDCC 48-10-02 provides the CGPC with continuing appropriation authority of \$175,000 out of this Fund and SB 2015 contains a \$25,000 operating appropriation for the CGPC.
  - No transfers have been made to Facilities Management during the first six months of the biennium.
  - During the quarter, the Capitol Building Fund collected approximately \$336,000 of oil and gas royalties and annual surface rentals of \$131,000.
  - In September 2015, most of the assets of the Capitol Building Fund were transferred to the NTI Ultra-Short portfolio, commingled with the assets of the SIIF and the Coal Development Trust Fund.
  - The NTI Ultra-Short portfolio earned a total return of -0.22% during the quarter ended December 31, 2015; it has earned a return of +0.13% since it's' August 1, 2015 inception date.

## R E P O R T S

**The Board reviewed the results of its February 2016 Oil and Gas Lease Auctions**

**The Board reviewed an unaudited Summary of Total Assets for Period Ended November 30, 2015**

**Report of Easements Issued by Land Commissioner 01-15-16 through 02-12-2016**

|                     |   |
|---------------------|---|
| <b>Granted to:</b>  | <b>BOE MIDSTREAM, DENVER-CO</b>               |
| For the Purpose of: | Easement: Oil Gathering Pipeline              |
| Legal Description:  | DUN-148-96-16-N2SE4, SW4SE4, LOT 2            |
| <b>Granted to:</b>  | <b>ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT</b> |
| For the Purpose of: | Easement: Drop Line-Gas Gathering Pipeline    |
| Legal Description:  | MCK-151-96-36-SE4, SW4                        |
| <b>Granted to:</b>  | <b>EOG RESOURCES INC, DENVER-CO</b>           |
| For the Purpose of: | Easement-Amend: Drop Line-Pipeline            |
| Legal Description:  | MOU-155-90-16-SE4                             |
| <b>Granted to:</b>  | <b>MARATHON OIL COMPANY INC, DICKINSON-ND</b> |
| For the Purpose of: | Easement: Multiple Pipelines                  |
| Legal Description:  | DUN-146-92-16-S2SW4                           |
| <b>Granted to:</b>  | <b>ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT</b> |
| For the Purpose of: | Easement: Drop Line-Gas Gathering Pipeline    |
| Legal Description:  | MCK-150-95-36-LOTS 1, 2                       |

|                     |  |
|---------------------|--|
| <b>Granted to:</b>  | <b>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND</b>     |
| For the Purpose of: | Easement: Electric Distribution Line - Above Ground              |
| Legal Description:  | WIL-159-96-16-NE4, NW4   |
| <b>Granted to:</b>  | <b>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND</b>     |
| For the Purpose of: | Easement: Drop Line-Electric Distribution Line                   |
| Legal Description:  | WIL-154-99-16-NE4, NW4, SW4                                      |
| <b>Granted to:</b>  | <b>LIBERTY RESOURCES MANAGEMENT CO LLC, DENVER-CO</b>            |
| For the Purpose of: | On-lease Act. Amend: Horizontal Oil Well                         |
| Legal Description:  | WIL-158-95-16-SE4  |
| <b>Granted to:</b>  | <b>HEP HB 3903 LLC, DENVER-CO</b>                                |
| For the Purpose of: | Easement: Drop Line-Saltwater Pipeline                           |
| Legal Description:  | MCK-149-99-16-NW4  |
| <b>Granted to:</b>  | <b>ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT</b>                    |
| For the Purpose of: | Easement: Easement Release                                       |
| Legal Description:  | MCK-146-104-36-NW4   |
| <b>Granted to:</b>  | <b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b>        |
| For the Purpose of: | Easement-Amend: Electric Transmission Line                       |
| Legal Description:  | MCK-153-97-16-NW4  |
| <b>Granted to:</b>  | <b>MCKENZIE ENERGY PARTNERS LLC, BELFIELD-ND</b>                 |
| For the Purpose of: | Easement: Drop Line-Saltwater Pipeline                           |
| Legal Description:  | MCK-151-100-16-NW4   |
| <b>Granted to:</b>  | <b>BURLINGTON RESOURCES OIL &amp; GAS CO LP, BARTLESVILLE-OK</b> |
| For the Purpose of: | Permit: Access Road  |
| Legal Description:  | DUN-146-94-36-SE4, SW4   |

The following letters of permission were issued to groups wishing to use school trust lands under the Board's policy for access to trust lands by organizations. Fees may be charged for this use.

|                     |  |
|---------------------|--|
| <b>Granted to:</b>  | <b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b>  |
| For the Purpose of: | Letter of Permission: Access to School Land to a proposed electric distribution line across the N2 of section 21 |
| Legal Description:  | DUN-147-95-16-NE4 NORTH OF HWY, SE4  |
| <b>Granted to:</b>  | <b>SOUTH DAKOTA STATE UNIVERSITY/ NDGFD, DICKINSON-ND</b>  |
| For the Purpose of: | Letter of Permission: Access to School Land to conduct mountain lion research                                    |
| Legal Description:  | BIL-141-101-14-NE4   |
| Legal Description:  | BIL-141-101-16-NW4, SW4  |
| Legal Description:  | MCK-146-100-16-NE4, SE4  |
| Legal Description:  | MCK-147-98-16-NE4, NW4, SE4  |
| Legal Description:  | MCK-149-96-36-ALL  |
| Legal Description:  | MCK-149-97-36-SW4SE4, LOTS 2, 3, 7<br>W2SW4, LOTS 4, 5, 6  |



## Comments on US Fish and Wildlife Proposed Oil and Gas Regulations

The Board reviewed comments that the Commissioner submitted in response to U.S. Fish and Wildlife Service proposed rules and draft environmental impact regarding non-federal oil and gas rights and activities.

The restrictions placed upon these private and USFWS lands may limit drilling and extraction activity in areas where conservation easements are prevalent, thereby reducing the income producing potential where trust assets are pooled with these tracts. These proposed rules could result in significant delays in the drilling of wells and in the subsequent payment of royalties owed to the trusts and funds managed by the Board.

The USFWS Refuge Rule comment letters were presented to the Board and are available at the Department.

## Status of Legal Issues

The following cases are pending regarding the ownership of sovereign lands on the Missouri River:

- *William S. Wilkinson, et al. v. The Board of University and School Lands of the State of N.D., et al.*, No. 53-2012-CV-00038 (Honorable Judge Jacobson assigned);
  - *On February 22, 2016 the Court granted the State Engineer's Motion to intervene as a Defendant.*
- *EEE Minerals, LLC, et al. v. Continental Resources, Inc., et al.*, No. 27-2014-CV-00282 (Honorable Judge Schmidt assigned);
- *Statoil Oil & Gas LP v. Abaco Energy, LLC, et al.*, No. 53-2015-CV-00744 (Judge Nelson);
- *Starin v. Schmidt*, No. 53-2015-CV-00986 (Honorable Judge Nelson assigned);
- *Statoil Oil & Gas LP v. 1280 Royalties, LLC, et al.*, No. 53-2015-CV-01437 (Honorable Judge Jacobson assigned);
- *Mary K Starin v. Kelly Schmidt, et al.*, No. 53-2015-CV-00986 (Honorable Judge Nelson assigned);

The following case is pending regarding ownership of sovereign lands on the Yellowstone River:

- *Whiting Oil and Gas Corp. v. Arlen A. Dean, et al.*, No. 27-2016-CV-00040 (Judge Schmidt).

Bench trial set for May 23 – 27 and June 1, 2016 for *Wilkinson*.

Separate Litigation:

*Willard Burk v. State of North Dakota by and through its Board of University and School Lands, et al.*, Case No. 08-2015-CV-01849

- In January, district court judge issued summary judgment order dismissing the case and award attorneys' fees to the state
- Plaintiff's counsel has indicated that Plaintiff intends to appeal case to Supreme Court

*EOG Resources v. Soo Line Railroad Company, et. al. and Stenehjem ex rel. State of North Dakota v. United States* - No change

**Dakota Access Pipeline Easement Request**

Dakota Access LLC plans to construct a crude oil transmission pipeline beginning near Stanley, ND and ending near Patoka, IL.

On December 16, 2015 the Board approved the general Dakota Access route involving 4 ½ miles of trust land in Mountrail, Williams, and McKenzie Counties. The Board then authorized the Commissioner to work on completing site specific route right-of-way evaluations and to propose final easement documents and consideration for its subsequent approval.

On January 29, 2016, the Department received an offer from Dakota Access coupled with substantial proposed changes to the Board's easement template. Since then Department staff has met with company representatives and counsel several times and proposed extensive revisions to the Board's easement template to Dakota Access. Subsequently, Dakota Access replied with concerns about the Department's proposals and offered additional modifications.

The Board reviewed a timeline of correspondence, meetings and action related to the easement request; copies of which are available at the Department.

The easement language and consideration were not final and not presented.

The Commissioner was informally directed to continue negotiations with Dakota Access with the objective of presenting a formal recommendation at a future Board meeting.

**Performance Audit Management of Energy Infrastructure and Impact Office and Unclaimed Property**

Final State Auditor performance audit letters and findings pertaining to the Energy Infrastructure and Impact office and Unclaimed Property division were distributed to members. These documents are available at the Department.

**A D J O U R N**

There being no further business, the meeting was adjourned at 11:05 AM.

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Jack Dalrymple, Chairman  
Board of University and School Lands

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Lance D. Gaebe, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
March 31, 2016**

The March 31, 2016 meeting of the Board of University and School Lands was called to order in the Governor's Conference Room at 9:00 AM by Chairman Jack Dalrymple.

**Members Present:**

|                 |                                      |
|-----------------|--------------------------------------|
| Jack Dalrymple  | 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 during open session:**

|                 |                                   |
|-----------------|-----------------------------------|
| Lance D. Gaebe  | Commissioner                      |
| Jeff Engleson   | Director, Investment Division     |
| Drew Combs      | Director, Minerals Division       |
| Linda Fisher    | Deputy Commissioner of Operations |
| Peggy Gudvangen | Director, Accounting              |
| Mike Humann     | Director, Surface Division        |
| Taylor Lee      | Director, Revenue Compliance      |
| Gerry Fisher    | Director, Grants and Claims       |
| Rick Owings     | Assistant Energy Impact Director  |
| Catelin Newell  | Office Manager                    |

**Others in Attendance during open session:**

|                   |                                |
|-------------------|--------------------------------|
| Hope Hogan        | Office of the Attorney General |
| Bonnie Storbakken | Governor's Legal Counsel       |
| Levi Andrist      | GA Group PC                    |
| Joel Gilbertson   | GA Group PC                    |
| Lawrence Bender   | Fredrikson & Byron, P.A.       |

**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 February 25, 2016 meeting was made by Secretary of State Al Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried on a voice vote.

**E N E R G Y   I N F R A S T R U C T U R E   A N D   I M P A C T   O F F I C E**

**Cancellation of Grants**

**Dickinson Theodore Roosevelt Regional Airport**

On October 29, 2015, the Land Board awarded \$2,225,460 to seven airports, including the Dickinson Theodore Roosevelt Regional Airport which was awarded \$535,100 for Benefit-Cost Analysis/Letter of Intent.

The North Dakota Aeronautics Commission received a letter dated January 22, 2016 from Dickinson Theodore Roosevelt Regional Airport indicating that Grant G160202, for a Benefit-Cost Analysis project can be closed. Due to the changing economic conditions all work pertaining to this grant is ceasing.

It is recommended by the ND Aeronautics Commission and the EIIO that the remaining amount on Grant Number G160202 in the amount of \$517,980 be canceled.

### Other Grants

In communications with other grantees during February 2016, additional awards were identified for possible cancellation. Most relate to balances remaining on completed projects where completed under the awarded amount. These grants were provided from Fiscal Year 2013 to Fiscal Year 2016.

The EIIO recommended cancellation of the following list of grants and grant balances.

| Political Subdivision                   | Year | Amount Awarded | Amount Paid  | Balance      | Project  |
|---|------|----------------|--------------|--------------|--|
| Bowman County Airport Authority         | 2015 | \$134,251.00   | \$131,042.49 | \$3,208.51   | FAA 2014 - AIP #3 - Construction of Terminal/SRE Building/Wildlife Fence |
| Bowman County Airport Authority         | 2015 | \$73,000.00    | \$72,141.48  | \$858.52     | Construct Public Fueling Facility  |
| Bowman County Rural Ambulance District  | 2016 | \$52,830.00    | \$46,188.12  | \$6,641.88   | Ambulance Equipment  |
| Center-Stanton Psd #1                   | 2016 | \$19.00        |              | \$19.00      | Renovation and improvement projects                                      |
| Dickinson Municipal Airport Authority   | 2016 | \$535,100.00   | \$17,120.00  | \$517,980.00 | BCA/LOI Application Documentation  |
| Dunn County Airport Authority           | 2015 | \$222,465.00   | \$220,649.31 | \$1,815.69   | Design And Construct 100ll And Jet A Fuel Facility                       |
| Golden Valley Rural Fire Prot. District | 2016 | \$19,184.00    | \$19,182.98  | \$1.02       | Scba's   |
| Idaho Township                          | 2014 | \$200,000.00   | \$198,098.34 | \$1,901.66   | 83rd Ave North Improvements  |
| Keene Township                          | 2014 | \$200,000.00   | \$190,690.00 | \$9,310.00   | Rebuild 1 Mile And Build 1 New Mile Gravel Road                          |
| Kramer Fire District                    | 2016 | \$9,000.00     |              | \$9,000.00   | 20 Fire Pagers And Programming   |
| Marmarth Rural Fire District            | 2013 | \$23,553.00    | \$11,558.65  | \$11,994.35  | Purchasing Personal Protective Equipment                                 |
| Mentor Township                         | 2015 | \$177,231.00   | \$126,104.00 | \$51,127.00  | 107th Avenue Repair  |
| Mentor Township                         | 2015 | \$50,000.00    | \$26,732.70  | \$23,267.30  | 103rd Avenue Repair  |
| Mentor Township                         | 2015 | \$25,000.00    | \$20,355.00  | \$4,645.00   | 108th Street Gravel  |
| New Town Airport Authority              | 2016 | \$42,535.00    | \$42,469.74  | \$65.26      | Construct Ga Terminal Building   |
| Parshall Rural Fire District            | 2014 | \$124,000.00   | \$123,593.05 | \$406.95     | Turnout/Scba   |
| Powers Lake Psd #27                     | 2014 | \$15,000.00    | \$1,995.79   | \$13,004.21  | Cost Of Contract Services - Financial And Construction Related Guidance  |
| Spring Coulee Township                  | 2015 | \$150,000.00   | \$149,650.00 | \$350.00     | Grade Raise On 43rd Street Nw  |
| Tioga Psd #15                           | 2014 | \$15,000.00    | \$2,165.81   | \$12,834.19  | Cost Of Contract Services - Financial And Construction Related Guidance  |
| Trenton Fire District                   | 2015 | \$147,710.00   | \$146,232.00 | \$1,478.00   | Replacement Of A 1976 Dodge  |
| Trenton Township                        | 2013 | \$27,500.00    | \$26,361.66  | \$1,138.34   | Bunker Gear  |
| Trenton Township                        | 2014 | \$240,000.00   | \$239,388.37 | \$611.63     | New Pumper Truck   |
| Turtle Lake Municipal Airport           | 2015 | \$31,252.00    | \$30,459.85  | \$792.15     | Construct Airport Snow Removal Equipment Building                        |

**Total \$672,450.66**

Motion: The Board canceled the 23 grants identified in the preceding list for a total of \$672,450.66. Subsequently, the Board declared the funds available within the oil and gas impact grant fund.

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

### Update on Program Funds

The following is the breakdown of program funds in the 2015-2017 biennium, of the \$139.3 million appropriated by the 2015 Legislature, \$41,873,272 in grant commitments have been provided by the Board. The following is a summary:

| 2015-2017 Biennium Breakdown (Combining like FY Rounds) |               |                      |                     |            |                     |
|---|---------------|----------------------|---------------------|------------|---------------------|
| Round or Award  | #Applications | Amount of Projects   | Amount Requested    | #Awards    | Amount Awarded      |
| Airports FY 2016  | 28            | \$9,717,451          | \$3,531,497         | 28         | \$3,000,775         |
| EMS FY 2016   | 43            | \$9,859,855          | \$7,467,128         | 32         | \$3,689,553         |
| K-12 FY 2016  | 62            | \$15,000,193         | \$15,000,193        | 62         | \$15,000,174        |
| Law Enforcement FY 2016                                 | 59            | \$22,102,479         | \$19,853,329        | 54         | \$7,788,580         |
| Fire Districts  | 67            | \$22,745,202         | \$16,837,094        | 36         | \$2,990,999         |
| Local District Health Units                             | 3             | \$2,000,000          | \$2,000,000         | 3          | \$2,000,000         |
| Emergency Request FY 2016                               | 1             | \$1,300,000          | \$1,100,000         | 1          | \$500,000           |
| Critical Access Hospitals                               | 7             | \$9,699,199          | \$5,405,945         | 7          | \$5,000,000         |
| Providers to Developmental Disabled                     | 11            | \$1,000,000          | \$1,000,000         | 11         | \$1,000,000         |
| Domestic Violence                                       | 3             | \$9,425,624          | \$2,178,280         | 0          | \$0                 |
| Sexual Assault Examiner                                 | 7             | \$309,733            | \$309,733           | 7          | \$247,767           |
| Human Trafficking                                       | 5             | \$1,112,934          | \$1,112,934         | 5          | \$655,424           |
|   | <b>296</b>    | <b>\$104,272,670</b> | <b>\$75,796,133</b> | <b>246</b> | <b>\$41,873,272</b> |

The February 1, 2016 revised State revenue forecast projected the Oil and Gas Impact Grant Fund (OGIGF) will receive \$28.6 million of the \$140 million appropriated for the biennium. In response, the Board halted all new grant consideration and directed that active funded by grants that had not started to be suspended. The EIO has sent suspension notices on 64 grants to 53 grantees for a total of \$7.48 million.

Based on direction provided by the Assistant Attorney General, interpretation of HB 1176 Section 5, subsection 4 indicates funding must be provided as designated to critical access hospitals, providers serving individuals with developmental disabilities, human trafficking and sexual assault examiner programs. An additional \$6,096,809 needs to be awarded to these entities during the 2015-2017 biennium to satisfy this requirement.

A summary based on the projections is as follows:

### **2015-17 Biennium Projected Summary**

|  |           |
|--|-----------|
| Committed 2015-17 Biennium                               | \$41.87   |
| Additional Required Grants                               | \$6.10    |
| Projected Administrative Costs                           | \$0.62    |
| Projected Total Commitments                              | \$48.59   |
| Revised Revenue for the Oil and<br>Gas Impact Grant Fund | \$28.60   |
| Projected Revenue Shortfall                              | (\$19.99) |

\*In Millions

Cash flow considerations to address the shortfall include the \$7.48 million of grant suspensions and \$13 million of awards to Williston's Airport that is not expected to be drawn on until the 2017 construction season.

Status of all grants, both current and previous biennia as of March 21, 2016:

- 375 grants have an open balance, total commitments of \$63,815,408.98
- Of these, 12 grants are to 11 entities legally required to receive grants, total balances \$903,191

Since February 1, 2016, \$26.32 million in 201 reimbursements have been processed and paid. Three months prior (November 1, 2015 through January 31, 2016), 271 reimbursements totaling \$35.25 million were processed.

For the 2015-2017 Biennium, \$23,466,786.39 has been received from GPT distributions into the OGIGF. Distributions and reimbursements provided on current biennium grant commitments total \$23,711,110.70. The current biennium funding deficit of \$244,324.31 has been paid utilizing funds from past biennia.

As of March 21, 2016, unpaid grant commitments include \$45,119,540.33 for past biennia and \$18,695,868.65 for the current biennium, for a total of \$63,815,408.98 in commitments. Not including administrative costs, \$44,875,216.02 remains available in the OGIGF.

The EIIO has requested legal counsel interpretation relating to carryover language in statute.

#### **Emerging Counties Energy Impact Grants**

A memo was presented to the Board regarding the determination of which counties are eligible for distribution of emerging counties grants. The memo is available at the Department.

## **S U R F A C E   M A N A G E M E N T**

#### **Consideration of Easements for Dakota Access Pipeline**

Dakota Access LLC plans to construct a crude oil transmission pipeline beginning near Stanley, ND and ending near Patoka, IL.

On December 16, 2015, the Board approved the general Dakota Access route involving 4 ½ miles of Trust land in Mountrail, Williams, and McKenzie Counties; and accepted the survey plats that the company provided. The site specific right-of-way environmental evaluations are completed.

On February 25, 2016, the Board instructed the Commissioner to work with Dakota Access on the terms and conditions of the easement and negotiate the easement consideration.

Dakota Access and the Commissioner have reached a proposed agreement of terms and conditions of the easement that will not jeopardize the Board's fiduciary responsibility to the Trust. The draft easement for each county, including the easement consideration for each county, was presented for the Board's review.

**Motion: The Board approved the proposed Dakota Access LLC easement and offer of consideration for the route through Mountrail, Williams, and McKenzie Counties as depicted on the referenced easement documents.**

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

Complete copies of the referenced easement documents are available on file at the Department.

## MINERALS MANAGEMENT

### Proposed Assessment of Penalties and Interest on Late Payment of Royalties

The Commissioner requested that the Board table the Agenda Item related to the assessment of penalties and interest on late payment of royalties while the Department gathers additional information.

Without objection the matter was tabled until a later meeting.

## OPERATIONS

### Review of Performance Audit Report Draft (Report 3 of 3)

#### EXECUTIVE SESSION

N.D.C.C. § 44-04-19.2(1) provides authority for governing bodies to review confidential documents. According to N.D.C.C. § 54-10-26 the State Auditor's Office audit report and Department responses to it, are deemed confidential while in draft form.

As directed by the Legislative Audit and Fiscal Review Committee, since January 2015 the State Auditor's Office has been conducting a performance examination of the Department. The identified audit objectives include:

1. the effectiveness of Unclaimed Property administration,
2. the effectiveness of Energy Infrastructure and Impact Office grants administration, and
3. the effectiveness and efficiency of the Department of Trust Lands in obtaining, accounting for, and use of resources.

The first two reports pertaining to Unclaimed Property and Energy Infrastructure and Impact were finalized and released to the public by the State Auditor on February 25, 2016.

The final chapter of the third report, related to the effectiveness and efficiency of the Department in obtaining, accounting for, and use of resources was delivered to the Department for response on March 24, 2016.

All three reports are anticipated to be included for consideration by the Legislative Audit and Fiscal Review Committee at its next meeting which is scheduled for April 21, 2016. The Auditor's Office has requested Department responses on the findings in the third report by April 14, 2016.

The draft report and the Department proposed responses are considered a part of the draft report and a confidential record according to N.D.C.C. § 54-10-26. The Board may review and discuss the confidential record in executive session. NDCC 44-04-19.2(1) gives governing bodies the authority to enter into executive session to review these type of records.

**Motion: The State Auditor's Office performance audit report regarding the Department is deemed confidential while in draft form according to N.D.C.C. § 54-10-26; in order to review and discuss the confidential draft audit report, the Board entered executive session, permitted under N.D.C.C. § 44-04-19.2(1).**

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

At 9:28 AM the Board entered executive session for review the State Auditor's Office audit report and Department responses to it, which are deemed confidential while in draft form.

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#### EXECUTIVE SESSION

##### **Members Present:**

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

##### **Department of Trust Lands Personnel Present:**

|                 |                                   |
|-----------------|-----------------------------------|
| Lance D. Gaebe  | Commissioner                      |
| Jeff Engleson   | Director, Investment Division     |
| Drew Combs      | Director, Minerals Division       |
| Linda Fisher    | Deputy Commissioner of Operations |
| Peggy Gudvangen | Director, Accounting              |
| Mike Humann     | Director, Surface Division        |
| Taylor Lee      | Director, Revenue Compliance      |
| Catelin Newell  | Office Manager                    |

##### **Others in Attendance:**

|                   |                                |
|-------------------|--------------------------------|
| Hope Hogan        | Office of the Attorney General |
| Bonnie Storbakken | Governor's Legal Counsel       |

No action was taken during the Executive Session which was adjourned at 10:28 AM and the Board returned to open session and the public was invited to return to the meeting.



## R E P O R T S

### Investment Updates

The table below shows the status of the asset allocation of the permanent trusts as of February 29, 2016. It includes:

- The long-term asset allocation approved by the Board in September of 2013
- Interim allocations to asset classes in place for the quarter, while the trusts await to fully fund all real estate mandates

| Account/Asset Class               | Long-Term Asset Allocation | Interim Target Allocation | Interim % +/- Weight | 2/29 Actual Allocation \$ | 2/29 Actual Allocation % |
|-----------------------------------|----------------------------|---------------------------|----------------------|---------------------------|--------------------------|
| Large Cap US Equity               | 13.5%                      | 14.0%                     | 3.7%                 | \$ 464,134,405            | 13.7%                    |
| Small Cap US Equity               | 3.5%                       | 3.7%                      | 5.7%                 | \$ 120,779,182            | 3.6%                     |
| International Equity              | 12.0%                      | 12.4%                     | 3.3%                 | \$ 406,205,932            | 12.0%                    |
| Emerging Market Equity            | 3.0%                       | 3.2%                      | 6.7%                 | \$ 111,179,697            | 3.3%                     |
| <b>Total Equities</b>             | <b>32.0%</b>               | <b>33.3%</b>              | <b>4.1%</b>          | <b>\$ 1,102,299,214</b>   | <b>32.6%</b>             |
| Domestic Investment Grade         | 14.2%                      | 15.8%                     | 11.3%                | \$ 526,797,431            | 15.6%                    |
| High Yield FI                     | 3.0%                       | 3.2%                      | 6.7%                 | \$ 108,601,895            | 3.2%                     |
| International/Global FI           | 5.8%                       | 6.3%                      | 8.6%                 | \$ 211,250,462            | 6.2%                     |
| <b>Total Fixed Income</b>         | <b>23.0%</b>               | <b>25.3%</b>              | <b>10.0%</b>         | <b>\$ 846,649,789</b>     | <b>25.0%</b>             |
| <b>Total Absolute Return</b>      | <b>20.0%</b>               | <b>21.0%</b>              | <b>5.0%</b>          | <b>\$ 700,974,489</b>     | <b>20.7%</b>             |
| Commodities                       | 3.0%                       | 3.1%                      | 3.3%                 | \$ 103,593,289            | 3.1%                     |
| MLPs                              | 3.0%                       | 3.1%                      | 3.3%                 | \$ 103,563,535            | 3.1%                     |
| TIPS                              | 2.0%                       | 2.1%                      | 5.0%                 | \$ 71,452,058             | 2.1%                     |
| Natural Resource Equities         | 2.0%                       | 2.1%                      | 5.0%                 | \$ 75,704,704             | 2.2%                     |
| <b>Total Inflation Strategies</b> | <b>10.0%</b>               | <b>10.4%</b>              | <b>4.0%</b>          | <b>\$ 354,313,587</b>     | <b>10.5%</b>             |
| Core Real Estate                  | 8.0%                       | 8.0%                      | 0.0%                 | \$ 313,728,951            | 9.3%                     |
| Core Plus Real Estate             | 7.0%                       | 2.0%                      | -71.4%               | \$ 76,722,725             | 2.3%                     |
| <b>Total Real Estate</b>          | <b>15.0%</b>               | <b>10.0%</b>              | <b>-33.3%</b>        | <b>\$ 390,451,677</b>     | <b>11.5%</b>             |
| <b>Total Asset</b>                | <b>100.0%</b>              | <b>100.0%</b>             |                      | <b>\$ 3,394,688,756</b>   | <b>100.4%</b>            |

As money is called to fund the real estate mandates, the permanent trusts' equity, fixed income, absolute return and diversified inflation strategies target allocations will continue to be adjusted toward the long-term target allocations.

Ten percent of the permanent trusts' 15% allocation to fixed income has been funded. Based upon communications with managers, the assessment of when the remaining real estate commitments will be funded is:

- Prologis                      \$75.0 million                      April 14, 2016
- JP Morgan                      \$113.0 million                      by year-end 2016

### Personnel Change at RVK

The Department recently learned that Kristen Steffens, one of the two primary RVK consultants who have worked on the Board's account since the beginning in 2013, recently left RVK. Kristen has taken a job with an investment management firm that will require less travel.

Although Marcia Beard has been the lead consultant on the account, Kristen was responsible for coordinating much of the work for the Board. The Board and Department have worked with many capable RVK professionals and the Commissioner is confident that RVK will continue to provide the expected services.

### **Personnel Change at Research Affiliates - Jason Hsu stepping down**

On March 7, 2016, the Department learned that Jason Hsu, co-founder and Vice Chairman of Research Affiliates (RA) would cease employment with the firm and instead serve as Chairman and CEO of his own Hong Kong based firm. RA manages the All Assets All Authority product for PIMCO. The Board currently has approximately 7% of permanent trust assets (\$245 million) invested in PIMCO's AAAA product.

While this is a significant development, after visiting with Research Affiliates in their offices, RVK does not believe immediate action is warranted.

Some of the reasons RVK is not concerned include:

- Mr. Hsu will remain closely involved with RA as Vice Chairman.
- Mr. Hsu continues to hold a significant ownership interest in RA.
- Mr. Hsu will continue to collaborate with research efforts at RA.
- Mr. Hsu will remain in Newport Beach.
- Mr. Hsu had no direct reports at RA and no direct involvement in portfolio management.
- Mr. Hsu's recent focus has been on smart beta research, not portfolio management.

The Research Affiliates situation will continue to be closely monitored.

### **The Board reviewed an unaudited Quarterly Financial Report for Period Ended December, 2015.**

### **Report of Easements Issued by Land Commissioner 02-16-16 through 03-14-16**

|                     |   |
|---------------------|---|
| <b>Granted to:</b>  | <b>WHITING OIL AND GAS CORPORATION, DENVER-CO</b>     |
| For the Purpose of: | Permit: Access Road                                   |
| Legal Description:  | WIL-154-98-16-NE4, SE4                                |
| <b>Granted to:</b>  | <b>BRIDGER PIPELINE LLC, CASPER-WY</b>                |
| For the Purpose of: | Easement-Amend: Drop Line-Pipeline                    |
| Legal Description:  | DUN-147-96-36-NE4                                     |
| <b>Granted to:</b>  | <b>HILAND CRUDE LLC, HOUSTON-TX</b>                   |
| For the Purpose of: | Easement: Drop Line-Oil Gathering Pipeline            |
| Legal Description:  | MCK-153-96-16-SE4                                     |
| <b>Granted to:</b>  | <b>PARADIGM MIDSTREAM SERVICES ND LLC., IRVING-TX</b> |
| For the Purpose of: | Easement-Amend: Drop Line-Pipeline                    |
| Legal Description:  | MCK-153-95-16-NW4                                     |
| <b>Granted to:</b>  | <b>ATKINS NORTH AMERICA, INC., AUSTIN-TX</b>          |
| For the Purpose of: | Permit: General Land Surveys                          |
| Legal Description:  | WAR-155-84-1- SW4NW4 LYING N & E OF RIVER CENTERLINE  |
| <b>Granted to:</b>  | <b>DOCKTER, DENHOFF-ND</b>                            |
| For the Purpose of: | Permit: Access Road                                   |
| Legal Description:  | SHE-145-75-16-NE4                                     |
| <b>Granted to:</b>  | <b>EOG RESOURCES INC, DENVER-CO</b>                   |
| For the Purpose of: | Easement: Multiple Pipelines                          |
| Legal Description:  | MCK-152-95-36-LOTS 1, 2                               |

**Granted to:** **BILLINGS COUNTY, MEDORA-ND**  
 For the Purpose of: Permit: Temporary Construction  
 Legal Description: BIL-144-100-16-SE4

The following letters of permission were issued to groups wishing to use school trust lands under the Board's policy for access to trust lands by organizations. Fees may be charged for this use.

**Granted to:** **CALIBER MIDSTREAM ND LLC, DENVER-CO**  
 For the Purpose of: Letter of Permission: Access to School Land for the purpose of  
 frac water  
 Legal Description: MCK-151-100-16-NW4

**Granted to:** **SELECT ENERGY SERVICES LLC, WILLISTON-ND**  
 For the Purpose of: Letter of Permission: Access to School Land for the purpose of  
 frac water  
 Legal Description: WIL-155-96-36-N2SE4, SW4SE4, NE4

**Granted to:** **MBI ENERGY SERVICES, KILLDEER-ND**  
 For the Purpose of: Letter of Permission: Access to School Land for the purpose of  
 frac water  
 Legal Description: MOU-154-93-16-NE4, SE4

## A D J O U R N

There being no further business, the meeting was adjourned at 10:39 AM.

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Jack Dalrymple, Chairman  
 Board of University and School Lands

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Lance D. Gaebe, Secretary  
 Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
April 28, 2016**

The April 28, 2016 meeting of the Board of University and School Lands was called to order in the Governor's Conference Room at 9:00 AM by Chairman Jack Dalrymple.

**Members Present:**

|                 |                                      |
|-----------------|--------------------------------------|
| Jack Dalrymple  | 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:**

|                |                                   |
|----------------|-----------------------------------|
| Lance D. Gaebe | Commissioner                      |
| Drew Combs     | Director, Minerals Division       |
| Levi Erdmann   | Investment Analyst                |
| Linda Fisher   | Deputy Commissioner of Operations |
| Mike Haupt     | Land Management Professional      |
| Mike Humann    | Director, Surface Division        |
| Taylor Lee     | Director, Revenue Compliance      |
| Gerry Fisher   | Director, Grants and Claims       |
| Rick Owings    | Assistant Energy Impact Director  |

**Guests in Attendance:**

|                   |                                |
|-------------------|--------------------------------|
| Dave Garner       | Office of the Attorney General |
| Matt Sagsveen     | Office of the Attorney General |
| Savannah Schmidt  | BCI                            |
| Bonnie Storbakken | Governor's Legal Counsel       |
| Anthony Ford      | Crowley Fleck PLLP             |
| Jim Melchior      | Coyote Creek Mine              |
| Chris Friez       | NA Coal                        |
| David Straley     | NA Coal                        |
| James MacPherson  | Associated Press               |
| Nick Smith        | Bismarck Tribune               |
| Mike Nowatski     | Forum News Service             |

**APPROVAL OF MINUTES**

A motion to approve the minutes of the March 31, 2016 meeting was made by Secretary of State Al Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

**ENERGY INFRASTRUCTURE AND IMPACT OFFICE**

**Human Trafficking Victim Treatment and Support Services Impact Grant**

Law enforcement agencies experiencing impacts from oil and gas development were allocated \$10 million by the 2015 Legislature in House Bill 1176 from the Oil and Gas Impact Grant Fund (OGIGF). Of the \$10 million appropriated for law enforcement, \$750,000 was designated by Senate Bill 2199 for grants to organizations involved in providing prevention and treatment services related

to human trafficking victims in hub cities located in oil-producing counties. In January 2016, the Board awarded \$655,424 of this \$750,000 to five entities. There is \$94,576 available for future awards.

Grant guidelines gave consideration to the development and implementation of direct care, emergency or long term crisis services, residential care, training of law enforcement and victim service providers, support of advocacy services, and programs promoting outcomes for victims.

The following Human Trafficking Victim Treatment and Support Services Grant application was recently received:

#### **Human Trafficking Victim Treatment and Support Services Grant Application**

| Applicant | City     | Application # | Project  | Amount of Project | Amount Requested |
|-----------|----------|---------------|--|-------------------|------------------|
| CAWS ND   | BISMARCK | A160342       | Statewide Training, Consultant Training & Formation of a John's School | \$94,576          | \$94,576         |

The Council on Abused Women's Services of North Dakota (CAWS ND) is a nonprofit membership organization representing the 20 domestic violence and sexual assault crisis intervention centers throughout the state including those located in the hub cities located within oil-producing counties. Its mission includes providing leadership and support in the identification, intervention and prevention of sexual and domestic violence.

A legal review indicates that the language within SB 2199 regarding the \$750,000 appropriation for Human Trafficking and SB 2284 regarding the \$250,000 appropriated for Sexual Assault Examiner Programs are required to be funded. These both are part of the \$10 million designated for law enforcement within HB 1176.

While the Board halted new grant activity in February 2016 based on revised State revenue projections, based on advice of counsel, the obligation to award the full \$750,000 for Human Trafficking is required.

The following recommended award is offered by the Attorney General and the EIO:

#### **Human Trafficking Victim Treatment and Support Services Grant Recommendation**

| Applicant | City     | Application # | Project  | Amount Recommended |
|-----------|----------|---------------|--|--------------------|
| CAWS ND   | BISMARCK | A160342       | Statewide Training, Consultant Training & Formation of a John's School | \$94,576           |

**Motion: The Board awarded \$94,576 from the Oil and Gas Impact Grant Fund to CAWS ND, a provider of human trafficking services to victims in hub cities located in oil-producing counties. With this action, the Board affirmed the full \$750,000 as designated for human trafficking programs by the 2015 Legislative Assembly within Senate Bill 2199, has been met.**

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

## **S U R F A C E   M A N A G E M E N T**

### Requests for Off Lease Well Locations

The Department operates under Commissioner adopted guidelines to evaluate requests for off-lease easement locations for oil well sites and well bores on Trust surface. A copy of the Department's off lease well location guidelines was presented to the Board and is available at the Department.

Commonly, delays in the process of obtaining a well location on federal surface pushes companies to request well pads on private or state surface acres in order to drill minerals in a neighboring spacing unit. The Board reviewed several examples of off-lease oil well site requests and it discussed options that would not jeopardize the future production of Trust minerals. The Board directed the Commissioner and staff to continue to work to ensure that the Trusts, including sovereign minerals, are appropriately compensated and fairly treated.

### Road Closure Issue – Coyote Creek Mine – Mercer County

The Coyote Creek Mining Company (CCMC) has successfully petitioned the Mercer County Commission to temporarily close area roads and section lines in accordance with N.D.C.C § 38-01-07.1 and 38-01-07.2 in order to conduct surface coal mining and reclamation operations at the Coyote Creek mine southwest of Beulah. The CCMC's request for temporary road and section line closure includes Common Schools Trust surface in the North 1/2 and SW 1/4 of Section 36, T143N, R89W and mineral interest under all of Section 36.

Included in this closure is an undocumented road across the SW 1/4 of Section 36. The action approved by Mercer County was subject to a plan developed by the CCMC that would provide viable substitute east-west access routes across the mine area during mining operations. Nonetheless, land owners near the area are appealing the Mercer County decision to close the undocumented road across the SW 1/4 of Section 36.

In a lawsuit, the plaintiffs are seeking to preclude the mining in the area of referenced road. The CCMC estimates the impact to the Trust in terms of lost coal production royalties would be between \$250,000 to \$500,000.

The Department has offered Mercer County the opportunity to obtain an easement for the existing road, so it can be replaced following mining operations, but it has not yet applied. With no easement acquired by the county the Department intends to ask the CCMC to not rebuild the road as this would re-create a liability.

**Motion: The Board requested that the Attorney General continue to take an active role in protecting the State Trusts' interests to permit coal to be mined, and that the Board defers to the Attorney General regarding the appropriate legal means to close an undocumented road and allow coal mining to commence.**

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

## O P E R A T I O N S

### Performance Audit Follow-up and Implementation

The testimony and related materials presented at the April 21, 2016 Legislative Audit and Fiscal Review Committee (LAFRC) were provided to the Board and are available at the Department.

The materials are in regard to the three sections issued within the State Auditor's Report No.3036:

Section (a): Energy Infrastructure and Impact Office (publicly released February 25, 2016)

Section (b): Unclaimed Property (publicly released February 25, 2016)

Section (c): Trust Assets and Department Resources (publicly released April 19, 2016)

It is the Department's intent to provide the Board with regular reports regarding the progress on addressing audit recommendations.

## R E P O R T S

### Investment Updates

#### Asset Allocation

The table below shows the status of the asset allocation of the permanent trusts as of March 31, 2016. It includes:

| Account/Asset Class               | Long-Term<br>Asset Allocation | Interim Target<br>Allocation | Interim %<br>+/- Weight | 3/31 Actual<br>Allocation \$ | 3/31 Actual<br>Allocation % |
|-----------------------------------|-------------------------------|------------------------------|-------------------------|------------------------------|-----------------------------|
| Large Cap US Equity               | 13.5%                         | 14.0%                        | 3.7%                    | \$ 487,601,341               | 13.7%                       |
| Small Cap US Equity               | 3.5%                          | 3.7%                         | 5.7%                    | \$ 131,918,505               | 3.7%                        |
| International Equity              | 12.0%                         | 12.4%                        | 3.3%                    | \$ 433,816,196               | 12.2%                       |
| Emerging Market Equity            | 3.0%                          | 3.2%                         | 6.7%                    | \$ 113,291,296               | 3.2%                        |
| <b>Total Equities</b>             | <b>32.0%</b>                  | <b>33.3%</b>                 | <b>4.1%</b>             | <b>\$ 1,166,627,339</b>      | <b>32.8%</b>                |
| Domestic Investment Grade         | 14.2%                         | 15.8%                        | 11.3%                   | \$ 577,956,264               | 16.3%                       |
| High Yield FI                     | 3.0%                          | 3.2%                         | 6.7%                    | \$ 111,070,193               | 3.1%                        |
| International/Global FI           | 5.8%                          | 6.3%                         | 8.6%                    | \$ 217,699,911               | 6.1%                        |
| <b>Total Fixed Income</b>         | <b>23.0%</b>                  | <b>25.3%</b>                 | <b>10.0%</b>            | <b>\$ 906,726,368</b>        | <b>25.5%</b>                |
| <b>Total Absolute Return</b>      | <b>20.0%</b>                  | <b>21.0%</b>                 | <b>5.0%</b>             | <b>\$ 724,127,854</b>        | <b>20.4%</b>                |
| Commodities                       | 3.0%                          | 3.1%                         | 3.3%                    | \$ 103,180,420               | 2.9%                        |
| MLPs                              | 3.0%                          | 3.1%                         | 3.3%                    | \$ 111,958,541               | 3.1%                        |
| TIPS                              | 2.0%                          | 2.1%                         | 5.0%                    | \$ 72,682,158                | 2.0%                        |
| Natural Resource Equities         | 2.0%                          | 2.1%                         | 5.0%                    | \$ 73,467,883                | 2.1%                        |
| <b>Total Inflation Strategies</b> | <b>10.0%</b>                  | <b>10.4%</b>                 | <b>4.0%</b>             | <b>\$ 361,289,002</b>        | <b>10.2%</b>                |
| Core Real Estate                  | 8.0%                          | 8.0%                         | 0.0%                    | \$ 319,539,770               | 9.0%                        |
| Core Plus Real Estate             | 7.0%                          | 2.0%                         | -71.4%                  | \$ 76,722,719                | 2.2%                        |
| <b>Total Real Estate</b>          | <b>15.0%</b>                  | <b>10.0%</b>                 | <b>-33.3%</b>           | <b>\$ 396,262,489</b>        | <b>11.1%</b>                |
| <b>Total Asset</b>                | <b>100.0%</b>                 | <b>100.0%</b>                |                         | <b>\$ 3,555,033,051</b>      | <b>100.0%</b>               |

Twelve percent of the permanent trusts' 15% allocation to fixed income has been funded. The trusts' \$75 million (2%) allocation to Prologis was fully funded earlier this month.

The \$113 million (3%) allocation to the J.P Morgan Income and Growth Fund will most likely be fully funded by the end of 2016. Once this occurs, the trusts' initial allocation to real estate will be fully funded, and the long-term target allocation will be reached.

### **Update on Changes at RVK**

The Board was informed by RVK that Josh Kevan, CFA, has been added to the primary team that service the Land Board account, to replace Kristen Steffens as one of the primary contacts. Josh is a senior consultant and principal at RVK with over 15 years of industry experience.

Josh was part of the team that worked with the State Investment Board and the Legacy and Budget Stabilization Fund Advisory Board to develop an asset allocation for the Legacy fund a several years ago.

### **Change in Leadership at GMO**

GMO announced the Brad Hilsabeck was stepping down from his role as CEO in April. Peg McGeshick, who currently serves on GMO's Board of Directors, will serve as CEO on an interim basis. GMO is one of the permanent trusts' absolute return managers. As of April 21, 2016 the value of this portfolio was \$244.2 million, which represents 6.8% of permanent trusts' total portfolio.

RVK and the Department do not believe this development is cause for immediate action, as Mr. Hilsabeck was not directly involved in the investment process at GMO. RVK will continue to monitor CEO search process and will report to the Board as needed.

### **The Board reviewed a Summary of Total Assets for Period Ended February 29, 2016.**

### **Ethics Policy Review**

The Board reviewed the ethics policy that it adopted for the Department and its employees in 1996. The policy was most recently reviewed and updated by the Board in 2010.

It is presented for awareness and consideration of possible adjustments or changes.

### **The Board reviewed its May 2016 Oil and Gas Lease Offering List**

#### **Report of Easements Issued by Land Commissioner (03-15-16 to 04-13-16)**

|                     |  |
|---------------------|--|
| <b>Granted to:</b>  | <b>DAKOTA ACCESS LLC, HOUSTON-TX</b>                             |
| For the Purpose of: | Easement: Oil Transmission Pipeline                              |
| Legal Description:  | MCK-150-96-36-NE4  |
| <b>Granted to:</b>  | <b>BRIDGER PIPELINE LLC, CASPER-WY</b>                           |
| For the Purpose of: | Easement: Drop Line-Oil Gathering Pipeline                       |
| Legal Description:  | MCK-153-96-36-SE4  |
| <b>Granted to:</b>  | <b>BURLINGTON RESOURCES OIL &amp; GAS CO LP, BARTLESVILLE-OK</b> |
| For the Purpose of: | On-lease Act. Amend: Oil Gathering Pipeline                      |
| Legal Description:  | MCK-149-96-16-NW4  |
| <b>Granted to:</b>  | <b>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND</b>     |
| For the Purpose of: | Easement: Drop Line-Electric Distribution Line                   |
| Legal Description:  | MOU-152-88-16-NE4, SE4   |
| <b>Granted to:</b>  | <b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b>        |
| For the Purpose of: | Easement: Electric Distribution Line - Above Ground              |
| Legal Description:  | MCK-147-104-36-N2  |



|   |   |
|---|---|
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>BRIDGER PIPELINE LLC, CASPER-WY</b><br>Easement: Tank Battery<br>BIL-141-101-22-NE4, BIL-141-101-23-NW4, S2                                |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND</b><br>Easement: Drop Line-Electric Distribution Line<br>MOU-153-90-36-NW4           |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>1804 OPERATING LLC, DALLAS-TX</b><br>Easement: Drop Line-Saltwater Pipeline<br>MCK-150-95-36-LOTS 1, 2                                     |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>BNSF RAILWAY COMPANY, FORT WORTH-TX</b><br>Permit: Access Road<br>WIL-154-100-16-ALL   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b><br>Easement: Drop Line-Buried Electric Distribution Line<br>MCK-150-95-36-LOTS 1, 2 |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>DAKOTA ACCESS LLC, HOUSTON-TX</b><br>Easement: Oil Transmission Pipeline<br>MOU-156-93-36-N2, MOU-156-94-36-N2                             |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>DAKOTA ACCESS LLC, HOUSTON-TX</b><br>Easement: Oil Transmission Pipeline<br>WIL-156-95-36-S2, WIL-156-97-36-S2                             |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>HILAND CRUDE LLC, HOUSTON-TX</b><br>Easement: Drop Line-Oil Gathering Pipeline<br>WIL-154-99-16-N2   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>HILAND CRUDE LLC, HOUSTON-TX</b><br>Easement: Drop Line-Oil Gathering Pipeline<br>MCK-153-96-16-SE4  |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>MCKENZIE COUNTY, WATFORD CITY-ND</b><br>Easement: Road Right-of-Way<br>MCK-152-99-36-N2, SE4   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>LIBERTY RESOURCES BAKKEN OPERATING LLC, DENVER-CO</b><br>On-lease Act. Amend: Multiple Pipelines<br>WIL-158-95-16-SW4                      |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b><br>Easement: Drop Line-Electric Distribution Line<br>MCK-149-95-16-NW4              |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>BRIDGER PIPELINE LLC, CASPER-WY</b><br>Easement: Drop Line-Oil Gathering Pipeline<br>MCK-153-97-16-N2                                      |
| <b>Granted to:</b>  | <b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b>   |

For the Purpose of:  
Legal Description:

Easement: Drop Line-Electric Distribution Line  
MCK-153-98-36-SW4

**Granted to:**

**HENRY HILL OIL SERVICES LLC, WILLISTON-ND**

For the Purpose of:  
Legal Description:

Assignment: Salt Water Disposal Well-Assignment  
WIL-154-100-16-SE4

**Granted to:**

**HILAND CRUDE LLC, HOUSTON-TX**

For the Purpose of:  
Legal Description:

Easement: Drop Line-Oil Gathering Pipeline  
MCK-150-98-36-S2

The following letters of permission were issued to groups wishing to use school trust lands under the Board's policy for access to trust lands by organizations. Fees may be charged for this use.

**Granted to:**

**WEST DAKOTA WATER LLC, WILLISTON-ND**

For the Purpose of:  
Legal Description:

Letter of Permission: Access to School Land (frac project)  
MCK-152-98-16-N2

**Granted to:**

**ROCKWATER ENERGY SOLUTIONS, DICKINSON-ND**

For the Purpose of:  
Legal Description:

Letter of Permission: Access to School Land (frac project)  
WIL-154-100-16-S2

## A D J O U R N

There being no further business, the meeting was adjourned at 10:32 AM.

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Jack Dalrymple, Chairman  
Board of University and School Lands

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Lance D. Gaebe, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
June 7, 2016**

The June 7, 2016 meeting of the Board of University and School Lands was called to order in the Governor's Conference Room at 3:00 PM by Chairman Jack Dalrymple.

**Members Present:**

|                 |                    |
|-----------------|--------------------|
| Jack Dalrymple  | Governor           |
| Alvin A. Jaeger | Secretary of State |
| Wayne Stenehjem | Attorney General   |
| Kelly Schmidt   | State Treasurer    |

**Absent Member:**

|                 |                                      |
|-----------------|--------------------------------------|
| Kirsten Baesler | Superintendent of Public Instruction |
|-----------------|--------------------------------------|

**Department of Trust Lands Personnel present:**

|                |                                   |
|----------------|-----------------------------------|
| Lance D. Gaebe | Commissioner                      |
| Jeff Engleson  | Director, Investment Division     |
| Drew Combs     | Director, Minerals Division       |
| Levi Erdmann   | Investment Analyst                |
| Linda Fisher   | Deputy Commissioner of Operations |
| Taylor Lee     | Director, Revenue Compliance      |
| Gerry Fisher   | Director, Grants and Claims       |
| Rick Owings    | Assistant Energy Impact Director  |
| Catelin Newell | Office Manager                    |
| Amanda Calhoun | Intern                            |

**Guests in Attendance:**

|                   |                                |
|-------------------|--------------------------------|
| Dave Garner       | Office of the Attorney General |
| Bonnie Storbakken | Governor's Legal Counsel       |
| Jason Nisbet      | Governor's Office              |
| Josh Kevan        | RVK                            |
| Marcia Beard      | RVK                            |

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

A motion to approve the minutes of the April 28, 2016 meeting was made by Secretary of State Al Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

**E N E R G Y   I N F R A S T R U C T U R E   A N D   I M P A C T   O F F I C E**

**Award Sponsors for Human Trafficking & Sexual Assault Nurse Examiner (SANE) Grants**

House Bill 1176 as passed by the 2015 Legislature contained numerous allocations of oil and gas impact grant funds. One setaside was of \$10 million for law enforcement agencies. Senate Bill 2199 further allocated \$750,000 of the \$10 million for grants to prevention and treatment services related to human trafficking victims. Senate Bill 2284 allocated \$250,000 of the \$10 million allocated to law enforcement be provided for grant through the domestic violence and rape crisis programs for community-based sexual assault examiner programs.

While the Legislature provided a number of exemptions to the requirement that grants need to be awarded to political subdivisions, an exception was not provided in SB 2199 or SB 2284. In January and April of 2016, the Board approved grants directly to the agencies. To correct this, these agencies were each asked to submit their applications through a political subdivision to act as fiscal agent for the reimbursement process of these awards.

Applications were received from the following political subdivisions and signed by a local elected official.

#### Transfer of Grants from Agencies to Sponsoring Political Subdivisions

| Name                                    | City     | County   | Sponsoring Political Subdivision | Grant # | Project  | Grant Amount |
|---|----------|----------|----------------------------------|---------|--|--------------|
| CENTRAL DAKOTA FORENSIC NURSE EXAMINERS | BISMARCK | BURLEIGH | City of Bismarck                 | G160235 | TRAVEL, TRAINING, CONTRACTED SERVICES, EQUIPMENT, SUPPLIES                       | \$171,060    |
| DAKOTA CHILDREN'S ADVOCACY CENTER       | BISMARCK | BURLEIGH | City of Bismarck                 | G160237 | CONTRACTED SERVICES, TRAINING & EQUIPMENT  | \$27,419     |
| DOMESTIC VIOLENCE CRISIS CENTER         | MINOT    | WARD     | Ward County                      | G160245 | STAFFING, TRAVEL, TRAINING, SUPPLIES, VARIOUS ITEMS                              | \$71,892     |
| CAWS ND                                 | BISMARCK | BURLEIGH | City of Bismarck                 | G160247 | STATEWIDE TRAINING, CONSULTANT TRAINING & FORMATION OF A JOHN'S SCHOOL           | \$94,576     |
| YOUTHWORKS-BISMARCK                     | BISMARCK | BURLEIGH | City of Bismarck                 | G160242 | STAFFING, TRAVEL, TRAINING, EQUIPMENT LEASE, SUPPLIES, CONSULTING, VARIOUS ITEMS | \$314,786    |

\$679,733

**Motion: The Board approved the transfer of the five grants for human trafficking and sexual assault nurse examiner programs as identified in the preceding list from the agencies to the political subdivisions identified in the preceding list.**

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

## INVESTMENT DIVISION

### Permanent Funds Investment Performance Report – 1st Quarter 2016

Marcia Beard and Josh Kevan from RVK reviewed the performance of the permanent trust funds' pool of investment assets for the period ending March 31, 2016, prepared to enable the Board to monitor and evaluate the collective performance of the permanent trusts' investments and managers within the program.

The performance report for 1<sup>st</sup> Quarter 2016 is available at the Department.

### Comprehensive Asset Class Review – Fixed Income

Each quarter, the Board undertakes a comprehensive review of a separate investment asset class in which the permanent trust funds participate.

RVK reviewed the permanent trusts' fixed income portfolio with the Board, which includes three different investment grade bond portfolios, a high yield bond portfolio, two international/global bond

(06/16)

portfolios, a cash equivalents portfolio and the Board's farm loan and energy construction loan programs. The presentation evaluated the asset class as a whole, as well as the specific strategies and managers.

### STRATEGIC INVESTMENT AND IMPROVEMENTS FUND

The Board reviewed the performance and transactions involving the Strategic Investment and Improvements Fund (SIIF) which holds the assets and collects the revenues earned from sovereign mineral acres, including those formerly owned by the Bank of North Dakota and State Treasurer, as well as the minerals located under navigable rivers and lakes. The SIIF also receives a portion of State oil and gas production and extraction taxes. Because the entire balance of this fund can be appropriated each biennium, it is invested in a conservative, short-term fixed income portfolio.

|   | 03/31/16<br>Asset Balances | Yield/Total Return<br>for Qtr. Ended 3/31/16 |
|---|----------------------------|--|
| <b>Strategic Investment and Improvements Fund</b> |                            |  |
| Loan Guarantee – Fuel Production                  | \$ 18,175,000              | 0.55% Yield                                  |
| Investments/Cash                                  | 316,752,000                | <b>0.70% (see below)</b>                     |
| <b>Total</b>                                      | <b>\$ 334,927,000</b>      |  |

During the quarter ended March 31, 2016, the SIIF earned about \$18.4 million. Approximately \$14.4 million came from oil royalties; \$1.7 million from mineral bonuses and \$2.2 million came from investment income and unrealized capital gains. The NTI Ultra-Short portfolio earned a total return of 0.70%, after fees, during the quarter ended March 31, 2016; it has earned a net return of +0.81% since its' August 1, 2015 inception date. Benchmark returns for the periods noted above were 0.52% and 0.72% respectively.

A portion of SIIF is set aside to guarantee a loan for the Dakota Spirit AgEnergy biomass fuel production facility earned an annualized yield of approximately 0.55% during the quarter.

### APPROPRIATED TRANSFERS

The table below shows the transfers that came out of the SIIF during the first six months of fiscal year 2016:

| Amount         | Bill (Agency)         | Purpose  |
|----------------|-----------------------|--|
| \$237 million  | SB 2103 - SURGE (DOT) | Balance of distributions to counties for road and bridge infrastructure needs. |
| \$13,125,322   | HB 1014 - (NDIC)      | Balance of funding for new core library  |
| \$650,000      | HB 1285 - (Commerce)  | Grants to domestic violence organizations                                      |
| \$3.75 million | HB 1018 - (Commerce)  | Partial transfers of funding to enhanced use lease grant program at GFAB       |
| \$3.0 million  | HB 1020 - (NDSU)      | Partial transfer of funding for veterinary diagnostic laboratory project       |
| \$50.0 million | HB 1443 - (BND)       | Transfer to BND infrastructure revolving loan fund                             |

The medical facilities infrastructure fund, which had been managed by the BND but owned by the SIIF, became a revolving fund to be managed by the BND in July 2015. The approximately \$50 million of loans and assets in this fund will no longer be paid back to the SIIF.

An additional \$51.8 million of appropriated transfers are scheduled to come out of the SIIF over the remainder of the 2015-17 biennium, as shown in the table below:

| Amount          | Bill (Agency)                 | Purpose   |
|-----------------|-------------------------------|---|
| \$7.0 million   | HB 1012 - (DOT)               | One-time funding for DOT's short line railroad program          |
| \$3.75 million  | HB 1018 - (Commerce)          | Balance of funding for enhanced use lease grant program at GFAB |
| \$15.0 million  | HB 1020 - (Extension Service) | Balance of funding for veterinary diagnostic laboratory project |
| \$25.85 million | SB 2015 - (DOT) CONTINGENT    | Enhance state highway investment                                |

The \$25.85 million contingent appropriation to the state highway fund is not expected to occur, as budget projections for the General Fund revenues are not likely to exceed legislative estimates by \$126.0 million trigger for the fiscal year ended June 30, 2016.

The latest projections issued by the OMB indicate that SIIF will receive about \$30.7 million of gross production and oil extraction taxes during the biennium, all of which will come in during the last two months of the biennium. The SIIF is expected to have a balance of approximately \$377.8 million on June 30, 2017.

The assigned fund balance of the SIIF was \$147.07 million as of 3/31/16. This represents money that has been set aside to cover potential refunds related to lawsuits involving navigable rivers.

#### **SCHOOL CONSTRUCTION ASSISTANCE LOAN FUND**

The School Construction Assistance Loan Fund (SCALF) was created by SB 2039, effective July 1, 2015 with a transfer of \$150 million of outstanding school construction loans from the SIIF. The legislation gave control of the SCALF to the BND, contingent on voter approval of a constitutional measure in November 2016. Until it is determined by voters if it will be transferred to BND, the Board will manage the SCALF.

#### **COAL DEVELOPMENT TRUST FUND**

The Board Reviewed the performance and balances of the Coal Development Trust Fund (CDTF) which is a permanent fund from which money is lent to energy impacted counties, cities and school districts as provided in NDCC § 57-62-03 and to school districts pursuant to NDCC Chap. 15-60. The Board invests funds that have not been loaned. As directed in the Constitution, the income earned by the CDTF is transferred to the General Fund each year. The CDTF has historically been invested in a conservative short-term fixed income portfolio.

|   | 3/31/16<br>Asset Balances | Yield/Total Return<br>for Qtr. Ended 3/31/16 |
|---|---------------------------|--|
| <b><u>Coal Development Trust Fund</u></b> |                           |  |
| School Construction Loans                 | \$ 49,740,000             | 1.67% Yield                                  |
| Coal Impact Loans                         | 13,477,000                | 3.37% Yield                                  |
| Investments/Cash                          | <u>4,595,000</u>          | <b>0.70%</b>                                 |
| <b>Total</b>                              | <b>\$ 67,812,000</b>      |  |

As of March 31, 2016, about \$260,000 of loan authority remained under the \$50.0 million cap for school construction loans from the CDTF. There is no cap to the amount that can be used for coal impact loans. Both school construction loan and coal impact loan balances remain at or near their 20 year highs. The investable balance of the CDTF was at approximately \$4.6 million at quarter's end, up slightly from the \$4.2 million investable balance on December 31, 2015.

The NTI Ultra-Short portfolio earned a total return of 0.70%, after fees, during the quarter ended March 31, 2016; it has earned a net return of +0.81% since its' August 1, 2015 inception date. Benchmark returns for the periods were 0.52% and 0.72% respectively.

### CAPITOL BUILDING FUND

The Board reviewed the balances and performance of the Capitol Building Fund which is a fund that was created at statehood for the construction and maintenance of “public buildings at the capital.” It generates revenues from the 10,000 surface and 27,700 mineral acres it owns.

The Capitol Grounds Planning Commission (CGPC) is the entity that has official control over the Capitol Building Fund; the Land Board is responsible for investing the assets on behalf of the CGPC. The balance of this fund can be appropriated each biennium, thus it is invested in conservative, short-term fixed income portfolio.

|                              | 3/31/16<br>Asset Balance | Total Return<br>Qtr. Ended 12/31/15 |
|------------------------------|--------------------------|-------------------------------------|
| <b>Capitol Building Fund</b> |                          |                                     |
| Investments/Cash             | \$ 6,861,000             | 0.70%                               |

The NTI Ultra-Short portfolio earned a total return of 0.70%, after fees, during the quarter ended March 31, 2016; it has earned a net return of +0.81% since it's' August 1, 2015 inception date. Benchmark returns for the periods noted above were 0.52% and 0.72% respectively.

The 64<sup>th</sup> Legislative Session appropriated \$5.7 million from the Capitol Building Fund including: \$4.0 million for a new Governor's residence (SB 2304), \$1.4 million for capitol building entrance and signage projects (SB 2015), \$310,000 for legislative wing electrical and ceiling repairs (SB 2015). Additionally, NDCC 48-10-02 provides the CGPC with continuing appropriation authority of \$175,000 from this Fund and SB 2015 contains a \$25,000 operating appropriation for the CGPC.

During the quarter, the Capitol Building Fund collected approximately \$192,000 of oil and gas royalties. The next biggest contributor to fund growth during the quarter was unrealized capital gains (\$30,000) and investment income (\$18,000).

### Investment Updates Asset Allocation

The table below shows the status of the asset allocation of the permanent trusts as of April 30, 2016.

| Account/Asset Class               | Long-Term<br>Asset Allocation | Interim Target<br>Allocation | Interim %<br>+/- Weight | 4/30 Actual<br>Allocation \$ | 4/30 Actual<br>Allocation % |
|-----------------------------------|-------------------------------|------------------------------|-------------------------|------------------------------|-----------------------------|
| Large Cap US Equity               | 13.5%                         | 14.0%                        | 3.7%                    | \$ 489,493,940               | 13.5%                       |
| Small Cap US Equity               | 3.5%                          | 3.6%                         | 2.9%                    | \$ 133,231,681               | 3.7%                        |
| International Equity              | 12.0%                         | 12.4%                        | 3.3%                    | \$ 447,712,896               | 12.3%                       |
| Emerging Market Equity            | 3.0%                          | 3.1%                         | 3.3%                    | \$ 114,587,703               | 3.2%                        |
| <b>Total Equities</b>             | <b>32.0%</b>                  | <b>33.1%</b>                 | <b>3.4%</b>             | <b>\$ 1,185,026,219</b>      | <b>32.6%</b>                |
| Domestic Investment Grade         | 14.2%                         | 14.7%                        | 3.5%                    | \$ 519,466,234               | 14.3%                       |
| High Yield FI                     | 3.0%                          | 3.1%                         | 3.3%                    | \$ 113,404,280               | 3.1%                        |
| International/Global FI           | 5.8%                          | 6.0%                         | 3.4%                    | \$ 219,235,510               | 6.0%                        |
| <b>Total Fixed Income</b>         | <b>23.0%</b>                  | <b>23.8%</b>                 | <b>3.5%</b>             | <b>\$ 852,106,023</b>        | <b>23.4%</b>                |
| <b>Total Absolute Return</b>      | <b>20.0%</b>                  | <b>20.7%</b>                 | <b>3.5%</b>             | <b>\$ 744,837,794</b>        | <b>20.5%</b>                |
| Commodities                       | 3.0%                          | 3.1%                         | 3.3%                    | \$ 111,142,851               | 3.1%                        |
| MLPs                              | 3.0%                          | 3.1%                         | 3.3%                    | \$ 112,789,775               | 3.1%                        |
| TIPS                              | 2.0%                          | 2.1%                         | 5.0%                    | \$ 72,930,202                | 2.0%                        |
| Natural Resource Equities         | 2.0%                          | 2.1%                         | 5.0%                    | \$ 84,588,367                | 2.3%                        |
| <b>Total Inflation Strategies</b> | <b>10.0%</b>                  | <b>10.4%</b>                 | <b>4.0%</b>             | <b>\$ 381,451,195</b>        | <b>10.5%</b>                |
| Core Real Estate                  | 8.0%                          | 8.0%                         | 0.0%                    | \$ 319,539,770               | 8.8%                        |
| Core Plus Real Estate             | 7.0%                          | 2.0%                         | -71.4%                  | \$ 151,722,719               | 4.2%                        |
| <b>Total Real Estate</b>          | <b>15.0%</b>                  | <b>10.0%</b>                 | <b>-33.3%</b>           | <b>\$ 471,262,489</b>        | <b>13.0%</b>                |
| <b>Total Asset</b>                | <b>100.0%</b>                 | <b>98.0%</b>                 |                         | <b>\$ 3,634,683,720</b>      | <b>100.0%</b>               |

As money has been called to fund the real estate mandates, the permanent trusts' equity, fixed income, absolute return and diversified inflation strategies target allocations have been adjusted towards long-term target allocations.

#### **Changes at J.P. Morgan – Columbus**

It was reported that Doug Swanson, who led the J.P. Morgan Columbus fixed income group for over 20 years is retiring. Barb Miller, will to lead the team.

In addition to Mr. Swanson's retirement, J.P. Morgan also recently announced the departure of two fixed income managers that had no involvement with the intermediate bond product in which the trusts' invest; as well as the retirement of a portfolio manager who was more directly involved in the intermediate bond product.

After reviewing these changes to J.P. Morgan's fixed income team, RVK reported that it has placed the J.P. Morgan Columbus fixed income group on its watch list. The Department and RVK will continue to monitor the situation and report to the Board if warranted.

#### **Changes at GMO**

The Commissioner was recently informed of personnel changes at GMO, one of the Board's absolute return strategy managers. The co-head of the asset allocation, Sam Wilderman will be leaving GMO at the end of the year, at which time Ben Inker, who currently shares responsibilities with Mr. Wilderman, will take over as the sole head of the asset allocation team. RVK will report back after its due diligence on these changes is complete

#### **Small and Mid-Cap Domestic equities**

In February 2016 RVK suggested that the Board consider searches for active managers in both the small and mid-cap domestic equity spaces. RVK and the Department have begun discussions of how a revised domestic equity portfolio might be structured to determine how to proceed with possible searches. A specific recommendation will be presented at a future meeting.

## **MINERALS MANAGEMENT**

#### **Reduction of Interest on Late Payment of Royalties**

Since January, 2015, the Department has worked with Oasis Petroleum to collect payment or establish escrow of royalties on the production of sovereign minerals in accordance with the Board's lease and rules.

Oasis is the operator of 17 wells that produce State sovereign minerals. The Department notified this operator on January 23, 2015, that royalties were expected to be paid or escrowed. A March 31, 2015 deadline was given to bring the wells into compliance. As of April 30, 2015, approximately \$3.67 million in royalties were not paid or escrowed.

The Department calculated assessed penalties and interests of \$682,805.09 beginning from the March 31, 2015 deadline until payment was made on December 3 and 31, 2015, and this amount was formally assessed in a February 4, 2016 letter to Oasis.

Subsequent to the assessment, a review of N.D.C.C. 47-16-39.1, found that interest may not be applied on royalties that were escrowed since this statute permits the suspension of interest payments in cases in which a dispute of title exists. The initial assessment was \$682,805.09 assessed both penalty and interest on both escrowed funds and paid to the Department. By eliminating the interest assessed on royalty that is escrowed because of a title dispute, the total assessment should be reduced to \$363,631.42.



Under the Board's rules, once penalties and interest over \$2,500 are assessed upon late payment of royalties, only the Board can modify or reduce the amount.

**Motion: The Board authorized the reduction of the Department's February 4, 2016 assessment from \$682,805.09 to \$363,631.42 to include only penalties on late royalties escrowed at the Bank of North Dakota and penalty and interest assessed on the royalties paid to the Department.**

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

### **Recommended Amendment of the Oil and Gas Rule 85-06-06-10 Regarding Delinquent Royalties**

On behalf of the Board, the Department collects royalties on oil and gas produced from Trust and sovereign mineral assets.

Regarding the application of penalties, the Board's Oil and Gas Leasing Rule 85-06-06-10 establishes the same payment timeframe for natural gas and oil production. Typically, the time needed for operators to account for gas is longer than is needed for oil. The rule accounts for this in the payment of initial production as penalties accrue after 90 days for initial oil production and 120 days for initial gas production. However, for later production, the rule requires payments for both oil and gas to be paid within 30 days for all existing production. This provision does not consider the varied times for appropriate accounting.

The Department's current royalty system does not automatically generate penalty notices, so requests must be manually prepared.

The Department recommended a change to the Board's oil and gas rules to extend the payment deadline for payment of gas royalties from 30 days to 60 days. In addition to this rule change, the Department will take a more rigid approach to assessing penalties on royalties paid beyond the proposed timeframes. Automatic calculations of penalty and interest will be built into a future royalty system.

### **Proposed Change to Rule**

**85-06-06-10. REPORTS OF LESSEE - DELINQUENCY PENALTY.** Lessee shall immediately notify the commissioner in writing when a permit to drill a well on the leased premises has been issued and shall indicate the location of the proposed well. Immediately upon obtaining production of oil and/or gas in commercial quantities, the producing lessee shall notify the commissioner in writing, giving the date production was commenced. Within ninety (90) days following initial production of oil and within one hundred twenty (120) days following initial production of gas, lessee shall file with the commissioner a production and royalty statement showing total production and indicating the royalty due together with payment of such royalty. Thereafter, such statement and payment of royalty shall be due each month on or before the last day of the month succeeding each month of production. These time limits may be extended by the commissioner for good cause. The commissioner reserves the right to request other information and to require that such reports be made on forms furnished by the commissioner. Any sum, other than annual delay rentals, not paid when due shall become delinquent and will be subject to a delinquency penalty of one percent (1%) of such sum for each thirty (30) day period of delinquency or fraction thereof for oil and for each sixty (60) day period of delinquency or fraction thereof for gas and natural gas liquids. A five day penalty grace period will be allowed. Royalty reports must be received within the specified timeframes.

In addition to the delinquency penalty, unpaid royalties also bear interest in accordance with N.D.C.C. sec. 47-16-39.1. The commissioner may initially seek to collect either the delinquency penalty or interest, or both. Failure to seek collection of both penalty and interest shall not constitute a waiver of the right to seek the full amount of both penalty and interest if the initial claim is not satisfactorily settled. At such time as a claim for unpaid royalties, if any, and penalties and interest is settled and payment received, the amount of penalty and interest not collected shall be deemed waived. In addition to the discretion to seek only penalty or interest in the initial claim for payment, the commissioner may, for good cause waive up to \$2500 of the penalty or interest initially sought. In determining whether good cause exists, the commissioner may consider one or more of the following: the reason for the late payment; the degree of control the payor had over the late payment; any unusual or mitigating circumstances involved; and any other relevant factors. Only in extremely rare circumstances will the commissioner consider waiving penalty or interest below the equivalent of the loss of interest earnings to the trust fund involved. Requests for interest or penalty waivers in excess of \$2,500 shall be presented to the Board, with the commissioner's recommendation thereon, for review and decision. Lessor shall have a first lien upon all oil and gas produced from the leased premises to secure payment of all unpaid royalties or other payments that may become due under this lease.

General Authority

NDCC 15-05-09

History: Effective July 26, 1979

Amended October 27, 1988; January 26, 1989; April 29, 1993, June 7, 2016

Law Implemented

NDCC 15-05-09

**Motion: The Board approved the amendment of its Oil and Gas Rule 85-06-06-10 to allow up to 60 days after production for the payment of royalties on produced gas. The Board amends and reenacts 85-06-06-10 as presented herein.**

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

## OPERATIONS

### Performance Audit Implementation Tracking

In response to the recommendations in the recent performance audit of the Department within the State Auditor's Report No. 3036 Section (a): Energy Infrastructure and Impact Office (publicly released February 25, 2016) Section (b): Unclaimed Property (publicly released February 25, 2016) Section (c): Trust Assets and Department Resources (publicly released April 19, 2016); the Department has built a recommendation tracking data set and monitoring tool to record and gauge progress on each of the audit recommendations.

The Department has implemented 35 of the recommendations, 34 improvements are underway and 34 are still pending action.

### Correction of Mineral Tracts Recorded Within the Wrong Trust

One of the audit findings involved the mistaken assignment of multiple mineral tracts to the wrong trust. When documents were transcribed in the 1940s, numerous mineral acre properties and files were incorrectly assigned to the Youth Correctional Center Trust (YCC Trust) that instead should have been identified as being owned by the Ellendale Trust. Subsequently, all mineral revenues generated by those mineral tracts were incorrectly attributed to the wrong trust.

As a result of the error, the Department has commenced a detailed review of the historical records of all mineral tracts currently identified as being owned by the YCC Trust. Initial efforts have focused on tracts which were recently or are currently leased for oil and gas production. Of the 121 active

(06/16)

tracts that have been critically examined thus far, 37 tracts were incorrectly assigned to the YCC trust. All of the estimated 450 tracts that are identified in the database as being owned by the YCC, will be reviewed.

The Department was able to reconstruct and evaluate 26 years of revenue records for each of the 37 mistakenly assigned mineral tracts. It has determined that the collective bonus, rent and royalty revenue mistakenly attributed to the YCC Trust since 1989 is approximately \$6.1 million.

The Department has reassigned the tracts to the proper trust within its database and adjusted the paper records to document the correction. In addition, accounting adjustments have been made transferring \$6.1 million from the YCC Trust to the Ellendale Trust.

The Department continues to review historical records to determine the investment income and operating expenses associated with the misapplied financial assets and plans to reimburse the Ellendale Trust for the net income it did not receive before the close of the 2016 fiscal year. It was estimated that forgone income of approximately \$1.1 million will be transferred in June.

The Department is working with legal counsel to ensure that the mechanism of correcting net assets and past distributions when trusts were incorrectly assigned to tracts is being done consistently and appropriately.

The collective impact of this error on distributions over 20 years is that the YCC received approximately \$610,000 more in distributions than it would have if mineral revenues had been deposited into the correct trust, and the seven beneficiaries of the Ellendale Trust received that much less.

In July of 2009, the Board adopted its distribution formula consistent with the 2006 changes to the Constitution and the 2009 Congressional amendment of the Enabling Act. Prior to that, distributions were based on the projected "interest and income" earned by each fund, however, starting July 1, 2009, article IX of the North Dakota State Constitution states: "*...biennial distributions from the perpetual trust funds must be ten percent of the five-year average value of trust assets, excluding the value of lands and minerals. The average value of trust assets is determined by using the assets' ending value for the fiscal year that ends one year before the beginning of the biennium and the assets' ending value for the four preceding fiscal years. Equal amounts must be distributed during each year of the biennium.*"

The calculation of distributions policy adopted in 2009 uses the fund balance based upon audited financial statements.

The Commissioner requested a one-time exception to the Board's distribution calculation policy to allow the Commissioner to use corrected fund balances for the YCC and Ellendale trusts for the past four years, as determined by staff, to determine distributions for the 2017-2019 biennium.

Since the 2015 Legislature made the appropriations from each trust according to the distribution formula outlined in the constitution and according to the best financial statement information available at the time, it was decided in discussions with OMB and Legislative Council staff that distributions will continue as appropriated during the current biennium.

The Commissioner requested authority to seek a legislative adjustment to correct the mistaken historical appropriations from these trusts during the upcoming session.

**Motion: The Board directed the Commissioner to use corrected fund balance figures for the Youth Correctional Center Trust and Ellendale trusts, as determined by staff, to determine distributions to these trusts for the 2017-2019 biennium, as an exception to the Board's distribution calculation policy; and it directed the Commissioner to request legislative action during the 2017 session to correct any material distribution errors that occurred in the past as a result of the misapplied revenues.**

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

## O P E R A T I O N S

**The Board reviewed an unaudited Quarterly Financial Report for Period Ended March 2016.**

**The Board reviewed the spring 2016 surface leasing auction results.**

**The Board reviewed the May 2016 oil and gas lease auction results.**

### **Report of Easements Issued by Land Commissioner (04-14-16 through 05-25-16)**

|                     |  |
|---------------------|--|
| <b>Granted to:</b>  | <b>MINOT PARK DISTRICT, MINOT-ND</b>                         |
| For the Purpose of: | Land Sale: Park  |
| Legal Description:  | WAR-155-83-16-N2SW4, NW4                                     |
| <b>Granted to:</b>  | <b>BURKE-DIVIDE ELECTRIC COOP, KENMARE-ND</b>                |
| For the Purpose of: | Easement-Amend: Electric Distribution Line - Above Ground    |
| Legal Description:  | DIV-161-98-36-NE4, NW4                                       |
| <b>Granted to:</b>  | <b>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND</b> |
| For the Purpose of: | Easement: Drop Line-Buried Electric Distribution Line        |
| Legal Description:  | MOU-155-90-16-SE4  |
| <b>Granted to:</b>  | <b>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND</b> |
| For the Purpose of: | Easement-Amend: Electric Distribution Line - Above Ground    |
| Legal Description:  | MOU-153-90-36-NW4  |
| <b>Granted to:</b>  | <b>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND</b> |
| For the Purpose of: | Easement: Drop Line-Electric Distribution Line               |
| Legal Description:  | WIL-154-100-16-SE4, SW4                                      |
| <b>Granted to:</b>  | <b>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND</b> |
| For the Purpose of: | Easement: Drop Line-Electric Distribution Line               |
| Legal Description:  | MOU-153-90-6-E2SW4, LOTS 6,7                                 |
| <b>Granted to:</b>  | <b>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND</b> |
| For the Purpose of: | Easement-Amend: Electric Distribution Line - Above Ground    |
| Legal Description:  | MOU-153-92-16-NE4, NW4                                       |
| <b>Granted to:</b>  | <b>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND</b> |
| For the Purpose of: | Easement: Drop Line-Electric Distribution Line               |
| Legal Description:  | MOU-155-93-16-SE4, SW4                                       |

|   |   |
|---|---|
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:   | <b>HESS NORTH DAKOTA PIPELINES LLC, MINOT-ND</b><br>Easement-Amend: Oil Gathering Pipeline<br>MOU-156-92-36-SW4                                   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:   | <b>HILAND CRUDE LLC, HOUSTON-TX</b><br>Easement: Drop Line-Oil Gathering Pipeline<br>WIL-157-95-16-NE4, NW4                                       |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:   | <b>HETTINGER COUNTY, MOTT-ND</b><br>Easement: Road Right-of-Way<br>HET-135-97-24-SE4  |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:   | <b>BRIDGER PIPELINE LLC, CASPER-WY</b><br>Easement: Drop Line-Oil Gathering Pipeline<br>MCK-151-96-36-SE4   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:   | <b>WESTERN AREA WATER SUPPLY AUTHORITY, WILLISTON-ND</b><br>Easement: Potable Water Pipeline<br>MOU-155-92-16-NE4, SE4, MOU-156-92-36-SW4         |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:   | <b>ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT</b><br>Easement-Amend: Drop Line-Pipeline<br>WIL-154-100-16-SE4, SW4                                    |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:<br>Legal Description:<br>Legal Description: | <b>NEON INC, BOULDER-CO</b><br>Easement-Amend: Tower Site<br>STU-142-66-16-NE4, NW4, SE4, SW4<br>STU-143-66-28-SW4<br>STU-143-67-16-NE4, NW4, SE4 |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:   | <b>WESTERN AREA WATER SUPPLY AUTHORITY, WILLISTON-ND</b><br>Easement: Potable Water Pipeline<br>MOU-154-94-16-SW4                                 |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:   | <b>NORTHERN STATES POWER COMPANY, MINNEAPOLIS-MN</b><br>Easement-Amend: Electric Transmission Line<br>STU-141-63-9-SE4 LESS 24 ACRES              |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:   | <b>WHITING OIL AND GAS CORPORATION, DENVER-CO</b><br>On-lease Act. Amend: Horizontal Oil Well<br>WIL-156-101-36-SE4                               |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:   | <b>ROCKWATER ENERGY SOLUTIONS, DICKINSON-ND</b><br>Letter of Permission: Access to School Land<br>MCK-153-96-16-NE4, SE4                          |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:   | <b>DIVIDE COUNTY HWY DEPT, CROSBY-ND</b><br>Permit: Temporary Construction<br>DIV-163-99-36-SW4   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:   | <b>BILLINGS COUNTY, MEDORA-ND</b><br>Permit-Amend: Temporary Construction<br>BIL-144-100-16-SE4   |

**Granted to:**  
For the Purpose of:  
Legal Description:

**HILAND CRUDE LLC, HOUSTON-TX**

Easement-Amend: Drop Line-Pipeline  
WIL-154-99-16-NE4, NW4

**Granted to:**  
For the Purpose of:  
Legal Description:

**ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT**

Easement-Amend: Gas Gathering Pipeline  
MCK-148-98-16-NE4

**Granted to:**  
For the Purpose of:  
Legal Description:

**LIBERTY RESOURCES MANAGEMENT CO LLC, DENVER-CO**

On-lease Act. Amend: Horizontal Oil Well  
WIL-158-95-16-SE4

**Granted to:**  
For the Purpose of:  
Legal Description:

**MELGAARD CONSTRUCTION INC, GILLETTE-WY**

Permit: Aggregate Prospecting  
MCK-150-95-16-NE4, NW4, SW4

**Granted to:**  
For the Purpose of:

**DEEP CREEK ADVENTURES, WATFORD CITY-ND**

Letter of Permission: Access to School Land for the purpose of  
laying a temporary surface frac water pipeline  
MCK-149-96-36-NE4, NW4, SE4, SW4

Legal Description:

**Granted to:**  
For the Purpose of:

**SELECT ENERGY SERVICES LLC, WILLISTON-ND**

Letter of Permission: Access to School Land for the purpose of  
laying a temporary surface frac water pipeline  
MCK-150-96-36-NE4, SE4

Legal Description:

**Granted to:**  
For the Purpose of:

**MBI ENERGY SERVICES, KILLDEER-ND**

Letter of Permission: Access to School Land for the purpose of  
laying a temporary surface frac water pipeline  
DUN-145-97-16-SE4

Legal Description:

**Granted to:**  
For the Purpose of:

**STREAMLINE WATER SERVICES LLC, WATFORD CITY-ND**

Letter of Permission: Access to School Land for the purpose of  
laying a temporary surface frac water pipeline  
DUN-148-96-36-SW4

Legal Description:

The following letters of permission were issued to groups wishing to use school trust lands under the Board's policy for access to trust lands by organizations. Fees may be charged for this use.

**Granted to:**  
For the Purpose of:

**NDSU DEPT 7650, FARGO-ND**

Letter of Permission: Access to School Land for the land and water  
resource survey  
BRK-161-92-36-SE4, KID-142-70-36-NW4, SE4

Legal Description:

**Granted to:**  
For the Purpose of:  
Legal Description:

**NDSU SCHOOL OF NAT RES SCIENCE, FARGO-ND**

Letter of Permission: Access to School Land  
WEL-150-69-36-N2SW4, NE4, NW4

**Granted to:**

For the Purpose of:

Legal Description:

Legal Description:

Legal Description:

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Legal Description:

**NORTH DAKOTA GEOLOGICAL SURVEY, BISMARCK-ND**

Letter of Permission: Access to School Land to conduct a surface geology study

SHE-145-77-16-SW4, W2NW4, LOTS 1,2

SHE-145-78-16-NW4, SW4

SHE-146-77-18-SE4

SHE-146-77-20-NW4

SHE-146-77-28-NW4

SHE-146-77-32-NE4, NW4, SE4, SW4

SHE-146-78-14-NE4, SE4, SW4

SHE-146-78-16-NE4

SHE-146-78-2-SE4, SW4

SHE-146-78-34-NW4, SW4

SHE-146-78-36-NW4, SW4

SHE-146-78-9-NE4, NW4

SHE-147-77-20-NE4, NW4

SHE-147-77-30-E2SW4, LOTS 3,4

SHE-147-78-16-NE4, NW4, SE4, SW4

SHE-147-78-36-SE4

SHE-148-78-36-NE4, NW4, SE4, SW4

**Granted to:**

For the Purpose of:

Legal Description:

**NDSU DEPT 2715, FARGO-ND**

Letter of Permission: Access to School Land

BRK-164-93-36-ALL

**Granted to:**

For the Purpose of:

Legal Description:

Legal Description:

Legal Description:

Legal Description:

Legal Description:

Legal Description:

Legal Description:

**USDA-NRCS, BISMARCK-ND**

Letter of Permission: Access to School Land

BEN-151-70-16-NE4

BOW-130-106-36-NW4

DUN-144-96-36-SE4

EDD-149-65-29-SW4

PIE-157-70-16-NW4

SIO-130-90-36-NE4

STU-143-67-16-NW4

**A D J O U R N**

There being no further business, the meeting was adjourned at 4:35 PM.

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Jack Dalrymple, Chairman  
Board of University and School Lands

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Lance D. Gaebe, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
June 30, 2016**

The June 30, 2016 meeting of the Board of University and School Lands in the Governor's Conference Room was called to order at 9:00 AM by Chairman Jack Dalrymple.

**Members Present:**

|                 |                                      |
|-----------------|--------------------------------------|
| Jack Dalrymple  | Governor                             |
| Alvin A. Jaeger | Secretary of State                   |
| Wayne Stenehjem | Attorney General (via telephone)     |
| Kelly Schmidt   | State Treasurer                      |
| Kirsten Baesler | Superintendent of Public Instruction |

**Department of Trust Lands Personnel present:**

|                |                                   |
|----------------|-----------------------------------|
| Lance D. Gaebe | Commissioner                      |
| Jeff Engleson  | Director, Investment Division     |
| Linda Fisher   | Deputy Commissioner of Operations |
| Taylor Lee     | Director, Revenue Compliance      |
| Gerry Fisher   | Director, Grants and Claims       |
| Rick Owings    | Assistant Energy Impact Director  |
| Catelin Newell | Office Manager                    |

**Guests in Attendance:**

|                   |                                |
|-------------------|--------------------------------|
| Dave Garner       | Office of the Attorney General |
| Hope Hogan        | Office of the Attorney General |
| Bonnie Storbakken | Governor's Legal Counsel       |
| Lawrence Bender   | Fredrikson and Bryan, P.A.     |
| Nick Smith        | 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 June 7, 2016 meeting was made by Secretary of State Al Jaeger and seconded by State Treasurer Kelly Schmidt and the motion carried unanimously on a voice vote.

**E N E R G Y   I N F R A S T R U C T U R E   A N D   I M P A C T   O F F I C E**

**Approval of Sponsors for Human Trafficking & Sexual Assault Nurse Examiners Grants**

House Bill 1176 as passed by the 2015 Legislature contained sixteen different allocations of funds appropriated to the oil and gas impact grant fund; one was \$10 million set-aside for law enforcement agencies. Senate Bill 2199 further allocated \$750,000 of the \$10 million for grants toward prevention and treatment services related to human trafficking victims in hub cities located in oil-producing counties. Senate Bill 2284 separately allocated \$250,000 of the \$10 million for community-based sexual assault examiner programs.

In January 2016 and April 2016, the Board approved awards to agencies for Human Trafficking and Sexual Assault Nurse Examiner Programs; however it was later discovered that should be provided to a political subdivision. On June 7, 2016, the Board approved the transfer of five awards for human trafficking and sexual assault examiner programs to political subdivision grant sponsors.



Three additional applications were from political subdivisions to serve as the fiscal agent for previously approved grants.

### Transfer of Grants from Agencies to Sponsoring Political Subdivisions

| Agency                                   | City        | County      | Sponsoring Political Subdivision | Grant # | Project                              | Grant Amount |
|--|-------------|-------------|----------------------------------|---------|--------------------------------------|--------------|
| Jamestown Regional Medical Center        | Jamestown   | Stutsman    | City Of Jamestown                | G160238 | Travel & Training                    | \$12,785     |
| Domestic Violence And Abuse Center, Inc. | Grafton     | Walsh       | Pembina County                   | G160239 | Travel & Training                    | \$6,886      |
| Family Crisis Shelter                    | Williston   | Williams    | City Of Williston                | G160240 | Travel & Training, Supplies          | \$14,486     |
| Altru Health System                      | Grand Forks | Grand Forks | Grand Forks County               | G160241 | Travel & Training                    | \$5,000      |
| Family Crisis Shelter                    | Williston   | Williams    | City Of Williston                | G160246 | Staffing, Travel, Training, Supplies | \$79,448     |

\$118,605

**Motion: The Board approved the transfer of the five referenced grants for sexual assault nurse examiner programs and human trafficking from the agencies to the political subdivisions identified in the preceding list.**

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

## MINERALS DIVISION

### Corrective Amendment to Oil and Gas Rule 85-06-06-10 Regarding Delinquent Royalties

During its June 7, 2016 meeting, the Board approved a recommendation to extend the due date for payment and reporting of gas royalties from 30 days to 60 days. The wording of that rule change did not accomplish what was intended.

The considered by the Board removed the additions adopted earlier and offered replacement amendments.

### Proposed Change to Rule

**85-06-06-10. REPORTS OF LESSEE DELINQUENCY PENALTY.** Lessee shall immediately notify the commissioner in writing when a permit to drill a well on the leased premises has been issued and shall indicate the location of the proposed well. Immediately upon obtaining production of oil and/or gas in commercial quantities, the producing lessee shall notify the commissioner in writing, giving the date production was commenced. Within ninety (90) days following initial production of oil and within one hundred twenty (120) days following initial production of gas, lessee shall file with the commissioner a production and royalty statement showing total production and indicating the royalty due together with payment of such royalty. Thereafter, such statement and payment of royalty shall be due each month on or before the last day of the month succeeding each month of production. Thereafter, such statement and payment of royalty based on oil production shall be due within thirty (30) days from the last day of each month of oil production and royalty based on gas production shall be due within sixty (60) days from the last day of each month of gas production. These time limits may be extended by the commissioner for good cause. The commissioner reserves the right to request other information

and to require that such reports be made on forms furnished by the commissioner. Any sum, other than annual delay rentals, not paid when due shall become delinquent and will be subject to a delinquency penalty of one percent (1%) of such sum for each thirty (30) day period of delinquency or fraction thereof for oil and for each sixty (60) day period of delinquency or fraction thereof for gas and natural gas liquids. A five day penalty grace period will be allowed. Royalty reports must be received within the specified timeframes.

In addition to the delinquency penalty, unpaid royalties also bear interest in accordance with N.D.C.C. sec. 47 16 39.1. The commissioner may initially seek to collect either the delinquency penalty or interest, or both. Failure to seek collection of both penalty and interest shall not constitute a waiver of the right to seek the full amount of both penalty and interest if the initial claim is not satisfactorily settled. At such time as a claim for unpaid royalties, if any, and penalties and interest is settled and payment received, the amount of penalty and interest not collected shall be deemed waived. In addition to the discretion to seek only penalty or interest in the initial claim for payment, the commissioner may, for good cause waive up to \$2500 of the penalty or interest initially sought. In determining whether good cause exists, the commissioner may consider one or more of the following: the reason for the late payment; the degree of control the payor had over the late payment; any unusual or mitigating circumstances involved; and any other relevant factors. Only in extremely rare circumstances will the commissioner consider waiving penalty or interest below the equivalent of the loss of interest earnings to the trust fund involved. Requests for interest or penalty waivers in excess of \$2,500 shall be presented to the Board, with the commissioner's recommendation thereon, for review and decision. Lessor shall have a first lien upon all oil and gas produced from the leased premises to secure payment of all unpaid royalties or other payments that may become due under this lease.

**General Authority**

**NDCC 15 05 09**

**History: Effective July 26, 1979**

**Amended October 27, 1988; January 26, 1989; April 29, 1993, June 7, 2016, June 30, 2016**

**Law Implemented**

**NDCC 15 05 09**

**Motion: The Board approved the amendment of its Oil and Gas Rule 85-06-06-10 to clarify that gas royalties are due within 60 days of the last day of the month of gas production. The Board amends and reenacts 85-06-06-10 as presented herein.**

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

## S U R F A C E   D I V I S I O N

### **Orion Wind Resources, LLC, Proposed Charlie Creek Wind Farm in Billings County**

Orion Wind Farm Resources, LLC, has applied for an easement to include 1920 acres of school trust land within the proposed Charlie Creek Wind Farm in northeastern Billings County. This wind farm will contain 115 wind towers and produce 250 megawatts of power.

Orion has not yet submitted a zoning application to Billings County which will need to be complete before it seeks approval from the Public Service Commission.

The Department has conducted an onsite inspection of the trust property proposed in the wind farm including up to nine possible wind tower locations, associated access roads, collection lines and construction access paths. There is potential for oil development in this area, but minimal drilling and producing activity presently. Turbine towers will be sited in coordination with the Department in an effort to not interfere with potential oil drilling and well locations.

Negotiations are currently ongoing with Orion. If a tentative agreement is met, the Department will present the easement to the Board for its consideration.

Maps of Charlie Creek Wind Farm and a timeline of application activity were provided to the Board.

**Motion: The Board authorized the Commissioner to negotiate a wind energy easement agreement with Orion Wind Resources pertaining to locations and consideration for use of trust land within the Charlie Creek Wind Farm upon approval of regulatory authorities; and to submit the final recommended easement and terms to the Board for its consideration and approval.**

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

## OPERATIONS

### Investment Updates

The Board reviewed the status of the asset allocation of the permanent trusts as of May 31, 2016:

| Account/Asset Class               | Long-Term Asset Allocation | Interim Target Allocation | Interim % +/- Weight | 5/31 Actual Allocation \$ | 5/31 Actual Allocation % |
|-----------------------------------|----------------------------|---------------------------|----------------------|---------------------------|--------------------------|
| Large Cap US Equity               | 13.5%                      | 14.0%                     | 3.7%                 | \$ 498,277,795            | 13.7%                    |
| Small Cap US Equity               | 3.5%                       | 3.6%                      | 2.9%                 | \$ 128,828,989            | 3.5%                     |
| International Equity              | 12.0%                      | 12.4%                     | 3.3%                 | \$ 442,714,126            | 12.2%                    |
| Emerging Market Equity            | 3.0%                       | 3.1%                      | 3.3%                 | \$ 111,005,086            | 3.1%                     |
| <b>Total Equities</b>             | <b>32.0%</b>               | <b>33.1%</b>              | <b>3.4%</b>          | <b>\$ 1,180,825,995</b>   | <b>32.5%</b>             |
| Domestic Investment Grade         | 14.2%                      | 14.7%                     | 3.5%                 | \$ 568,407,533            | 15.6%                    |
| High Yield FI                     | 3.0%                       | 3.1%                      | 3.3%                 | \$ 109,434,349            | 3.0%                     |
| International/Global FI           | 5.8%                       | 6.0%                      | 3.4%                 | \$ 209,010,538            | 5.7%                     |
| <b>Total Fixed Income</b>         | <b>23.0%</b>               | <b>23.8%</b>              | <b>3.5%</b>          | <b>\$ 886,852,420</b>     | <b>24.4%</b>             |
| <b>Total Absolute Return</b>      | <b>20.0%</b>               | <b>20.7%</b>              | <b>3.5%</b>          | <b>\$ 731,126,910</b>     | <b>20.1%</b>             |
| Commodities                       | 3.0%                       | 3.1%                      | 3.3%                 | \$ 111,698,830            | 3.1%                     |
| MLPs                              | 3.0%                       | 3.1%                      | 3.3%                 | \$ 109,669,095            | 3.0%                     |
| TIPS                              | 2.0%                       | 2.1%                      | 5.0%                 | \$ 72,448,515             | 2.0%                     |
| Natural Resource Equities         | 2.0%                       | 2.1%                      | 5.0%                 | \$ 74,574,918             | 2.1%                     |
| <b>Total Inflation Strategies</b> | <b>10.0%</b>               | <b>10.4%</b>              | <b>4.0%</b>          | <b>\$ 368,391,358</b>     | <b>10.1%</b>             |
| Core Real Estate                  | 8.0%                       | 8.0%                      | 0.0%                 | \$ 319,539,770            | 8.8%                     |
| Core Plus Real Estate             | 7.0%                       | 4.0%                      | -42.9%               | \$ 151,056,840            | 4.2%                     |
| <b>Total Real Estate</b>          | <b>15.0%</b>               | <b>12.0%</b>              | <b>-20.0%</b>        | <b>\$ 470,596,610</b>     | <b>12.9%</b>             |
| <b>Total Asset</b>                | <b>100.0%</b>              | <b>100.0%</b>             |                      | <b>\$ 3,637,793,293</b>   | <b>100.0%</b>            |

As money has been called to fund the real estate mandates, the permanent trusts' equity, fixed income, absolute return and diversified inflation strategies target allocations have been adjusted down towards long-term target allocations.

Notice was received that J.P. Morgan will call \$84.75 million of the \$113.0 million (3%) allocation committed to J.P. Morgan's Income and Growth Fund on July 1, 2016. It is expected that the balance of the commitment (\$28.25 million) will be called in October, 2016.

### **J.P. Morgan - Columbus**

At its June 7, 2016 meeting, the Board was informed that RVK had put the J.P. Morgan – Columbus fixed income team on its “watch list”, due to a number of recent departures. Although the Board does not have a formal watch list, RVK and staff will continue to monitor the situation closely, and will report back to the Board as circumstance develop.

### **Business Process Modeling Project**

In April the Department issued a Request for Proposals (RFP) for a consultant to direct, facilitate, and develop business process models in an effort to document core business requirements for a future information management system and to provide recommendations regarding a build verses buy software decision options.

In its RFP, the Department indicated a need to update processes and the current systems for the purpose of replacing current systems, enhance security and internal control needs, and to provide greater online functionality. Internal reviews indicate at least 95 separate processes that will be reviewed.

Eight proposals were received from prospective vendors. Following a thorough evaluation process, a notice of intent to award the contract to Verint Americas Inc. (Major Oak) was issued on June 17, 2016.

Verint Americas will begin onsite analysis in mid-July with a final report due in December. It is anticipated that the recommendations will support a budget request for a system upgrade or purchase.

## **R E P O R T S**

### **Update of Legal Issues**

#### **SOVEREIGN LANDS LITIGATION**

In December 2013 the North Dakota Supreme Court issued a decision in *Reep v State* and *Brigham v State* upholding that the State of North Dakota holds title to mineral interests to the ordinary high water mark of navigable rivers and water bodies. Notwithstanding affirmation of the State's ownership of the land and minerals to the ordinary high watermark (OHWM) in *Reep* and *Brigham*, litigation on specific local circumstances and river features continue.

### **Brigham Oil & Gas**

On June 9, 2011, Brigham Oil & Gas filed a suit seeking resolution of the title question. It did so because it operates a well just to the southeast of Williston. The well produces from a 1,280-acre spacing unit that includes the Missouri River. There are dozens of parties with interests in the spacing unit.

Because of the title disputes among those parties, Brigham has withheld royalty payments. In its lawsuit, Brigham, essentially, asks the court to require all those asserting title to the minerals in the spacing unit to set forth and prove their claims, and once the court rules on those claims, Brigham will know who to pay.

Brigham named 83 defendants in its Complaint, including the Land Board, City of Williston, Williams County, and many individuals and oil companies. Brigham also named the United States.

Unlike the *Reep* case, this issue was before the court on a motion for partial summary judgment meaning the resolution of this issue does not resolve the entire case. No party has requested further action from the District Court since issuance of the Supreme Court opinion and court administration has “closed” the file.

## **Wilkinson Family**

The Wilkinson family lawsuit was filed on January 10, 2012, asserts that it owns minerals in about 200 acres west of Williston. This suit was initially filed in state court as a quiet title action. The AG'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. The Plaintiffs assert in their amended complaint that the Land Board should be issuing leases on the west side of the Highway 85 Bridge pursuant to the Phase II Investigation –the historical Missouri River – rather than the Phase I Delineation – current location of the ordinary high water mark. The 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. The plaintiffs believe that the State's title to the Missouri River is limited to the channel as it existed prior to inundation of Lake Sakakawea.

In January, the State Engineer filed a motion to intervene in the case which was granted. A joint motion for summary judgment was filed by the Board and the State Engineer on March 1, 2016. This motion was opposed by the Wilkinson family. 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 the 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 ground to support Counts II through VII.

The Plaintiffs filed a notice of appeal on June 1, 2016. On the same day, EOG Resources, Inc. filed a motion for reconsideration with the district court. EOG is requesting the Court amend its order to eliminate what EOG believes is unnecessarily broad language in the order regarding mineral acres located east of the Highway 85 Bridge. The Supreme Court has remanded this case back to the district court to address EOG's motion.

## **EEE Minerals, LLC et. al. v. Continental Resources, Inc., et al.**

On July 31, 2014 the Attorney General's Office was served with a complaint in the above referenced matter. This case is requesting class action status and alleges identical causes of action to what was pled in the Wilkinson amended complaint. In January of 2016, the State Engineer filed a motion to intervene which was granted on March 3, 2016. Also in March, the Plaintiffs amended their complaint to add an additional two named plaintiffs, to expand the scope of the propose class action property from the Montana border to the border of the Fort Berthold reservation, and to add as defendants all of the parties who the Board has issued oil and gas leases. On May 13, 2016, several of the newly added defendants removed the case to federal court based on diversity and federal questions. On June 11, 2016 the Board and the State Engineer filed a motion to dismiss arguing that the counts of the amended complaint which address US Constitution and US Code are not ripe and asserting the State defendants right to sovereign immunity regarding the remaining counts of the complaint. Several other motions to dismiss have been filed by the other defendants as well as motion to join the United States as a defendant.

### **Whitetail Wave LLC v. XTO Energy, Inc., Board of University and School Lands, and the State of North Dakota**

On August 1, 2015, the Attorney General's Office was served with a complaint in the above referenced case. This case is also challenging the State's determination of the OHWM but the tract is located on the east side of the Highway 85 Bridge where the Department has currently leased only the historic channel of the Missouri River. The Plaintiffs are requesting that title to the minerals be quieted and have alleged claims of Unconstitutional takings, trespass, slander of title and constructive trust/unjust enrichment against the State. The complaint also makes a number of claims against XTO individually. An answer was filed on behalf of the Board and the State on July 21, 2015. The parties are currently engaged in discovery and no scheduling order has been issued yet.

### **OTHER LITIGATION**

#### **Willard Burk v. State of North Dakota, et. al.**

On April 24, 2015 the Attorney General's Office was served with a complaint in the above referenced case. Mr. Burk has brought this suit against the State through both the Board of University and School Lands and Tax Commissioner Ryan Rauschenberger. Mr. Burk is requesting a declaratory judgment that the State has wrongfully withheld gross production taxes on Mr. Burk's share of royalties being paid to him pursuant to a Settlement Agreement with the State.

In 1991, the Bank of North Dakota conveyed to the Mr. Burk and his wife some property in Williams County reserving 50% of the minerals. At the time, the statutory mineral reservation was 100%. Mr. Burk brought this issue to the Board in 2011 and threatened litigation. The Board entered into an agreement with Mr. Burk to convey to him 50% of the minerals he thought were previously conveyed to him. Mr. Burk now claims that he should not have to pay taxes on the royalties he is receiving pursuant to this agreement. The Board and Tax Commissioner filed a joint motion for summary judgment which was granted by the district court. The district court also made a finding that Mr. Burk's claim was frivolous and awarded the parties attorney fees. Mr. Burk has appealed this decision to the Supreme Court.

#### **EOG Resources v. Soo Line Railroad Company, et. al.**

EOG Resources filed this quiet title action on January 20, 2010, against the railroad and its lessee to determine the ownership of the minerals to land acquired by the railroad in Mountrail County. The railroad acquired its interest to the disputed land by three different means: railroad right-of-way deeds, condemnation, and the 1899 Act. The railroad leased its mineral interests to G-4, LLC. The railroad claims that it acquired fee simple interest to this land, whereas EOG claims the railroad only acquired a surface easement. The parties have already filed cross summary judgment motions, G-4 filed its motion on July 28, 2011, and EOG filed its motion on October 26, 2011. Before considering the summary judgment motions, the court directed G-4 to plead in all the other parties claiming an interest in the disputed property.

There were two issues being contested: (1) the validity of a condemnation order issued in 1914 to the railroad for a tract across state school lands which purported to grant the railroad fee simple title to the tract; and (2) whether right-of-way deeds issued by private parties to the railroad conveyed fee simple title or an easement interest. On January 20, 2014, the district court found in favor of the State and the private interest defendants. The court found that the condemnation order could only convey an easement interest because that was all the statute provided for at the time. Any conveyance of an interest beyond an easement was void. The court also found that the private right-of-way deeds only conveyed an easement interest to the railroads. Both the railroad and its lessee, G-4, LLC, appealed this judgment to the Supreme Court, which issued an opinion in this case on July 15, 2015. For the tract to which the State claims interest, the Supreme Court found that the deed was ambiguous and remanded the case back to the district court for further trial.

**Stenehjem ex rel. State of North Dakota v. United States:**

In 2012, the Attorney General filed suit in federal court naming the United States as the defendant. The basis for the lawsuit is that the United States, through its Forest Service, refuses to recognize that section lines in the Little Missouri, Sheyenne, and Cedar River National Grasslands are subject to a public easement to travel over thirty-three feet on each side of section lines. On several occasions, this refusal has required that roads be built entirely on state school land. Both federal and state law recognize a public easement over section lines, even section lines on federal land, and the suit asks that the court declare that the Grasslands are subject to this public easement.

In April 2013, the United States moved to dismiss both the State and County complaints arguing the State and Counties' claims were barred by the 12-year statute of limitations. All parties agreed to conduct "jurisdictional" discovery which included the exchange of interrogatories, requests for production of documents, and depositions; the United States would subsequently be allowed to refile its brief. The parties exchanged thousands of pages of documents and conducted over 20 depositions. During discovery various special interest groups also attempted to intervene in the lawsuit, but their request was denied by the federal district court. The denial of intervention was appealed to the Eighth Circuit Court of Appeals and was affirmed on June 1, 2015. The United States re-filed its brief in support of its motion to dismiss on September 26, 2014 and the State and Counties responded on January 27, 2015. The United States filed its reply brief on April 30, 2015. On May 22, 2015, the State and Counties requested leave to file a surreply, which was then filed on May 28, 2015. The United States replied to the surreply on June 8, 2015. To date, no party has requested oral argument. The parties are awaiting a ruling from the Court on the United States' motion to dismiss.

**Casey Voigt, et al. vs. Mercer County Board of County Commissioners, et al.**

On December 16, 2015, Coyote Creek Mining Company, LLC filed a petition with the Mercer County Board of Commissioners requesting the closure of an undocumented road based on its claim that said road interferes with its surface coal mining and reclamation operations. The Board owns a surface and mineral interest in the tract over which part of the road lies. On March 16, 2016, the Commission passed a resolution ordering the closure of the road subject to an agreement by and between the Commission and Coyote Creek requiring Coyote Creek to construct temporary access trails for landowners affected by the road closure.

On April 14, 2016, Casey and Julie Voigt (the "Voigts") filed a Notice of Appeal of Decision of seeking to void the Commission order on the grounds that it violated the requirement under North Dakota Century Code § 38-01-07.1 that a road may only be closed if it "is not required due to readily accessible alternate routes of travel and the closing or relocation does not deprive adjacent landowners access to their property."

On April 27, 2016, Coyote Creek intervened in the Voigts' appeal. On May 6, 2016, Coyote Creek filed a motion to join the State as a party to the appeal. The State filed a notice stating it did not oppose this motion. The motion to join the State was opposed by the Voigts. A hearing on the motion to join the State is scheduled for August 8, 2016.

On June 17, 2016, the Voigts filed a second Notice of Appeal relating to the same Commission order, requesting identical relief as that requested in the first appeal but alleging additional facts including that the road closure agreement by and between the Commission and Coyote Creek does not allow the Voigts to access their property and that Coyote Creek has already begun mining coal which will ultimately destroy the road.

**The Board reviewed an unaudited Summary of Total Assets for Period Ended April 30, 2016.**

**Report of Easements Issued by Land Commissioner (05-26-16 through 06-17-16)**

|                      |  |
|----------------------|--|
| <b>Granted to:</b>   | <b>CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK</b>   |
| For the Purpose of:  | On-lease Act. Amend: Horizontal Oil Well   |
| Legal Description:   | DUN-147-96-36-NW4  |
| <b>Granted to:</b>   | <b>ROUGH RIDER ELECTRIC COOPERATIVE, INC., DICKINSON-ND</b>  |
| For the Purpose of:  | Easement: Electric Distribution Line - Buried  |
| Legal Description:   | BIL-142-100-28-N2SW4   |
| <b>Granted to:</b>   | <b>BRADY WIND LLC, JUNO BEACH-FL</b>   |
| For the Purpose of:  | Permit: Temporary Construction   |
| Legal Description:   | STA-137-96-36-NW4  |
| <b>Granted to:</b>   | <b>SELECT ENERGY SERVICES LLC, WILLISTON-ND</b>  |
| For the Purpose of:  | Letter of Permission: Access to School Land for the purpose of a Temporary Surface Frac Water Pipeline |
| Legal Description:   | MCK-150-95-16-NW4, SW4   |
| <b>Granted to:</b>   | <b>ROCKWATER ENERGY SOLUTIONS, DICKINSON-ND</b>  |
| For the Purpose of:  | Letter of Permission: Access to School Land for the purpose of a Temporary Surface Frac Water Pipeline |
| Right-of-Way Number: | RW0007846  |
| Legal Description:   | MCK-153-97-36-SE4  |
| <b>Granted to:</b>   | <b>WEST DAKOTA WATER LLC, WILLISTON-ND</b>   |
| For the Purpose of:  | Letter of Permission: Access to School Land for the purpose of a Temporary Surface Frac Water Pipeline |
| Legal Description:   | WIL-154-99-16-SE4  |

The following letters of permission were issued to groups wishing to use school trust lands under the Board's policy for access to trust lands by organizations. Fees may be charged for this use.

|                     |  |
|---------------------|--|
| <b>Granted to:</b>  | <b>NDSU (DEPT 7650), FARGO-ND</b>  |
| For the Purpose of: | Letter of Permission: Access to School Land to survey the changes occurring on reference condition wetlands across the state of North Dakota |
| Legal Description:  | KID-139-71-36-SE4  |
| Legal Description:  | STU-139-66-36-NE4  |
| Legal Description:  | STU-142-66-16-NW4  |

**A D J O U R N**

There being no further business, the meeting was adjourned at 9:38 AM.

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Jack Dalrymple, Chairman  
Board of University and School Lands

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Lance D. Gaebe, Secretary  
Board of University and School Lands

(06/30/16)



**Minutes of the Meeting of the  
Board of University and School Lands  
July 28, 2016**

The July 28, 2016 meeting of the Board of University and School Lands in the Governor's Conference Room was called to order at 9:00 AM by Chairman Jack Dalrymple.

**Members Present:**

|                 |                                      |
|-----------------|--------------------------------------|
| Jack Dalrymple  | 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:**

|                |                                  |
|----------------|----------------------------------|
| Lance D. Gaebe | Commissioner                     |
| Jeff Engleson  | Director, Investment Division    |
| Allisen Bement | Mineral Title Specialist         |
| Drew Combs     | Director, Minerals Division      |
| Taylor Lee     | Director, Revenue Compliance     |
| Gerry Fisher   | Director, Grants and Claims      |
| Rick Owings    | Assistant Energy Impact Director |
| Catelin Newell | Office Manager                   |

**Guests in Attendance:**

|                   |  |
|-------------------|--|
| Hope Hogan        | Office of the Attorney General           |
| Jen Verleger      | Office of the Attorney General           |
| Bonnie Storbakken | Governor's Legal Counsel (via telephone) |
| Jason Nisbet      | Governor's Office                        |
| John Paczkowski   | Office of the State Engineer             |
| Mike Schoepf      | Fredrikson & Byron                       |
| Kyle Wanner       | ND Aeronautics Commission                |
| Nick Smith        | Bismarck Tribune                         |
| Mike Nowatski     | Forum News Service                       |

**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 June 30, 2016 meeting was made by State Treasurer Kelly Schmidt and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

**E N E R G Y   I N F R A S T R U C T U R E   A N D   I M P A C T   O F F I C E**

**Approval of Financial Sponsors for Human Trafficking Grants**

As passed by the 2015 Legislature, Senate Bill 2199 allocated \$750,000 for grants toward prevention and treatment services related to human trafficking victims in hub cities located in oil-producing counties and Senate Bill 2284 separately allocated \$250,000 for community-based sexual assault examiner programs.

Two grants which had been previously awarded directly to the agencies have submitted applications to instead direct the funds to political subdivisions as legally required.

#### Transfer of Grants from Agencies to Sponsoring Political Subdivisions

| Agency                            | City     | County   | Sponsoring Political Subdivision | Project  | Grant Amount |
|-----------------------------------|----------|----------|----------------------------------|--|--------------|
| Legal Services Of North Dakota    | Bismarck | Burleigh | Mountrail County                 | Staffing, Travel, Training, Litigation Expenses  | \$79,398     |
| Minot Community Foundation – 4her | Minot    | Ward     | City Of Watford City             | Staffing, Travel, Training, Supplies, Consulting | \$109,900    |

\$189,298

**Motion: The Board approved the transfer of the two referenced grants for human trafficking from the agencies to the political subdivisions identified in the preceding list.**

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

#### Biennial Carryover of Grants:

The revised revenue forecast released in February 2016 projected the Oil and Gas Impact Grant Fund (OGIGF) to receive \$28.6 million of the \$140 million as appropriated by the 2015 legislature. The significant drop in the price of oil reduced collections of Gross Production Tax (GPT) and thus lowered distributions to the OGIGF.

The revenue shortfall prompted several steps:

1. Scheduled grant round processes were postponed in February 2016.
2. In February 2016, \$7.3 million of grants were suspended for projects not started or where no commitment had been made by the grantee.
3. A legal analysis determined that of the legislative allocations apportionments to Sexual Assault Nurse Examiners Programs, Human Trafficking Advocacy Programs, Critical Access Hospitals and Providers to the Developmentally Disabled were required to be provided, but that based on the legislation other grants were subject to availability of funds.

During its meeting the Board reviewed a legal memo regarding the carryover of grants to the next biennium for which money is not presently available. The assessment was sought because \$42 million had already been awarded with another \$6 million legislatively required to be distributed in January 2017. These \$48 million in obligations exceed the revised revenue projection of \$28.6 million to the OGIGF. The memo indicated that it is likely the legislature did not contemplate a funding shortfall and it recommended that the legislature be asked to address the outstanding grant commitments issue.

#### Revenue Update:

While the February state revenue forecast projected that the OGIGF would receive \$28.6 million, a revised revenue forecast released in July 2016 changed that projection to \$73.4 million. As of July 22, 2016, the oil and gas impact grant fund has received \$30,731,049.13 from distributions of gross production tax collections for the 2015-17 biennium.

The EIIO was directed to develop a recommendation for prioritizing the unaddressed legislative allocations.

## MINERALS MANAGEMENT

### Sovereign Lands Litigation Update

The Board reviewed a summary of litigation in which it is involved regarding sovereign lands and minerals.

In December 2013, the North Dakota Supreme Court issued a decision in *Reep v State* and *Brigham v State* holding that the State of North Dakota owns the mineral interests up to the ordinary high water mark (OHWM) of navigable rivers and water bodies. Notwithstanding affirmation of the State's ownership of the land and minerals to the OHWM in *Reep* and *Brigham*, litigation on specific local circumstances and river features continue.

#### **Whiting Oil and Gas Corp. v. Arlen A. Dean, et al.**

Whiting Oil and Gas Corporation ("Whiting") operates the Kuykendall 34-31-1H well located in McKenzie County near the Montana border. The Yellowstone River flows through the Kuykendall well spacing unit. Over time, the river has shifted westward. There are also islands within the Kuykendall spacing unit. On January 25, 2016, Whiting filed this interpleader action to resolve alleged title questions that have arisen due to the Yellowstone River. Because of these title questions, Whiting is withholding royalty payments. In its lawsuit, Whiting essentially asks the court to require all those asserting title to the minerals in the spacing unit to set forth and prove their claims, and once the court rules on those claims, Whiting will know who to pay.

The Board claims a mineral interest under the Yellowstone River, including the islands, and the Board also claims a 5% mineral interest in some of the riparian tracts in this spacing unit.

The Board and the State Engineer filed a joint response to the Complaint and several cross claims that have been made against the State. A scheduling order has not been issued.

#### **William S. Wilkinson v. Board of University and School Lands, et al.**

##### **Williams County District Court**

The Wilkinson lawsuit was filed on January 10, 2012. The Plaintiffs assert that they own minerals in about 200 acres 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. The 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 historical Missouri River – rather than the Phase I Delineation – current location of the OHWM. The 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.

In January, the State Engineer filed a motion to intervene in the case, which was granted. A joint motion for summary judgment was filed by the Board and the State Engineer on March 1, 2016. This motion was opposed by the Wilkinson family. 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 the 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 ground to support Counts II through VII. The Plaintiffs filed a notice of appeal on June 1, 2016. On the same day, EOG Resources, Inc. filed

a motion for reconsideration with the district court. EOG is requesting the Court amend its order to eliminate what EOG believes is unnecessarily broad language in the order regarding mineral acres located east of the Highway 85 Bridge. The Supreme Court has remanded this case back to the district court to address EOG's motion. A response from the Board and State Engineer is due August 1, 2016.

***EEE Minerals, LLC et al. v. State of North Dakota et al.***

**U.S. District Court – District of ND (Western)**

On July 31, 2014, the Attorney General's Office was served with a complaint in the above referenced matter. This case is requesting class action certification and alleges identical causes of action to the *Wilkinson* case. In January 2016, the State Engineer filed a motion to intervene, which was granted on March 3, 2016. Also in March, the Plaintiffs amended their complaint to: (1) add two additional named plaintiffs, (2) expand the scope of the proposed class action property from the Montana border to the border of the Fort Berthold reservation, and (3) add as defendants all of the Board's lessees. On May 13, 2016, several of the recently added defendants removed the case to federal court based on diversity and federal questions. On June 11, 2016, the Board and the State Engineer filed a motion to dismiss arguing that: (1) the counts of the amended complaint that address the US Constitution and US Code are not ripe; and (2) asserting the State's right to sovereign immunity. Several other motions to dismiss have been filed by the other defendants, as well as motions to join the United States as a defendant. The Plaintiffs have requested oral arguments on the motions to dismiss.

**Statoil Oil & Gas, LP v. Abaco Energy, LLC, et al.**

**Williams County District Court**

**Statoil Oil & Gas, LP v. 1280 Royalties LLC, et al.**

**Williams County District Court**

Similar to the *Whiting* case listed above, Statoil has filed these two cases as interpleaders for the lands underlying spacing units operated by Statoil which are located east of the Bridge. Statoil is requesting the Court determine the property interests for the spacing units so that Statoil can correctly distribute the proceeds from the wells. The federal government claims a mineral interest to portions of the subject lands in both cases. Statoil acknowledges in the complaint that the United States claims an interest but is not amenable to state court jurisdiction.

In both cases, a motion to dismiss for failure to name indispensable parties – the United States – was made and granted by the Court. In essence, the motions addressed whether title could be decided without the United States as a party to the case. Both cases were appeal and are now pending before the ND Supreme Court.

***Whitetail Wave, LLC v. XTO Energy, Inc., et al.***

**McKenzie District Court**

On August 1, 2015, the Attorney General's Office was served with a complaint in the above referenced case. This case is also challenging the State's determination of the OHWM east of the Highway 85 Bridge. The Board has currently leased minerals pursuant to the Phase II Investigation for this tract. The Plaintiff is requesting that title to the minerals be quieted and has alleged claims of Unconstitutional takings, trespass, slander of title, and constructive trust/unjust enrichment against the State. The complaint also makes a number of claims specific to only XTO, the operator of the wells on the tracts in dispute. Specifically, the Plaintiff is requesting that the State's claim to sovereign lands' mineral interest be restricted to those minerals located below the OHWM of the Missouri River prior to inundation of the Lake Sakakawea.

An answer was filed on behalf of the Board on July 21, 2015. In January 2016, the State Engineer intervened in the case. The parties are currently engaged in discovery. The Court has not scheduled a trial date or issued a scheduling order.

**Mary K. Starin v. Kelly Schmidt, et al.**  
**Williams County District Court**

The Plaintiff initiated this quiet title action to determine title to property located under Lake Sakakawea. In 1939, the State acquired the disputed property through a foreclosure of a Bank of North Dakota loan. The State then sold the property through a contract for deed in 1945 to the Plaintiff's predecessors in interest. Pursuant to state law, the state reserved 50% of the minerals. The Special Warranty Deed issued after satisfaction of the contract for deed was not recorded, and no one has a copy of the fully executed deed. The surface estate was later condemned as part of the Garrison Dam reservoir project. The Plaintiffs have brought this action to clear title to the 50% of the minerals that they believe to be theirs. The Board has leased the 50% mineral interest it reserved in this conveyance.

In January 2016, the State Engineer intervened in this case. The parties are currently engaged in discovery. The Court has not scheduled a trial date or issued a scheduling order.

**ND Office of State Engineer, Board of University and School Lands v. BLM**  
**US Dept. of Interior Office of Hearings and Appeals – Board of Land Appeals**  
**IBLA 2016-170**

In 2014, the Bureau of Land Management (BLM) resurveyed land along the Missouri River to locate the boundary (OHWM) between the public domain land owned by the United States and the riverbed owned by the state of North Dakota. In identifying the OHWM, the BLM applied federal law rather than state law. Specifically the BLM adopted the survey conducted by the Corps of Engineers as part of the Garrison Dam project. In certain areas, the survey overlaps with the state's claim to sovereign lands.

After the survey work was complete, the BLM published a "Notice of Filing Plats of Survey; North Dakota" in which BLM intended to formally file the survey plats as Official Plats. After the Federal Register Notice appeared, the State Engineer and the Board jointly filed a protest challenging the filing of the survey plats. The BLM rejected the State's protest and the State appealed the BLM's decision to the IBLA. The State is waiting for the decision on the appeal.

**EXECUTIVE SESSION**

**Motion: Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, that the Board closes this meeting to the public and enters executive session for the purpose of consultation with its attorneys on pending and active litigation that challenge the State's claim to sovereign lands, including:**

- **Whiting Oil and Gas Corp. v. Arlen A. Dean et al.**
- **William S. Wilkinson v. Board of University & School Lands, et al.**
- **EEE Minerals, LLC, et al. v. State of North Dakota, et al.**
- **Statoil Oil & Gas LP v. 1280 Royalties LLC, et al.**
- **Statoil Oil & Gas LP v. Abaco Energy, LLC et al.**
- **Whitetail Wave, LLC v. XTO Energy, Inc., et al.**
- **Mary K. Starin v. Kelly Schmidt, et al.**

**And to review the Assigned Fund Balance within the Strategic Investment and Improvements Fund.**

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

At 9:28 AM the Board entered executive session for the purposes outlined in its adopted motion.

### EXECUTIVE SESSION

#### Members Present:

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

#### Department of Trust Lands Personnel present:

|                |                               |
|----------------|-------------------------------|
| Lance D. Gaebe | Commissioner                  |
| Jeff Engleson  | Director, Investment Division |
| Allisen Bement | Mineral Title Specialist      |
| Drew Combs     | Director, Minerals Division   |
| Taylor Lee     | Director, Revenue Compliance  |
| Catelin Newell | Office Manager                |

#### Authorized Guests in Attendance:

|                   |  |
|-------------------|--|
| Hope Hogan        | Office of the Attorney General           |
| Jen Verleger      | Office of the Attorney General           |
| Bonnie Storbakken | Governor's Legal Counsel (via telephone) |
| Jason Nisbet      | Governor's Office                        |
| John Paczkowski   | Office of the State Engineer             |

No action was taken during the Executive Session which was adjourned at 11:34 AM and the Board returned to open session and the public was invited to return to the meeting.

### OPERATIONS

#### Strategic Investment and Improvements Fund - Assigned Fund Balance

|   |               |
|---|---------------|
| All Reservation Bonus   | \$41,825,894  |
| All Bonus West of Hwy 85 Bridge                               | 40,462,849    |
| All Royalties West of Hwy 85 Bridge                           | 25,848,540    |
| 15 % of Bonus Between Hwy 85 Bridge and Four Bears Bridge     | 17,395,088    |
| 15 % of Royalties Between Hwy 85 Bridge and Four Bears Bridge | 16,792,678    |
|   |               |
| Recommended Assigned Fund Balance                             | \$142,325,049 |

Motion: **The Board affirmed the "Assigned Fund Balance" of the Strategic Investment and Improvements fund is \$142,325,049. These funds should not be transferred from the SIIF until title claims related to sovereign lands are resolved.**

**Secondly, any material amounts collected in bonus, rent or royalty from the oil and gas minerals leased beneath navigable rivers should be designated as part of the "Assigned Fund Balance" as depicted in the preceding chart for both distribution and financial statement purposes.**

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

## R E P O R T S

### Summary of Total Assets (Unaudited) for Period Ended May 31, 2016

The Summary of Total Assets was reviewed by the Board.

#### Report of Easements Issued by Land Commissioner (6-14-16 through 7-11-16)

|                     |   |
|---------------------|---|
| Granted to:         | MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND |
| For the Purpose of: | Easement: Drop Line-Electric Distribution Line        |
| Legal Description:  | WIL-158-95-16-SW4                                     |

|                     |  |
|---------------------|--|
| Granted to:         | BURKE-DIVIDE ELECTRIC COOPERATIVE, COLUMBUS-ND |
| For the Purpose of: | Easement: Drop Line-Electric Distribution Line |
| Legal Description:  | DIV-161-98-16-N2NW4                            |

|                     |   |
|---------------------|---|
| Granted to:         | MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND |
| For the Purpose of: | Easement: Electric Distribution Line - Above Ground   |
| Legal Description:  | MOU-152-88-16-SE4                                     |

|                     |   |
|---------------------|---|
| Granted to:         | WESTERN AREA WATER SUPPLY AUTHORITY, WILLISTON-ND |
| For the Purpose of: | Easement: Potable Water Pipeline                  |
| Legal Description:  | DIV-162-99-16-SE4, DIV-163-100-36-NW4, SW4        |

|                     |  |
|---------------------|--|
| Granted to:         | BASIN ELECTRIC POWER COOP INC, BISMARCK-ND |
| For the Purpose of: | Easement-Amend: Electric Transmission Line |
| Legal Description:  | MCK-151-100-36-NE4, MCK-151-99-36-NE4, SE4 |

|                     |   |
|---------------------|---|
| Granted to:         | MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND |
| For the Purpose of: | Easement: Drop Line-Electric Distribution Line        |
| Legal Description:  | WIL-157-95-16-NE4                                     |

|                     |  |
|---------------------|--|
| Granted to:         | ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT                   |
| For the Purpose of: | Easement: Gas Gathering Pipeline                         |
| Legal Description:  | DUN-148-96-16-N2SE4, SW4SE4, LOT 2, N2SW4, SE4SW4, LOT 1 |

|                     |   |
|---------------------|---|
| Granted to:         | MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND |
| For the Purpose of: | Easement: Drop Line-Electric Distribution Line        |
| Legal Description:  | WIL-159-96-16-NW4                                     |

|                     |  |
|---------------------|--|
| Granted to:         | BASIN ELECTRIC POWER COOP INC, BISMARCK-ND |
| For the Purpose of: | Easement-Amend: Electric Transmission Line |
| Legal Description:  | WIL-156-100-16-NE4                         |

|                     |   |
|---------------------|---|
| Granted to:         | HENRY HILL OIL SERVICES LLC, WILLISTON-ND |
| For the Purpose of: | Easement: Salt Water Disposal Well        |
| Legal Description:  | WIL-154-100-16-SE4                        |

|                     |   |
|---------------------|---|
| Granted to:         | NP RESOURCES LLC, DENVER-CO             |
| For the Purpose of: | Easement: Directional Wellsite Location |
| Legal Description:  | GOL-143-103-36-NE4                      |

|                     |   |
|---------------------|---|
| Granted to:         | ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT  |
| For the Purpose of: | Easement: Drop Line-Gas Gathering Pipeline  |
| Legal Description:  | DUN-148-96-36-SW4   |
| Granted to:         | ONEOK BAKKEN PIPELINE LLC, SIDNEY-MT  |
| For the Purpose of: | Easement-Amend: Gas Gathering Pipeline  |
| Legal Description:  | MCK-148-98-16-NE4   |
| Granted to:         | WESTERN AREA WATER SUPPLY AUTHORITY, WILLISTON-ND   |
| For the Purpose of: | Easement: Potable Water Pipeline  |
| Legal Description:  | WIL-157-95-16-SE4, SW4  |
| Granted to:         | ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT  |
| For the Purpose of: | Easement: Drop Line-Gas Gathering Pipeline  |
| Legal Description:  | MCK-153-94-36-SW4   |
| Granted to:         | RESERVATION TELEPHONE COOPERATIVE, PARSHALL-ND  |
| For the Purpose of: | Easement: Communication Cable - Buried  |
| Legal Description:  | BRK-159-90-36-NW4, SW4  |
| Granted to:         | WESTERN AREA WATER SUPPLY AUTHORITY, WILLISTON-ND   |
| For the Purpose of: | Easement: Potable Water Pipeline  |
| Legal Description:  | MCK-153-97-16-NE4, NW4, SE4   |
| Granted to:         | WISE TOWNSHIP, MERCER-ND  |
| For the Purpose of: | Easement: Road Right-of-Way   |
| Legal Description:  | MCL-147-79-16-SE4   |
| Granted to:         | WHITING OIL AND GAS CORPORATION, DENVER-CO  |
| For the Purpose of: | Easement: Gas Gathering Pipeline  |
| Legal Description:  | MOU-155-91-22-N2SW4   |
| Granted to:         | WHITING OIL AND GAS CORPORATION, DENVER-CO  |
| For the Purpose of: | On-lease Act. Amend: Horizontal Oil Well  |
| Legal Description:  | WIL-156-101-36-SE4  |
| Granted to:         | STREAMLINE WATER SERVICES LLC, WATFORD CITY-ND  |
| For the Purpose of: | Letter of Permission: Access to School Land for the purpose of<br>Temporary Surface Frac Water Pipeline |
| Legal Description:  | MCK-150-98-36-NW4, SE4, SW4   |

The following letters of permission were issued to groups wishing to use school trust lands under the Board's policy for access to trust lands by organizations. Fees may be charged for this use.

|                     |  |
|---------------------|--|
| Granted to:         | NDSU (DEPT 7650), FARGO-ND   |
| For the Purpose of: | Letter of Permission: Access to School Land to Conduct a<br>Wetland Vegetation Study |
| Legal Description:  | WAR-151-81-16-SE4, SW4, WAR-152-84-36-NW4, SW4                                       |



## Investment Updates

The Board reviewed the status of the asset allocation of the permanent trusts as of July 20, 2016.

| Account/Asset Class               | Long-Term Asset Allocation | 7/20 Actual Allocation \$ | 7/20 Actual Allocation % |
|-----------------------------------|----------------------------|---------------------------|--------------------------|
| Large Cap US Equity               | 13.5%                      | \$ 512,527,998            | 13.7%                    |
| Small Cap US Equity               | 3.5%                       | \$ 135,479,802            | 3.6%                     |
| International Equity              | 12.0%                      | \$ 440,393,131            | 11.7%                    |
| Emerging Market Equity            | 3.0%                       | \$ 121,473,672            | 3.2%                     |
| <b>Total Equities</b>             | <b>32.0%</b>               | <b>\$ 1,209,874,602</b>   | <b>32.3%</b>             |
| Domestic Investment Grade         | 14.2%                      | \$ 532,102,795            | 14.2%                    |
| High Yield FI                     | 3.0%                       | \$ 112,027,282            | 3.0%                     |
| International/Global FI           | 5.8%                       | \$ 215,856,284            | 5.8%                     |
| <b>Total Fixed Income</b>         | <b>23.0%</b>               | <b>\$ 859,986,361</b>     | <b>22.9%</b>             |
| <b>Total Absolute Return</b>      | <b>20.0%</b>               | <b>\$ 750,761,995</b>     | <b>20.0%</b>             |
| Commodities                       | 3.0%                       | \$ 106,984,286            | 2.9%                     |
| MLPs                              | 3.0%                       | \$ 114,268,223            | 3.0%                     |
| TIPS                              | 2.0%                       | \$ 74,009,778             | 2.0%                     |
| Natural Resource Equities         | 2.0%                       | \$ 72,167,546             | 1.9%                     |
| <b>Total Inflation Strategies</b> | <b>10.0%</b>               | <b>\$ 367,429,833</b>     | <b>9.8%</b>              |
| Core Real Estate                  | 8.0%                       | \$ 324,557,636            | 8.7%                     |
| Core Plus Real Estate             | 7.0%                       | \$ 235,806,840            | 6.3%                     |
| <b>Total Real Estate</b>          | <b>15.0%</b>               | <b>\$ 560,364,476</b>     | <b>14.9%</b>             |
| <b>Total Asset</b>                | <b>100.0%</b>              | <b>\$ 3,748,417,268</b>   | <b>100.0%</b>            |

On July 1, 2016 \$84.75 million of the \$113.0 million (3%) allocation to J.P. Morgan Income and Growth Fund was funded. It is expected that the balance of the commitment (\$28.25 million) will be called in October, 2016.

### Changes at GMO: (\$250 million, 6.7% of assets)

The Board learned that GMO's co-head of its asset allocation team, Sam Wilderman will be leaving GMO at the end of the year. RVK and Department staff recommended that the Board maintain exposure to the GMO Benchmark Free Allocation Fund. RVK's memo on GMO was reviewed by the Board.

### JP Morgan Income and Growth - Reduced Fee

JP Morgan informed the Board that fees will be reduced for investments in the Income and Growth Fund effective October 1, 2016. The effective rate for the \$113.0 million investment in this fund will drop from 125 bps to 96 bps. This change will save the permanent trusts about \$327,000 annually in fees.

### New CEO at PIMCO (\$251 million, 6.7% of assets)

PIMCO's Managing Directors appointed Emmanuel (Manny) Roman as its new Chief Executive Officer, effective November 1, 2016. Mr. Roman has nearly 3 decades of investment experience and is currently CEO of Man Group, PLC. He has previous leadership roles at Goldman Sachs and GLG Partners, Inc. Current CEO Doug Hodge will assume the new role of Managing Director and Senior Advisor.

### Revenue Compliance Division Update

The Department's Revenue Compliance Division ensures that royalties and other collections are complete and accurate. Oil and gas royalty payments are reviewed to determine if accordance with lease terms, rules and regulations, and state statutes. The total oil and gas royalties and interest and penalties collected in FY 2016 was \$192,733,443, a decrease of 42.25% from the prior fiscal year. Included in this total is \$1,756,032, which is a result of enhanced efforts to examine royalty reports and submittals.

| REVENUE COMPLIANCE SUMMARY                     |                       |  |   |
|--|-----------------------|--|---|
|  | Biennium<br>2013-2015 |  | Biennium to Date<br>(07-01-15 thru 6-30-16) |
| Additional Royalties Collected                 | \$10,519,938          |  | \$915,778                                   |
| Additional Taxes or Other Deductions Collected | 720,158               |  | 353,256                                     |
| Penalties Collected                            | 563,726               |  | 486,998                                     |
| Total Collected                                | \$11,803,822          |  | \$1,756,032                                 |
| NDIC Report Corrections                        | 221                   |  | 12  |

The penalty provision in the Department's lease is calculated at the rate of 1% per 30 days. The penalty may be assessed in lieu of seeking interest on late royalty payments as provided by N.D.C.C. 47-16-39.1.

In 2015 a new electronic royalty reporting form was implemented which reduced manual data entry and eliminated third party vendor costs by approximately \$40,000 per year. This transition has allowed the division to shift from data entry to audit focused. An oil and gas royalty auditor position was added in December 2015. The Department has implemented a comprehensive oil and gas audit program. There are currently eight ongoing oil and gas audits.

Despite the decline in oil and gas revenues, there has been an increase in both the number of wells and transactions. Last biennium, royalties were received from 4,853 producing properties. During the current biennium through June 2016, royalties from 5,337 producing properties were received. Total lines of data reported have increased from about 357,000 lines in FY 2015 to 433,000 lines in FY 2016.

The Department continues efforts to collect royalties produced from sovereign minerals within the Missouri and Yellowstone Rivers. These efforts have resulted in more wells that had royalty held in suspense by the operating company to be placed instead into pay status and or escrowed.

Presently, 11 oil and gas operators have 179 wells escrowed totaling \$51,478,917.

| BND ROYALTY ESCROW BALANCES |              |
|-----------------------------|--------------|
| June 30, 2014               | \$11,280,421 |
| June 30, 2015               | 18,736,053   |
| June 30, 2016               | 51,478,917   |

### August Oil & Gas Mineral Lease Auction

The Board reviewed the list of oil and gas tract leases that will be offered during the quarterly oil and gas lease auction on August 2, 2016.

## ADJOURN

There being no further business, the meeting was adjourned at 9:38 AM.

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Jack Dalrymple, Chairman  
Board of University and School Lands

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Lance D. Gaebe, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
August 25, 2016**

The August 25, 2016 meeting of the Board of University and School Lands in the Governor's Conference Room was called to order at 9:00 AM by Chairman Jack Dalrymple.

**Members Present:**

|                 |                                      |
|-----------------|--------------------------------------|
| Jack Dalrymple  | 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:**

|                |                               |
|----------------|-------------------------------|
| Lance D. Gaebe | Commissioner                  |
| Jeff Engleson  | Director, Investment Division |
| Allisen Bement | Mineral Title Specialist      |
| Taylor Lee     | Director, Revenue Compliance  |
| Catelin Newell | Office Manager                |

**Guests in Attendance:**

|                   |   |
|-------------------|---|
| Hope Hogan        | Office of the Attorney General                      |
| Jen Verleger      | Office of the Attorney General                      |
| Matt Sagsveen     | Office of the Attorney General                      |
| Bonnie Storbakken | Governor's Legal Counsel                            |
| Jason Nisbet      | Governor's Office                                   |
| Jerry Heiser      | Office of the State Engineer/State Water Commission |

## 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 July 28, 2016 meeting was made by Attorney General Wayne Stenehjem and seconded by Secretary of State Alvin Jaeger and the motion carried unanimously on a voice vote.

## M I N E R A L S   M A N A G E M E N T

**Sovereign Lands Litigation Update**

The Board reviewed a summary of litigation in which it is involved regarding sovereign lands and minerals.

In December 2013, the North Dakota Supreme Court issued a decision in **Reep v State** and **Brigham v State** holding that the State of North Dakota owns the mineral interests up to the ordinary high water mark (OHWM) of navigable rivers and water bodies. Oil, gas, and other hydrocarbons underlying sovereign lands are managed by the Board. The Office of the State Engineer manages the bed of the navigable waters and all other minerals, and is responsible for determining the location of the OHWM.

There has been one significant change in status from the update on sovereign lands litigation that the Board reviewed in July. The **William S. Wilkinson v. Board of University and School Lands**,

**et al.** lawsuit filed in Williams County District Court on January 10, 2012 is now before the State Supreme Court.

Case background: the Plaintiffs assert mineral ownership in about 200 acres west of Williston. 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.

The Plaintiffs argue that the subject property is located under Lake Sakakawea wherein they assert that the State's title to the Missouri River is limited to the channel as it existed prior to inundation by the Lake. The Plaintiffs believe that the Board should be issuing leases on the west side of the Highway 85 Bridge pursuant to its investigation of the historical Missouri River (Phase II Investigation) – rather than the delineated current location of the OHWM of the navigable river (Phase 1 Delineation).

A joint motion for summary judgment was filed by the Board and the State Engineer on March 1, 2016.

On May 16, 2016, the District Court canceled the scheduled five day trial scheduled to begin the following week. On May 18, 2016 the court dismissed the Plaintiff's claims and it granted the State's 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 (current OHWM) should be used to determine the boundary of sovereign land in the subject property, rather than the Phase II Investigation (historical channel);
- 3) to the extent they are aggrieved by the determination of the OHWM, the Plaintiffs must exhaust their administrative remedies through the State Engineer before making a claim in district court; and
- 4) there are no grounds to support assertions of unconstitutional takings, conversion, constructive trust and unjust enrichment, civil conspiracy and deprivation of rights.

On June 1, 2016, the parties were notified that the Plaintiffs filed a notice of appeal. On the same day, EOG Resources, Inc. filed a motion for reconsideration with the District Court. Thus the Supreme Court remanded the case back to District Court for the limited purpose of addressing EOG's motion, which sought to modify the summary judgment.

Both the Wilkinsons and the State opposed EOG's motion, and on August 5, 2016 EOG withdrew its motion. On August 9, 2016 the District Court issued an order formally denying EOG's motion.

The transcript was filed with the Supreme Court which initiates the appellants' 40-day period to file their brief (September 24, 2016 deadline). The State's response brief will be due 30 days after the plaintiffs file.

The following items were presented to the Board: the May 18, 2016 Order on Summary Judgment Motion, Wilkinsons' Notice of Appeal and the August 9, 2016 Order Denying Rule 59(j) Motion.

### EXECUTIVE SESSION

Motion: **Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, that the Board closes this meeting to the public and enters executive session for the purpose of consultation with its attorneys on pending and active litigation that challenge the State's claim to sovereign lands, including:**

- **Whiting Oil and Gas Corp. v. Arlen A. Dean et al.**
- **William S. Wilkinson v. Board of University & School Lands, et al.**
- **EEE Minerals, LLC, et al. v. State of North Dakota, et al.**
- **Statoil Oil & Gas LP v. 1280 Royalties LLC, et al.**
- **Statoil Oil & Gas LP v. Abaco Energy, LLC et al.**
- **Whitetail Wave, LLC v. XTO Energy, Inc., et al.**
- **Mary K. Starin v. Kelly Schmidt, et al.**

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

At 9:05 AM the Board entered executive session for the purposes outlined in its adopted motion.

### EXECUTIVE SESSION

**Members Present:**

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

**Department of Trust Lands Personnel present:**

|                |                               |
|----------------|-------------------------------|
| Lance D. Gaebe | Commissioner                  |
| Jeff Engleson  | Director, Investment Division |
| Allisen Bement | Mineral Title Specialist      |
| Taylor Lee     | Director, Revenue Compliance  |
| Catelin Newell | Office Manager                |

**Authorized Guests in Attendance:**

|                   |   |
|-------------------|---|
| Hope Hogan        | Office of the Attorney General                      |
| Jen Verleger      | Office of the Attorney General                      |
| Matt Sagsveen     | Office of the Attorney General                      |
| Bonnie Storbakken | Governor's Legal Counsel                            |
| Jason Nisbet      | Governor's Office                                   |
| Jerry Heiser      | Office of the State Engineer/State Water Commission |

No action was taken during the Executive Session which was adjourned at 10:05 AM and the Board returned to open session and the public was invited to return to the meeting.

## R E P O R T S

**The Board reviewed Easements Issued by Land Commissioner from 7-15-16 through 8-3-16**

|   |   |
|---|---|
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND</b><br>Easement: Easement Release<br>WIL-156-99-16-NE4, SE4                              |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>SHERIDAN ELECTRIC COOP INC, MEDICINE LAKE-MT</b><br>Easement: Electric Distribution Line - Above Ground<br>DIV-163-103-36-SW4                  |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>SHERIDAN ELECTRIC COOP INC, MEDICINE LAKE-MT</b><br>Easement: Electric Distribution Line - Above Ground<br>DIV-163-102-16-NE4, SE4             |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>SHERIDAN ELECTRIC COOP INC, MEDICINE LAKE-MT</b><br>Easement: Drop Line-Electric Distribution Line<br>DIV-161-103-36-NE4, NW4                  |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND</b><br>Easement-Amend: Drop Line-Electric<br>MOU-150-92-10-S2SW4                         |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>LIBERTY RESOURCES BAKKEN OPERATING, LLC, DENVER-CO</b><br>On-lease Act. Amend: Horizontal Oil Well<br>WIL-158-95-16-SE4, SW4                   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b><br>Easement-Amend: Electric Distribution Line - Above Ground<br>MCK-153-96-36-SE4, SW4  |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>SHERIDAN ELECTRIC COOP INC, MEDICINE LAKE-MT</b><br>Easement: Drop Line-Electric Distribution Line<br>DIV-163-103-36-SW4                       |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>SHERIDAN ELECTRIC COOP INC, MEDICINE LAKE-MT</b><br>Easement: Drop Line-Electric Distribution Line<br>DIV-163-102-16-NE4                       |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>QEP ENERGY COMPANY, DENVER-CO</b><br>Permit-Amend: Access Road<br>MOU-150-92-15-W2SW4  |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>SLOPE ELECTRIC COOP INC, NEW ENGLAND-ND</b><br>Easement-Amend: Electric Distribution Line - Buried<br>BOW-129-102-16-SE4 LESS SCHOOL SITE, SW4 |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>WHITING OIL AND GAS CORPORATION, DENVER-CO</b><br>On-lease Act. Amend: Drop Line-Oil Gathering Pipeline<br>MCK-153-97-16-NE4                   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>SACAGAWEA PIPELINE CO LLC, IRVING-TX</b><br>Easement-Amend: Oil Gathering Pipeline<br>MOU-155-91-34-S2NE4, N2SE4                               |
| <b>Granted to:</b>  | <b>TARGA BADLANDS LLC, HOUSTON-TX</b>   |

|                     |  |
|---------------------|--|
| For the Purpose of: | Easement-Amend: Drop Line-Multiple Pipelines               |
| Legal Description:  | MCK-149-95-36-LOTS 3,4                                     |
| <b>Granted to:</b>  | <b>ONEOK BAKKEN PIPELINE LLC, SIDNEY-MT</b>                |
| For the Purpose of: | Easement-Amend: Gas Gathering Pipeline                     |
| Legal Description:  | MCK-148-98-16-NE4  |
| <b>Granted to:</b>  | <b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b>  |
| For the Purpose of: | Easement: Drop Line-Electric Distribution Line             |
| Legal Description:  | MCK-153-96-36-SE4, SW4                                     |
| <b>Granted to:</b>  | <b>RESERVATION TELEPHONE COOPERATIVE, PARSHALL-ND</b>      |
| For the Purpose of: | Easement: Communication Cable - Buried                     |
| Legal Description:  | BRK-159-90-36-SE4, SW4                                     |
| <b>Granted to:</b>  | <b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b>  |
| For the Purpose of: | Easement: Drop Line-Buried Electric Distribution Line      |
| Legal Description:  | MCK-153-97-16-NE4  |
| <b>Granted to:</b>  | <b>SHD OIL &amp; GAS LLC, MCLEAN-VA</b>                    |
| For the Purpose of: | Easement-Amend: Salt Water Disposal Well                   |
| Legal Description:  | MCK-151-95-36-LOTS 1,2                                     |
| <b>Granted to:</b>  | <b>SELECT ENERGY SERVICES LLC, WILLISTON-ND</b>            |
| For the Purpose of: | Letter of Permission: Access to School Land (frac project) |
| Legal Description:  | MOU-154-94-16-SE4  |
| <b>Granted to:</b>  | <b>PETRO-HUNT LLC, BISMARCK-ND</b>                         |
| For the Purpose of: | Letter of Permission: Access to School Land (frac project) |
| Legal Description:  | MCK-153-95-16-SW4 LESS PATENTED ACRES                      |
| <b>Granted to:</b>  | <b>MBI ENERGY SERVICES, KILLDEER-ND</b>                    |
| For the Purpose of: | Letter of Permission: Access to School Land (frac project) |
| Legal Description:  | DUN-144-96-16-SE4  |

#### **August Oil & Gas Mineral Lease Auction Results**

The Board reviewed the results of oil and gas lease auction that occurred on August 2, 2016.

#### **Presentation to Energy Development and Transmission Committee**

The Board reviewed the presentation planned to be provided as part of testimony to the Energy Development and Transmission Committee on behalf of the Energy Infrastructure and Impact Office.

### **A D J O U R N**

There being no further business, the meeting was adjourned at 10:10 AM.

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Jack Dalrymple, Chairman  
Board of University and School Lands

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Lance D. Gaebe, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
September 29, 2016**

The September 29, 2016 meeting of the Board of University and School Lands was called to order at 9:00 AM in the Governor's Conference Room by Chairman Jack Dalrymple.

**Members Present:**

|                 |                                      |
|-----------------|--------------------------------------|
| Jack Dalrymple  | Governor                             |
| Alvin A. Jaeger | Secretary of State – via telephone   |
| Wayne Stenehjem | Attorney General                     |
| Kelly Schmidt   | State Treasurer                      |
| Kirsten Baesler | Superintendent of Public Instruction |

**Department of Trust Lands Personnel present:**

|                |                               |
|----------------|-------------------------------|
| Lance D. Gaebe | Commissioner                  |
| Jeff Engleson  | Director, Investment Division |
| Levi Erdmann   | Investment Analyst            |
| Gerry Fisher   | Director, Grants and Claims   |
| Linda Fisher   | Deputy Commissioner           |
| Catelin Newell | Office Manager                |
| Rick Owings    | Land Professional             |

**Guests in Attendance:**

|                   |                           |
|-------------------|---------------------------|
| Bonnie Storbakken | Governor's Legal Counsel  |
| Jason Nisbet      | Governor's Office         |
| Josh Kevan        | RVK                       |
| Marcia Beard      | RVK                       |
| David Jones       | Major Oak                 |
| Andrew Studee     | Major Oak                 |
| Harry Marsteller  | Major Oak                 |
| Pete Crosswell    | Major Oak (via telephone) |
| Mike Nowatski     | Forum Communications      |
| Nick Smith        | Bismarck Tribune          |

**APPROVAL OF MINUTES**

A motion to approve the minutes of the August 25, 2016 meeting was made by Treasurer Kelly Schmidt and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

**ENERGY INFRASTRUCTURE AND IMPACT OFFICE**

**Revenue Update:**

The following statistics are as of September 16, 2016:

Within the 2015-2017 biennium, the oil and gas impact grant fund (OGIGF) has received \$38,419,273.41 of distributions from gross production tax collections including the September 2016 distribution.



The February 2016 revised state revenue forecast projected the OGIGF would receive \$28.6 million of the \$140 million appropriated. The revised state revenue forecast released in July 2016 increased the projection to \$73.4 million.

The balance of carryover funds remaining in the OGIGF from previous biennium awards is \$30.4 million. For the current biennium, \$8.8 million remains after accounting for reimbursements and administrative costs. Accounting for previous and current biennium available funds, \$39.2 million is available in the OGIGF.

It seems that the OGIGF will have adequate deposits to cover current grant obligations and the required January 2017 \$5 million to critical access hospitals and \$1 million to developmentally disabled service providers. It is expected that there will be funding to address additional legislative identified grant allocations which the Board had to suspend consideration of in February.

### Cancellation of Grants

At the Board's July 2016 direction the EIO staff contacted grantees whose grants were suspended in February 2016 as a result of the projected revenue shortfall. During phone calls, several grants were identified for cancellation. Additionally, seven grant projects for airports were completed under budget and were included among the recommendations for cancellations of grants or remaining balances of grants:

| Political Subdivision                 | Year | Grant Number | Amount Awarded | Amount Paid  | Balance to be Canceled | Project Description   |
|---------------------------------------|------|--------------|----------------|--------------|------------------------|---|
| ADAMS COUNTY                          | 2014 | G140086      | \$96,750.00    | \$89,170.73  | \$7,579.27             | Training; 2 vehicles; K-9   |
| ADAMS COUNTY                          | 2014 | G140226      | \$126,450.00   | \$91,271.81  | \$35,178.19            | Mobile Computer w/ Docking Stations, Printer & Scanner; Mobile (digital) Radios w/ Installation; Tower & Repeater & Building w/ Generator & Security Fence.   |
| BEACH COMM AMBULANCE                  | 2016 | G160027      | \$67,500.00    | \$63,006.27  | \$4,493.73             | Ambulance Equipment   |
| BIG MEADOW TOWNSHIP                   | 2015 | G150279      | \$140,000.00   | \$125,400.16 | \$14,599.84            | Rebuild and Fix Roads   |
| BURKE COUNTY                          | 2014 | G140089      | \$109,233.00   | \$102,115.30 | \$7,117.70             | Housing Allowances; Overtime; Vehicle & Equipment; Equipment; Licensing Fees  |
| CITY OF STANLEY                       | 2015 | G150093      | \$80,000.00    | \$73,025.92  | \$6,974.08             | Fire Hall Renovations   |
| DICKINSON MUNICIPAL AIRPORT AUTHORITY | 2015 | G150131      | \$4,704.00     | \$3,579.91   | \$1,124.09             | FAA 2014 AIP #31 - Runway 32 Safety Area Design   |
| EARL PSD #18                          | 2016 | G160059      | \$11,973.00    |              | \$11,973.00            | Renovation and improvement projects   |
| GRASSLAND TOWNSHIP                    | 2015 | G150282      | \$32,000.00    |              | \$32,000.00            | Road Maintenance  |
| HETTINGER COUNTY                      | 2014 | G140093      | \$144,311.00   | \$141,442.08 | \$2,868.92             | Vehicles; Equipment; UTV  |
| MCHENRY COUNTY                        | 2014 | G140231      | \$115,773.00   | \$115,711.95 | \$61.05                | (1) Deputy Position; Overtime; DV Training; (1) Vehicle w/ equipment & installation; Lightbar, Radio & Radar; In-Car Camera; Uniform; Ammo, Oil changes/Fuel; Tires; Taser; Alco-Sensor; Vest; Cell Phone |
| MCHENRY COUNTY                        | 2016 | G160107      | \$2,250.00     |              | \$2,250.00             | Building, Equipment, Supplies   |
| MCLEAN COUNTY                         | 2014 | G140233      | \$126,758.00   | \$126,757.26 | \$0.74                 | (1) Criminal Investigator Position; (1) Narcotics Investigator Position; 2 Unmarked Patrol Vehicles w/ Equipment ; Supplies for new officer/vehicles; Cell phones; Modems; Netmotion fees                 |
| NEW ENGLAND RURAL FIRE DISTRICT       | 2016 | G160030      | \$22,741.00    | \$22,579.21  | \$161.79               | Stryker Power Load System   |
| SIKES TOWNSHIP                        | 2014 | G140256      | \$200,000.00   | \$99,201.00  | \$100,799.00           | Road Repairs  |
| SLOPE COUNTY                          | 2016 | G160119      | \$53,100.00    | \$45,638.54  | \$7,461.46             | Personnel, Equipment, Supplies  |
| SLOULIN INT'L AIRPORT                 | 2014 | G140074      | \$67,032.00    | \$67,031.82  | \$0.18                 | General Aviation Primary Guiding Documents (Airport Transition Policy, Minimum Standards, Lease Agreements  |
| SLOULIN INT'L AIRPORT                 | 2014 | G140298      | \$110,654.00   | \$109,898.65 | \$755.35               | Architectural Terminal Pre-Design   |
| SLOULIN INT'L AIRPORT                 | 2014 | G140299      | \$50,486.00    | \$25,243.11  | \$25,242.89            | Site Selection and Preliminary Environmental Study  |
| SLOULIN INT'L AIRPORT                 | 2015 | G150132      | \$32,748.00    | \$32,058.32  | \$689.68               | FAA 2014 AIP #38 - Purchase Class 4 - 3,000 Gallon ARFF Truck   |
| SLOULIN INT'L AIRPORT                 | 2015 | G150285      | \$895,078.00   | \$865,125.26 | \$29,952.74            | Terminal ARFF/SREE Schematic Design Reimbursement   |
| SLOULIN INT'L AIRPORT                 | 2015 | G150286      | \$496,249.00   | \$419,749.10 | \$76,499.90            | Benefit Cost Analysis/ FAA Letter Of Intent Application   |

**Total of Cancellations \$367,783.60**

**Motion: The Board canceled the 22 grant balances identified in the preceding list for a total of \$367,783.60. Subsequently the Board declared these funds as available within the oil and gas impact grant fund.**

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

## **Grant Rounds for Critical Access Hospitals and Providers to the Developmentally Disabled**

### **Critical Access Hospitals**

HB 1176 as passed by the 2015 Legislature allocated \$10 million for grants to critical access hospitals in oil producing and contiguous counties. The legislation identified that one-half of the grant funding must be distributed in January of each year. In January 2016, \$5 million was distributed to seven hospitals based upon earlier awards approved by the Board.

The EIIO will work with the Department of Human Services to begin accepting applications during October and to score the applications in November.

The following criteria was recommended:

- Qualifying hospitals must have incurred an operating loss in the most recently completed fiscal year, excluding any grant amount received in the 2016 HB 1358 Grant program for CAHs.
- Uncompensated care provided by the facility must have exceeded 2.7% of Gross Patient Revenue.
  - Uncompensated care provided over the 2.7% threshold will be eligible for grant funds. However, the amount of the grant may not result in the hospital earning a positive operating margin.
  - Gross Patient Revenue is defined as Inpatient Hospital Revenue, Outpatient Hospital Revenue and Hospital Owned Clinic Revenue. It excludes revenue from Nursing Home, Assisted Living, Basic Care, Hospice, Home Health, etc.

In 2015 the Board appointed a Critical Access Hospitals Grants Advisory Committee:

Becky Hansen, Southwest Healthcare Services, Bowman  
 Daniel Kelly, McKenzie County Healthcare, Watford City  
 Darrold Bertsch, Sakakawea Medical Center, Hazen  
 Matt Grimshaw, Mercy Medical Center, Williston  
 Randall Pederson, Tioga Medical Center, Tioga  
 Tom Nehring, ND Department of Health, Bismarck  
 Jerry Jurena, President of the ND Hospital Association, Bismarck

The EIIO will work with the advisory committee to develop December grant recommendations Board consideration.

### **Providers to the Developmentally Disabled**

HB 1176, as passed by the 2015 Legislature also allocated \$2 million for grants to providers serving individuals with developmental disabilities located in oil producing counties.

The Legislature directed distributions are to be made each January during the biennium and for the EIIO to work with the Department of Human Services (DHS) regarding grant procedures. The legislation directed that grant recommendations be based upon each provider's number of full-time equivalent positions.

In December of 2015 the Board made grants to eleven providers totaling \$1 million with distribution of these awards provided in January 2016.

The EIO will again work with the DHS to provide award recommendation to the Board in December 2016 for distribution of \$1 million in January 2017.

**Motion: The EIO is authorized to initiate energy impact grant rounds for Critical Access Hospitals and providers serving the developmentally disabled using the described criteria and advisory groups as outlined herein and in 2015 Session Law.**

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

### **Presentation to the Budget Section**

The EIO Budget Section presentation was distributed for the Board's review.

## **INVESTMENTS**

### **RVK Investment Performance Review**

Marcia Beard and Josh Kevan from RVK reviewed the performance of the permanent trust funds' pool of investment assets for the period ending June 30, 2016. They also provided an update on markets and portfolio performance since the end of the quarter.

This report presents the collective performance of the permanent trusts' investments and the performance of individual managers within the program.

The complete detailed report was reviewed by the Board and is available at the Department.

### **U.S. Equity Portfolio Restructure**

During a February 2016 comprehensive review of equities, RVK informed the Board that the permanent trusts' U.S equity portfolio had a small underweight to mid cap stocks and small overweight to small cap stocks. This size bias was established when the equity portfolio was restructured in mid 2014.

With RVK's assistance, the Department has analyzed the historic risk/return profile of U.S stocks; and the historic performance of active versus passive management of U.S equities. The results of that analysis shows that:

- Mid cap stocks have outperformed both small and large cap stocks by a substantial margin over the past 36 years
- Small cap stocks have outperformed large cap stocks, but are more volatile than both mid and large cap stocks
- Evidence in support of the active management of small cap stocks is compelling
- Evidence in support of active management of both mid and large cap stocks is far less compelling

The permanent trusts' allocation to domestic equities is approximately \$649 million, which represents 17% of total fund assets. Of that \$649 million, 79% (\$512 million) is invested in a passive S&P 500 Index fund managed by State Street Global Advisors and 21% (\$137 million) is invested in an active small cap portfolio managed by Northern Trust. The cost of managing the U.S. Equity portfolio has averaged approximately 15 basis points (0.15%) per year over the past 2 years.

Using RVK's optimization tools, a revised domestic equity portfolio structure for the permanent trusts was developed and recommended:

- 78% Russell 1000 Index
- 10% Russell Mid Cap Index
- 12% actively managed small cap

The resultant portfolio over weights both mid and small cap stocks by approximately 30% versus their benchmark weight in the Russell 3000. The recommended structure will also bring down the cost of managing the domestic portfolio to approximately 9.6 basis points annually.

Northern Trust and State Street Global Advisors (SSGA) were both requested to provide estimates to manage the suggested allocations in the Russell 1000 and Russell Mid Cap index mandates.

Both proposed fees of 1.0 basis points for a Russell 1000 Index product, this is down from the 1.5 basis point fee currently paid to SSGA for the S&P 500 Index. Both firms also proposed a fee of 3.0 basis points for a Russell Mid Cap index product.

Further discussions with both entities resulted in SSGA agreeing to lower the fee for the current World Ex US Index portfolio it manages from 2.5 basis points to 2.0 basis points. The World Ex US fee reduction proposed by SSGA more than offsets the custody saving advantage that would be achieved by investing through Northern.

Recommended Motion:

**The Board:**

1. **Adopts a new structure for the permanent trusts' U.S. equity portfolio that includes a 78% allocation to in the Russell 1000 Index, a 10% allocation to the Russell Mid Cap Index and a 10% allocation to actively managed small cap equities;**
2. **Achieves the desired structure by using SSGA to manage the two index portfolios and continue to use Northern Trust to manage the active small cap;**
3. **Directs the Commissioner to amend agreements as needed to implement the desired fund structure.**

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

**Asset Class Review – Diversified Inflation Strategies**

Each quarter, the Board reviews a separate investment asset class in which the permanent trust funds participate. At this meeting, RVK reviewed the permanent trusts' diversified inflation strategies portfolio. The permanent trusts' diversified inflation strategies investment is made up of four different

portfolios that hold TIPS (treasury inflation protected securities), commodities, master limited partnerships (MLPs) and natural resource equities.

The commodities, MLPs and natural resource equities portfolios are all actively managed; these portfolios were initially funded in June 2015 as a result of the RVK asset allocation implementation project. The TIPS portfolio, which has been a part of the permanent trusts' portfolio since June of 2004, is a passively managed commingled fund.

The presentation covered the asset class as a whole, as well as the specific strategies and managers. The presentation was reviewed by the Board and is available at the Department.

#### **Investment Policy Statement Amendment of Fixed Income Benchmark**

During the June 2016 Board meeting, RVK presented a review of the Permanent Trusts' fixed income investments and discussed revision of the benchmark to more closely reflect exposures to non-US debt and high yield credit. Subsequently, appropriate options were evaluated and the Department and the consultant recommended an update to the investment policy statement to change the fixed income benchmark from the Barclays Global Aggregate to a blended benchmark of 75% Barclays US Universal Index and 25% Barclays Multiverse Index.

**Motion: The Board adopts the blended benchmark of 75% Barclays US Universal Index and 25% Barclays Multiverse Index for the fixed income composite of the Permanent Trust Funds, and accepts the proposed changes within its Investment Policy Statement.**

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

#### **Other Funds Managed by the Board – 2<sup>nd</sup> Quarter 2016**

##### **STRATEGIC INVESTMENT AND IMPROVEMENTS FUND**

The Strategic Investment and Improvements Fund (SIIF) was created in 2011, holds the assets and collects the revenues earned from sovereign mineral acres, including those formerly owned by the Bank of North Dakota and State Treasurer, as well as the minerals located under navigable rivers and lakes. The SIIF also receives a portion of the oil and gas production and extraction taxes. Because the entire balance of this fund can be appropriated each biennium, it is invested in a conservative, short-term fixed income portfolio.

|   | 06/30/16<br>Asset Balances | Yield/Total Return<br>for Qtr. Ended 6/30/16 |
|---|----------------------------|--|
| <b>Strategic Investment and Improvements Fund</b> |                            |  |
| Loan Guarantee – Fuel Production                  | \$ 18,169,000              | <b>0.40% Yield</b>                           |
| Investments/Cash                                  | 327,037,000                | <b>0.65% Total Return</b>                    |
| <b>Total</b>                                      | <b>\$ 345,206,000</b>      |  |

The Board reviewed the authorized transfers which occurred within the SIIF during the first fiscal year of the biennium:

- ♦ \$150 million of school construction loans were transferred to the newly created school construction assistance loan fund (SCALF) in July 2015. SB 2039 gave control of the SCALF to the Bank of North

Dakota (BND); contingent on voter approval of a constitutional measure in November 2016. The Board manages the SCALF until it is determined by voters if it will be transferred to the BND.

- ◆ The medical facilities infrastructure fund, which had been managed by the BND but owned by the SIIF, became a revolving fund managed by the BND in July 2015. The approximately \$50 million of loans and assets in this fund will no longer be paid back to the SIIF.
- ◆ In February 2016, OMB transferred \$50.0 million of SIIF money to BND to fund the newly created infrastructure revolving loan fund. This transfer of funds is permanent.
- ◆ The funds set aside to guarantee a loan for the Dakota Spirit AgEnergy biomass fuel production facility earned an annualized yield of approximately 0.40% during the quarter. In addition, the annual guarantee fee of \$45,000 (0.25% of the outstanding loan balance) was received in June 2016.
- ◆ During the quarter ended June, 2016, the SIIF earned approximately \$17.9 million. \$14.4 million of revenues came from oil and gas royalties, \$2.2 million came from investment income and capital gains, and \$894,000 came from mineral bonuses.

### APPROPRIATED TRANSFERS FY 2016

The table below shows a breakdown of the \$314.78 million of cash transfers that came out of the SIIF during fiscal year 2016:

| Amount         | Bill (Agency)                 | Purpose  |
|----------------|-------------------------------|--|
| \$237 million  | SB 2103 - SURGE (DOT)         | Balance of distributions to counties for road and bridge infrastructure needs. |
| \$13,125,322   | HB 1014 - (NDIC)              | Balance of funding for new core library  |
| \$650,000      | HB 1285 - (Commerce)          | Grants to domestic violence organizations                                      |
| \$7.5 million  | HB 1018 - (Commerce)          | Funding to enhanced use lease grant program at GFAB                            |
| \$3.0 million  | HB 1020 - (Extension Service) | Partial transfer of funding for veterinary diagnostic laboratory project       |
| \$50.0 million | HB 1443 - (BND)               | Transfer to BND infrastructure revolving loan fund                             |
| \$3.5 million  | HB 1012 - (DOT)               | Partial funding for DOT's short line railroad program                          |

An additional \$18.7 million of appropriated transfers are scheduled to come from the SIIF over the remainder of the 2015-17 biennium:

| Amount         | Bill (Agency)                                       | Purpose   |
|----------------|---|---|
| \$3.5 million  | HB 1012 - (DOT)                                     | Remaining funding for DOT's short line railroad program         |
| \$15.0 million | HB 1020 - (Extension Service)                       | Balance of funding for veterinary diagnostic laboratory project |
| \$200,000      | HB 1022 – Commission on Legal Counsel for Indigents | Funding for contract services                                   |

A contingent appropriation of \$25.85 million to the state highway fund will not occur during FY 2017, as budget projections for the General Fund revenues did not exceed legislative estimates by \$126.0 million for the fiscal year ended June 30, 2016, as required by law.

### SCHOOL CONSTRUCTION ASSISTANCE LOAN FUND (SCALF)

The SCALF was created by SB 2039, effective July 1, 2015, with a transfer of \$150 million of outstanding school construction loans from the SIIF. SB 2039 gave control of the SCALF to the BND, contingent on voter approval of a constitutional measure in November 2016. The Board manages the SCALF until it is determined if it will be transferred to BND or not.

- ◆ As of June 30, 2016, the SCALF had a balance of approximately \$153.2 million and was made up of \$143.2 million of school construction loans, \$8.7 million of invested cash, and \$1.3 million of accrued income.

- ♦ The \$8.7 million of cash represents principal and interest payments received during fiscal year 2016, and is available to loan by the Department of Public Instruction.
- ♦ The average yield of the outstanding total loan balance was 1.43% as of June 30, 2016. The invested cash is currently earning an annual yield of about 0.20%.

### COAL DEVELOPMENT TRUST FUND

The Coal Development Trust Fund (CDTF) is a permanent fund from which the Board issues loans to energy impacted counties, cities and school districts as provided in NDCC Section 57-62-03, and lends to school districts pursuant to NDCC Chapter 15-60. The Board is responsible for investing all funds that have not been lent to political subdivisions. As directed in the Constitution, the income earned by the CDTF is transferred to the General Fund each year. The CDTF has historically been invested in a conservative short-term fixed income portfolio.

|   | 6/30/2016<br>Asset Balances | Yield/Total Return<br>for Qtr. Ended 6/30/16 |
|---|-----------------------------|--|
| <b><u>Coal Development Trust Fund</u></b> |                             |  |
| School Construction Loans                 | \$ 43,513,000               | 1.67% Yield                                  |
| Coal Impact Loans                         | 13,315,000                  | 3.37% Yield                                  |
| Investments/Cash                          | <u>11,141,000</u>           | 0.65% Total Return                           |
| <b>Total</b>                              | <b>\$ 67,969,000</b>        |  |

- ♦ No new loans were funded out of the CDTF during the quarter ended June 30, 2016.
- ♦ In the school construction loan program, principal payments of \$7.6 million and interest payments of \$798,000 were received in fiscal year 2016. As of June 30, 2016, just under \$6.5 million of school loan capacity was available under the \$50 million loan cap for this program
- ♦ The investable balance of the CDTF was \$11.1 million at quarter's end, up \$6.5 million from \$4.6 million on March 31, 2015.

### CAPITOL BUILDING FUND

The Capitol Building Fund is a Constitutional fund that was created for the construction and maintenance of "public buildings at the capital." It generates revenues from its 10,000 surface and 27,700 mineral acres. Because the entire balance of this Fund can be appropriated by the legislature each biennium, it is invested in conservative, short-term fixed income portfolio.

The Capitol Grounds Planning Commission (CGPC) has official control over the Capitol Building Fund; the Land Board is responsible for investing the assets on behalf of the CGPC.

|                                     | 6/30/16<br>Asset Balance | Total Return<br>Qtr. Ended 6/30/16 |
|-------------------------------------|--------------------------|------------------------------------|
| <b><u>Capitol Building Fund</u></b> |                          |                                    |
| Investments/Cash                    | \$ 6,861,000             | 0.65% Total Return                 |

- ♦ The 64<sup>th</sup> Legislative Session, appropriated approximately \$5.7 million from the Capitol Building Fund:
  - \$4.0 million for a new Governor's residence (SB 2304)
  - \$1.4 million for capitol building entrance and signage projects (SB 2015)
  - \$310,000 for legislative wing electrical and ceiling repairs (SB 2015)
- ♦ In addition to the specific appropriations, NDCC 48-10-02 provides the CGPC with continuing appropriation authority of \$175,000 from the Fund, and SB 2015 contains a \$25,000 operating appropriation for the CGPC.

- ◆ During the quarter, the Capitol Building Fund collected approximately \$204,000 of oil and gas royalties. The next biggest contributor to fund growth during the quarter were investment income and capital gains which totaled more than \$41,000.
- ◆ During the quarter, \$1.0 million was transferred to Facilities Management to help pay for some of the upfront costs associated with the new governor's residence. The Capitol Building Fund has not received the \$500,000 transfer of donated money that is required before construction of the residence begins.
- ◆ The investment assets of the Capitol Building Fund are commingled with the SIIF, Coal Development Trust Fund in the Northern Trust Ultra-Short bond portfolio.

The Ultra-Short Performance Report dated June 30, 2016 and Ultra-Short Performance Report dated August 31, 2016 were provided to the Board for review and are available at the Department.

## Investment Updates

### Asset Allocation

The status of the asset allocation of the permanent trusts as of August 31, 2016, compared to the target allocation for each asset class.

| Account/Asset Class               | Long-Term Asset Allocation | 8/31 Actual Allocation \$ | 8/31 Actual Allocation % |
|-----------------------------------|----------------------------|---------------------------|--------------------------|
| Large Cap US Equity               | 13.5%                      | \$ 512,770,232            | 13.6%                    |
| Small Cap US Equity               | 3.5%                       | \$ 135,471,952            | 3.6%                     |
| International Equity              | 12.0%                      | \$ 450,356,993            | 11.9%                    |
| Emerging Market Equity            | 3.0%                       | \$ 114,073,306            | 3.0%                     |
| <b>Total Equities</b>             | <b>32.0%</b>               | <b>\$ 1,212,672,482</b>   | <b>32.1%</b>             |
| Domestic Investment Grade         | 14.2%                      | \$ 541,980,003            | 14.4%                    |
| High Yield FI                     | 3.0%                       | \$ 111,656,444            | 3.0%                     |
| International/Global FI           | 5.8%                       | \$ 217,279,232            | 5.8%                     |
| <b>Total Fixed Income</b>         | <b>23.0%</b>               | <b>\$ 870,915,680</b>     | <b>23.1%</b>             |
| <b>Total Absolute Return</b>      | <b>20.0%</b>               | <b>\$ 752,287,800</b>     | <b>19.9%</b>             |
| Commodities                       | 3.0%                       | \$ 110,118,498            | 2.9%                     |
| MLPs                              | 3.0%                       | \$ 112,283,808            | 3.0%                     |
| TIPS                              | 2.0%                       | \$ 74,572,498             | 2.0%                     |
| Natural Resource Equities         | 2.0%                       | \$ 76,827,662             | 2.0%                     |
| <b>Total Inflation Strategies</b> | <b>10.0%</b>               | <b>\$ 373,802,466</b>     | <b>9.9%</b>              |
| Core Real Estate                  | 8.0%                       | \$ 325,803,443            | 8.6%                     |
| Core Plus Real Estate             | 7.0%                       | \$ 239,518,096            | 6.3%                     |
| <b>Total Real Estate</b>          | <b>15.0%</b>               | <b>\$ 565,321,540</b>     | <b>15.0%</b>             |
| <b>Total Asset</b>                | <b>100.0%</b>              | <b>\$ 3,774,999,968</b>   | <b>100.0%</b>            |

The remaining \$28.25 million commitment to J.P. Morgan's Income and Growth Fund has been called; the funds will be transferred to J.P. Morgan on October 3, 2016. With this transfer, the real estate investment is essentially fully funded, and the permanent trust funds' long-term target allocations will be used to manage and evaluate the permanent trust investment portfolio.

### J.P. Morgan – Columbus (\$251 million, 6.7% of assets)

In June the Board was informed that RVK had placed the J.P. Morgan – Columbus fixed income team on its "watch list", due to a number of recent departures.



In early September, representatives of J.P. Morgan traveled met with Department staff about the investment's performance, compliance and strategy. The Commissioner and investment staff are confident that J.P. Morgan's fixed income team can continue to do the job for which they were hired. Both RVK and the Department will continue to monitor this manager closely and will report any concerns to the Board.

#### **Jamestown Premier Property Fund (\$77.4 million, 2.1% of assets)**

On September 22, 2016, Jamestown Premier Property Fund distributed approximately \$4.5 million dollars to the trusts. This distribution of "sale proceeds" represents the trusts' share of the gain earned on the sale of one of the portfolio's buildings. In this case, 245 First Street in Cambridge, MA.

This distribution is at Jamestown's discretion.

## **OPERATIONS**

### **Deputy Commissioner**

Among the informal recommendations offered in the Department's performance audit, was a suggestion that the 'deputy commissioner' role be assigned under the requirements of NDCC §15-02-04 which requires the Board's consent of the appointment of a deputy commissioner and the subscription by that appointee of an oath of office.

The statutory role of the deputy is to serve as secretary for Board meetings in the Commissioner's absence, and the Board has also authorized the deputy to sign trust land easements and permits when the Commissioner is unavailable.

The Board's concurrence was requested to approve Linda Fisher as the deputy commissioner of the Department of Trust Lands.

**Motion: The Board consents to the appointment of Linda Fisher as deputy commissioner of university and school lands and requests that Ms. Fisher take and subscribe the oath of office required by law for civil officers.**

| <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 Dalrymple         |               |               | X          |            |               |

### **Business Process Modeling Project Update**

The Department has hired Major Oak Consulting to undertake a Business Process Modeling (BPM) project to analyze current processes and identify recommendations for process improvements and future system strategy in support of a budget request for improved and advanced information technology systems.

In addition to interacting with all Department employees to document current processes and discuss improvements opportunities, Major Oak has been contacting peer organizations, software vendors, and various industry professionals. The information gathered will be used in completing a contract

deliverable that requires recommendations on system replacement options and estimated costs for budgeting purposes.

Major Oak's project summary and status report was provided to the Board for review. Major Oak personnel, Harrison Marsteller, David Jones, Pete Croswell and Andrew Studee provided project highlights to the Board.

## R E P O R T S

### **Performance Audit Implementation Tracking**

Following the April 2016 release and presentation of the State Auditor's performance audit report No. 3036 relating to the Energy Infrastructure and Impact Office, Unclaimed Property, and Trust Assets and Department Resources, the Department built an improvement tracking tool to record and gauge progress on each of the audit recommendations. This database details the recommendation, the Department response, a time stamped improvement tracking log, policy summaries or plans, and the location of any related documents.

The Legislative Audit and Fiscal Review Committee has requested an update of the Department's progress on implementing audit recommendations at its October 13, 2016 meeting. The Board reviewed graphs which depicted progress on the audit recommendations that will be presented to the committee.

### **The Board reviewed Easements Issued by Land Commissioner from 8-16-16 through 9-9-16**

|                     |  |
|---------------------|--|
| <b>Granted to:</b>  | <b>ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT</b>                |
| For the Purpose of: | Easement: Drop Line-Gas Gathering Pipeline                   |
| Legal Description:  | MCK-153-97-16-NE4  |
| <b>Granted to:</b>  | <b>1804 OPERATING LLC, DALLAS-TX</b>                         |
| For the Purpose of: | Easement-Amend: Drop Line-Pipeline                           |
| Legal Description:  | MCK-153-97-16-NE4  |
| <b>Granted to:</b>  | <b>NP RESOURCES LLC, DENVER-CO</b>                           |
| For the Purpose of: | Permit: Access Road  |
| Legal Description:  | MCK-145-102-36-NW4   |
| <b>Granted to:</b>  | <b>AMERICAN MIDSTREAM BAKKEN LLC, WATFORD CITY-ND</b>        |
| For the Purpose of: | Easement-Amend: Oil Gathering Pipeline                       |
| Legal Description:  | MCK-150-99-16-NW4  |
| <b>Granted to:</b>  | <b>ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT</b>                |
| For the Purpose of: | Easement: Drop Line-Gas Gathering Pipeline                   |
| Legal Description:  | GOL-143-103-36-NE4   |
| <b>Granted to:</b>  | <b>HESS NORTH DAKOTA PIPELINES LLC, MINOT-ND</b>             |
| For the Purpose of: | Easement: Gas Gathering Pipeline                             |
| Legal Description:  | MOU-156-92-36-SW4  |
| <b>Granted to:</b>  | <b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b>    |
| For the Purpose of: | Easement: Drop Line-Electric Distribution Line               |
| Legal Description:  | MCK-151-95-16-NW4, SW4                                       |
| <b>Granted to:</b>  | <b>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND</b> |
| For the Purpose of: | Easement: Drop Line-Electric Distribution Line               |
| Legal Description:  | MOU-156-92-36-SW4  |
| <b>Granted to:</b>  | <b>SACAGAWEA PIPELINE CO LLC, IRVING-TX</b>                  |
| For the Purpose of: | Permit: Section Line Access Road                             |
| Legal Description:  | MOU-153-91-16-NE4  |

|   |  |
|---|--|
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:                         | <b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b><br>Easement-Amend: Electric Distribution Line - Above Ground<br>MCK-152-99-36-NW4                                    |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:                         | <b>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND</b><br>Easement-Amend: Electric Distribution Line - Above Ground<br>WIL-154-97-16-NW4                                 |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:                         | <b>DUNN COUNTY, MANNING-ND</b><br>Easement: Road Right-of-Way<br>DUN-146-97-36-NE4   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:                         | <b>B.O.B. ENTERPRISES, KILLDEER-ND</b><br>Letter of Permission: Access to School Land (Frac project)<br>DUN-148-96-36-LOTS 1,2,6,7, NW4SE4, S2SE4, LOT 8,<br>S2NW4, LOTS 3,4,5 |
| <b>Granted to:</b><br>For the Purpose of:<br>Right-of-Way Number:<br>Legal Description: | <b>MBI ENERGY SERVICES, KILLDEER-ND</b><br>Letter of Permission: Access to School Land (Frac project)<br>RW0007885<br>MOU-154-93-16-NE4, NW4                                   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:                         | <b>SELECT ENERGY SERVICES LLC, WILLISTON-ND</b><br>Letter of Permission: Access to School Land (Frac project)<br>MCK-153-94-36-SW4   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:                         | <b>WEST DAKOTA WATER LLC, WILLISTON-ND</b><br>Letter of Permission: Access to School Land (Frac project)<br>MCK-153-97-16-NE4, NW4, SW4  |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:                         | <b>SELECT ENERGY SERVICES LLC, WILLISTON-ND</b><br>Letter of Permission: Access to School Land (Frac project)<br>MCK-150-95-16-SW4   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:                         | <b>WHITING OIL AND GAS CORPORATION, DENVER-CO</b><br>Letter of Permission: Access to School Land (Frac project)<br>MCK-153-97-16-NE4   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description:                         | <b>SELECT ENERGY SERVICES LLC, WILLISTON-ND</b><br>Letter of Permission: Access to School Land (Frac project)<br>MCK-149-95-36-LOTS 3,4  |

## A D J O U R N

There being no further business, the meeting was adjourned at 10:10 AM.

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Jack Dalrymple, Chairman  
Board of University and School Lands

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Lance D. Gaebe, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
October 18, 2016**

The October 18, 2016 meeting of the Board of University and School Lands was called to order at 2:30 PM in the Governor's Conference Room by Chairman Jack Dalrymple.

**Members Present:**

|                 |                                      |
|-----------------|--------------------------------------|
| Jack Dalrymple  | Governor                             |
| Alvin A. Jaeger | Secretary of State                   |
| Kelly Schmidt   | State Treasurer                      |
| Kirsten Baesler | Superintendent of Public Instruction |

**Member Absent:**

|                 |                  |
|-----------------|------------------|
| Wayne Stenehjem | Attorney General |
|-----------------|------------------|

**Department of Trust Lands Personnel present:**

|                  |                              |
|------------------|------------------------------|
| Lance D. Gaebe   | Commissioner                 |
| Allisen Bement   | Mineral Title Specialist     |
| Drew Combs       | Director, Minerals Division  |
| Taylor Lee       | Director, Revenue Compliance |
| Catelin Newell   | Office Manager               |
| Kristie McCusker | Legal Assistant              |

**Guests in Attendance:**

|                        |   |
|------------------------|---|
| Hope Hogan             | Office of the Attorney General                      |
| Jen Verleger           | Office of the Attorney General                      |
| Matt Sagsveen          | Office of the Attorney General                      |
| Tom Trenbeath          | Office of the Attorney General                      |
| Bonnie Storbakken      | Governor's Legal Counsel                            |
| Jason Nisbet           | Governor's Office                                   |
| Ron Rauschenberger     | Governor's Office                                   |
| Jerry Heiser           | Office of the State Engineer/State Water Commission |
| John Paczkowski        | Office of the State Engineer/State Water Commission |
| Craig Smith            | Crowley Fleck                                       |
| Lawrence Bender        | Fredrikson & Byron                                  |
| Larry L. Larson        | NDSEA   |
| Michael Cymbaluk       | Self  |
| Cary Backstrand        | ND Elks Association                                 |
| Rob Lindberg           | Bakken Backers                                      |
| Alexis Brinkman Baxley | North Dakota Petroleum Council                      |
| Ron Ness               | North Dakota Petroleum Council                      |
| Mike Nowatski          | Forum News Service                                  |

Chairman Jack Dalrymple opened the meeting with the following statement:

"The Land Board has been consistent in its leasing practices concerning the minerals under the Missouri River and Lake Sakakawea. For purposes of leasing sovereign minerals the Land Board has utilized the Phase I Delineation which establishes the Ordinary High Water mark of the Yellowstone and Missouri Rivers from the Montana State Line to the Highway 85 Bridge. When leasing minerals between the Highway 85 Bridge and the Four Bears Bridge the Land Board has used the Phase II study which identified the Historic River channel as it existed immediately prior to inundation by Lake Sakakawea. The Board did not initiate any of the current litigation regarding the minerals."

**Motion: The Land Board will not change any leasing practices concerning the minerals under the Missouri River and Lake Sakakawea until such time as the North Dakota Legislative Assembly has had the opportunity to consider a definition of the Ordinary High Water Mark as it is used in establishing the State's sovereign ownership of oil and gas minerals.**

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

## MINERALS MANAGEMENT

### Sovereign Lands Litigation Update

The Board reviewed a summary of litigation in which it is involved regarding sovereign lands and minerals.

In December 2013, the North Dakota Supreme Court issued a decision in *Reep v. State* and *Brigham v. State* holding that the State of North Dakota owns the mineral interests up to the ordinary high water mark (OHWM) of navigable rivers and water bodies. Notwithstanding affirmation of the State's ownership of the land and minerals to the OHWM in *Reep* and *Brigham*, litigation on specific local circumstances and river features continue.

**Whiting Oil and Gas Corp. v. Arlen A. Dean, et al.  
McKenzie County District Court  
Case No. 27-2016-CV-00040  
Honorable Robin Schmidt**

Whiting Oil and Gas Corporation ("Whiting") operates the Kuykendall 34-31-1H well located in McKenzie County near the Montana border. The Yellowstone River flows through the Kuykendall well spacing unit. Over time, the river has shifted westward. There are also islands within the Kuykendall well spacing unit. On January 25, 2016, Whiting filed this interpleader action to resolve alleged title questions that have arisen due to the Yellowstone River. Because of these title questions, Whiting is withholding royalty payments. In its lawsuit, Whiting essentially asks the court to require all those asserting title to the minerals in the spacing unit to set forth and prove their claims, and once the court rules on those claims, Whiting will know who to pay.

The State claims a mineral interest under the Yellowstone River, including the islands, and the Board also claims a 5% mineral interest in some of the riparian tracts in this spacing unit.

The Board and the State Engineer filed a joint response to the Complaint and several cross claims that have been made against the State. A scheduling order has not been issued.

**William S. Wilkinson v. Board of University and School Lands, et al.  
Williams County District Court  
Case No. 53-2012-CV-00038  
Honorable Paul Jacobson**

The Wilkinson lawsuit was filed on January 10, 2012. The Plaintiffs assert that they own minerals in about 200 acres 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. The 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 historical Missouri River – rather than the Phase I Delineation – current location of the OHWM. The 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. The Plaintiffs argue that the State's title to the Missouri River is limited to the channel as it existed prior to inundation of Lake Sakakawea.

In January, the State Engineer filed a motion to intervene in the case, which was granted. A joint motion for summary judgment was filed by the Board and the State Engineer on March 1, 2016. This motion was opposed by the Wilkinson family. 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 the 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. The Plaintiffs filed a notice of appeal on June 1, 2016. Both EOG and Statoil Oil and Gas LP have filed cross-appeals in this case. The Appellants' brief is due October 28, 2016.

**EEE Minerals, LLC et al. v. State of North Dakota et al.**  
**U.S. District Court – District of ND (Western)**  
**Case No. 1:16-cv-00115**  
**Honorable Daniel L. Hovland**

On July 31, 2014, the Attorney General's Office was served with a complaint in the above referenced matter. This case is requesting class action certification and alleges identical causes of action to the *Wilkinson* case. In January 2016, the State Engineer filed a motion to intervene, which was granted on March 3, 2016. Also in March, the Plaintiffs amended their complaint to: (1) add two additional named plaintiffs, (2) expand the scope of the proposed class action property from the Montana border to the border of the Fort Berthold reservation, and (3) add as defendants all of the Board's lessees. On May 13, 2016, several of the recently added defendants removed the case to federal court based on diversity and federal questions. On June 11, 2016, the Board and the State Engineer filed a motion to dismiss arguing that: (1) the counts of the amended complaint that address the US Constitution and US Code are not ripe; and (2) asserting the State's right to sovereign immunity. Several other motions to dismiss have been filed by the other defendants, as well as motions to join the United States as a defendant. The Plaintiffs have requested oral arguments on the motions to dismiss. On October 3, 2016, Judge Hovland issued an order denying the request for oral arguments and granting the motions to dismiss.

In his order, Judge Hovland found that because the United States claims an interest in the lands subject to this litigation, "no court, whether a state court or a federal court, could craft an effective judgment and address the litany of claims and disputes that exist in this complex litigation, if the federal government is not bound by the judgment. There is no court that could ever craft a judgment and carve out the ownership interests of the federal government from the judgment and achieve a fair and just result. The United States is a required, necessary, and indispensable party to the litigation."

**Statoil Oil & Gas, LP v. Abaco Energy, LLC, et al.**  
**Williams County District Court**  
**Case No. 53-2015-CV-00744**  
**Honorable Judge David Nelson**

**Statoil Oil & Gas, LP v. 1280 Royalties LLC, et al.**  
**Williams County District Court**  
**Case No. 53-2015-CV-01437**  
**Honorable Judge Paul Jacobson**

Similar to the *Whiting* case listed above, Statoil has filed these two cases as interpleaders for the lands underlying spacing units operated by Statoil which are located east of the Bridge. Statoil is requesting the Court determine the property interests for the spacing units so that Statoil can correctly distribute the proceeds from the wells. The federal government claims a mineral interest to portions of the subject lands in both cases. Statoil acknowledges in the complaint that the United States claims an interest but is not amenable to state court jurisdiction. State's claim to sovereign lands' mineral interest be restricted to those minerals located below the OHWM of the Missouri River prior to inundation by Lake Sakakawea.

An answer was filed on behalf of the Board on July 21, 2015. In January 2016, the State Engineer intervened in the case. The Court has scheduled a six-person jury trial for March 12-16, 2018. On September 20, 2016, the Plaintiffs filed a motion for partial summary judgment in which they are requesting the court determine the breach of contract claim and failure to pay royalties claim for tracts it believes are not in dispute by this litigation.

**Mary K. Starin v. Kelly Schmidt, et al.**  
**Williams County District Court**  
**Case No. 53-2015-CV-00986**  
**Honorable David Nelson**

The Plaintiff initiated this quiet title action to determine title to property located under Lake Sakakawea. In 1939, the State acquired the disputed property through a foreclosure of a Bank of North Dakota loan. The State then sold the property through a contract for deed in 1945 to the Plaintiff's predecessors in interest. Pursuant to state law, the state reserved 50% of the minerals. The Special Warranty Deed issued after satisfaction of the contract for deed was not recorded, and no one has a copy of the fully executed deed. The surface estate was later condemned as part of the Garrison Dam reservoir project. The Plaintiffs have brought this action to clear title to the 50% of the minerals that they believe to be theirs. The Board has leased the 50% mineral interest it reserved in this conveyance.

In January 2016, the State Engineer intervened in this case. The parties are currently engaged in discovery. The Court has not scheduled a trial date or issued a scheduling order.

**ND Office of State Engineer, Board of University and School Lands v. BLM**  
**US Dept. of Interior Office of Hearings and Appeals – Board of Land Appeals**  
**IBLA 2016-170**

In 2014, the Bureau of Land Management (BLM) resurveyed land along the Missouri River to locate the boundary (OHWM) between the public domain land owned by the United States and the riverbed owned by the state of North Dakota. In identifying the OHWM, the BLM applied federal law rather than state law. Specifically the BLM adopted the survey conducted by the Corps of Engineers as part of the Garrison Dam project. In certain areas, the survey overlaps with the state's claim to sovereign lands.

After the survey work was complete, the BLM published a "Notice of Filing Plats of Survey; North Dakota" in which BLM intended to formally file the survey plats as Official Plats. After the Federal Register Notice appeared, the State Engineer and the Board jointly filed a protest challenging the filing of the survey plats. The BLM rejected the State's protest and the State appealed the BLM's decision to the IBLA. The State is waiting for the decision on the appeal.

## EXECUTIVE SESSION

**Motion: Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, that the Board closes this meeting to the public and enters executive session for the purpose of consultation with its attorneys on pending and active litigation that challenge the State's claim to sovereign lands, including:**

- **Whiting Oil and Gas Corp. v. Arlen A. Dean et al.**
- **William S. Wilkinson v. Board of University & School Lands, et al.**
- **EEE Minerals, LLC, et al. v. State of North Dakota, et al.**
- **Statoil Oil & Gas LP v. 1280 Royalties LLC, et al.**
- **Statoil Oil & Gas LP v. Abaco Energy, LLC et al.**
- **Whitetail Wave, LLC v. XTO Energy, Inc., et al.**
- **Mary K. Starin v. Kelly Schmidt, et al.**
- **ND Office of State Engineer, Board of University & School Lands, et al. v. BLM US Dept. of Interior Office of Hearings and Appeals**

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

At 2:50 PM the Board entered executive session for the purposes outlined in its adopted motion.

## EXECUTIVE SESSION

### Members Present:

|                 |                                      |
|-----------------|--------------------------------------|
| Jack Dalrymple  | Governor                             |
| Alvin A. Jaeger | Secretary of State                   |
| Kirsten Baesler | Superintendent of Public Instruction |
| Kelly Schmidt   | State Treasurer                      |

### Member Absent:

|                 |                  |
|-----------------|------------------|
| Wayne Stenehjem | Attorney General |
|-----------------|------------------|

### Department of Trust Lands Personnel present:

|                  |                              |
|------------------|------------------------------|
| Lance D. Gaebe   | Commissioner                 |
| Allisen Bement   | Mineral Title Specialist     |
| Drew Combs       | Minerals Manager             |
| Taylor Lee       | Director, Revenue Compliance |
| Kristie McCusker | Legal Assistant              |
| Catelin Newell   | Office Manager               |

### Authorized Guests in Attendance:

|                   |   |
|-------------------|---|
| Hope Hogan        | Office of the Attorney General                      |
| Jen Verleger      | Office of the Attorney General                      |
| Matt Sagsveen     | Office of the Attorney General                      |
| Tom Trenbeath     | Office of the Attorney General                      |
| Bonnie Storbakken | Governor's Legal Counsel                            |
| Jason Nisbet      | Governor's Office                                   |
| Jerry Heiser      | Office of the State Engineer/State Water Commission |
| John Paczkowski   | Office of the State Engineer/State Water Commission |

No action was taken during the Executive Session which was adjourned at 3:08 PM and the Board returned to open session and the public was invited to return to the meeting.



**R E P O R T S**

**Testimony presented to the Legislative Audit and Fiscal Review Committee on October 13, 2016 was provided to the Board.**

**A D J O U R N**

There being no further business, the meeting was adjourned at 3:10 PM.

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Jack Dalrymple, Chairman  
Board of University and School Lands

---

Lance D. Gaebe, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
October 27, 2016**

The October 27, 2016 meeting of the Board of University and School Lands was called to order at 9:00 AM in the Governor's Conference Room by Chairman Jack Dalrymple.

**Members Present:**

|                 |                    |
|-----------------|--------------------|
| Jack Dalrymple  | Governor           |
| Alvin A. Jaeger | Secretary of State |
| Wayne Stenehjem | Attorney General   |
| Kelly Schmidt   | State Treasurer    |

**Member Absent:**

|                 |                                      |
|-----------------|--------------------------------------|
| Kirsten Baesler | Superintendent of Public Instruction |
|-----------------|--------------------------------------|

**Department of Trust Lands Personnel present:**

|                  |                               |
|------------------|-------------------------------|
| Lance D. Gaebe   | Commissioner                  |
| Jeff Engleson    | Director, Investment Division |
| Drew Combs       | Director, Minerals Division   |
| Levi Erdmann     | Investment Analyst            |
| Linda Fisher     | Deputy Commissioner           |
| Catelin Newell   | Office Manager                |
| Kristie McCusker | Legal Assistant               |

**Guests in Attendance:**

|                  |                                |
|------------------|--------------------------------|
| Hope Hogan       | Office of the Attorney General |
| Jason Nisbet     | Governor's Office              |
| David Jones      | Major Oak                      |
| Andrew Studee    | Major Oak                      |
| Harry Marsteller | Major Oak                      |
| Pete Croswell    | Major Oak                      |

**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 September 29, 2016 and October 18, 2016 meetings was made by Treasurer Kelly Schmidt and seconded by Secretary Al Jaeger and the motion carried unanimously on a voice vote.

**Permanent Trust Distributions for the 2017-2019 Biennium**

Permanent trust distributions are determined using the distribution formula found in Article IX, Section 2 of the North Dakota Constitution, which states in part: "biennial distributions from the perpetual trust funds must be ten percent of the five-year average value of trust assets, excluding the value of lands and minerals. The average value of trust assets is determined by using the assets' ending value for the fiscal year that ends one year before the beginning of the biennium and the assets' ending value for the four preceding fiscal years. Equal amounts must be distributed during each year of the biennium."

The fund balances in the annual audited financial statements are used to determine trust ending asset values.

The following table outlines the constitutionally mandated distribution amounts for each permanent trust for the 2017-19 biennium; it also includes comparisons to 2015-17 biennial distributions.

| Trust Fund            | 2015-2017 Bi. Distributions | 2017-2019 Bi. Distributions (1) | Increase in Distributions | % Increase in Distributions |
|-----------------------|-----------------------------|---------------------------------|---------------------------|-----------------------------|
| Common Schools        | \$ 206,134,000              | \$ 288,264,000                  | \$ 82,130,000             | 39.8%                       |
| NDSU                  | 3,368,000                   | 4,738,000                       | 1,370,000                 | 40.7%                       |
| School for the Blind  | 456,000                     | 654,000                         | 198,000                   | 43.4%                       |
| School for the Deaf   | 1,180,000                   | 1,598,000                       | 418,000                   | 35.4%                       |
| State Hospital        | 1,000,000                   | 1,184,000                       | 184,000                   | 18.4%                       |
| Ellendale (2)         | 546,000                     | 1,304,000                       | 758,000                   | 138.8%                      |
| Valley City           | 570,000                     | 808,000                         | 238,000                   | 41.8%                       |
| Mayville              | 382,000                     | 542,000                         | 160,000                   | 41.9%                       |
| Industrial School (3) | 1,372,000                   | 1,422,000                       | 50,000                    | 3.6%                        |
| School of Science     | 988,000                     | 1,260,000                       | 272,000                   | 27.5%                       |
| School of Mines       | 1,134,000                   | 1,444,000                       | 310,000                   | 27.3%                       |
| Veteran's Home        | 356,000                     | 436,000                         | 80,000                    | 22.5%                       |
| UND                   | 1,608,000                   | 2,218,000                       | 610,000                   | 37.9%                       |
| <b>TOTAL</b>          | <b>\$ 219,094,000</b>       | <b>\$ 305,872,000</b>           | <b>\$ 86,778,000</b>      | <b>39.6%</b>                |

- (1) These amounts are not subject to change by the legislature nor will they change as a result of any activity in the investment portfolio over the next two years. These amounts will be included in the Department's budget bill.
- (2) The beneficiaries of the Ellendale Trust are: Dickinson State University, Minot State University, Dakota College at Bottineau, Veterans' Home, School for the Blind, State Hospital, and the State College of Science.
- (3) The Youth Correctional Center is the beneficiary of the Industrial School Trust.

### Distribution Adjustment

During the recent performance audit, it was discovered that mineral revenues that should have been deposited into the Ellendale Trust were incorrectly deposited into the Industrial School Trust. Consequently, the Department evaluated 26 years of revenue records for each of the 37 mistakenly assigned active mineral tracts and determined that the oil and gas revenue incorrectly deposited into the Industrial School Trust since 1989 was \$6.1 million. The estimated amount of investment revenue that was incorrectly allocated to the Industrial School Trust was \$1.1 million. Thus prior to the close of the 2016 fiscal year, accounting adjustments were made with the transfer of \$7.2 million from the Industrial School Trust to the Ellendale Trust.

This misallocation of funds also resulted in distributions from these trusts being more to the Youth Correctional Center and less to Ellendale Trust beneficiaries than would have occurred had all revenues been properly deposited. On June 7, 2016, the Board approved the use of corrected fund balances to determine distributions for these two funds, which is reflected in the preceding distribution tables. At that time, the Board also authorized the Commissioner to seek legislative approval to "correct any material distribution errors that occurred in the past as a result of the misapplied revenues".

The Industrial School Trust has paid out \$621,186 more than it should have since 1990, while the Ellendale Trust has paid out \$627,889 less than it should have over the same period. The Office of Management and Budget and Legislative Council have been asked to add a section to the Department's appropriation bill to include a one-time adjustment in the distributions from the Ellendale and Industrial School trusts by the over/under paid amounts indicated herein.

**Motion: The Board approves the planned 2017-2019 distributions of \$305,872,000 from the 13 permanent funds for the amounts indicated in the preceding table, and directs the Commissioner to provide these figures for inclusion into the budget and legislative measures for the upcoming biennium.**

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

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

### **Securities Lending Annual Report**

The annual Securities Lending report describing the performance and status of the Board's securities lending program, as facilitated by Northern Trust, for the fiscal year ended June 30, 2016 was provided to the Board to review. The complete report is available on file with the Department.

### **Summary of Investment Fees Paid in FY 2016**

The report of investment fees and expenses paid during the fiscal year ended June 30, 2016 was presented to the Board for review and is available at the Department.

The permanent trusts' investments had an average market value of \$3.53 billion and during the fiscal year paid \$16,364,886, resulting in a fee rate of 0.463% of the average assets.

The pooled investments of the Coal Development Trust Fund, the Strategic Investment and Improvements Fund (SIIF), and the Capitol Building Fund had an average market value of \$295.0 million during the fiscal year and paid \$168,460 in investment management fees, an average fee rate of .057%.

## M I N E R A L S   M A N A G E M E N T

### **EOG Resources, Inc. v. Soo Line Railroad Company, et al. Litigation**

The Board was briefed on litigation pertaining to a small mineral holding, referred to as the Faro Parcel in Mountrail County, that private minerals owners, the Soo Line Railroad Company and the State claim an interest and have subsequently taken oil and gas leases.

On January 20, 2010, EOG Resources (EOG), which is in the operator of the spacing unit, commenced a quiet title action with the Mountrail County District Court. The action was brought against the railroad and its lessee to determine the ownership of the minerals to land acquired by the railroad.

The railroad acquired its interest to land by three different means: railroad right-of-way deeds, condemnation, and 1899, March 2 - 30 Stat. 990, Act. The railroad claims it acquired fee simple interest, whereas EOG, the State, and several private parties, claim the railroad acquired only a surface easement. The parties stipulated and agreed that the 1899 Act did not grant the railroad fee simple title but only an easement. The District Court determined that the railroad could not obtain fee simple interest through condemnation and it quieted title to the State where the railroad acquired its interest through condemnation.

In the tracts which the railroad acquired interest through right-of-way deeds, the District Court found that the private right-of-way deeds only conveyed an easement interest to the railroads. Both the railroad and its lessee, G-4, LLC, appealed this judgment to the Supreme Court, which issued an opinion in this case on July 15, 2015. *EOG Resources, Inc. v. Soo Line R.R Co.*, 2015 ND 187, 867 N.W.2d 308.

In the opinion, the Supreme Court reversed the District Court's decision and found for all of the tracts except the Faro Parcel that the private right-of-way deeds conveyed fee simple. The Supreme Court found that this deed was ambiguous and remanded the case back to the district court for further trial.

The Attorney General's office received a proposal for settlement from the attorneys for EOG and the Soo Line.

**Motion: Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board closed this meeting to the public and entered executive session for the purpose of consultation with its attorneys on the active litigation of: EOG Resources, Inc. v. Soo Line Railroad Company, et al.**

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

### EXECUTIVE SESSION

At 9:20 AM the Board entered executive session for the purposes outlined in its adopted motion.

#### EXECUTIVE SESSION

##### Members Present:

|                 |                    |
|-----------------|--------------------|
| Jack Dalrymple  | Governor           |
| Alvin A. Jaeger | Secretary of State |
| Wayne Stenehjem | Attorney General   |
| Kelly Schmidt   | State Treasurer    |

##### Member Absent:

|                 |                                      |
|-----------------|--------------------------------------|
| Kirsten Baesler | Superintendent of Public Instruction |
|-----------------|--------------------------------------|

##### Department of Trust Lands Personnel present:

|                  |                               |
|------------------|-------------------------------|
| Lance D. Gaebe   | Commissioner                  |
| Jeff Engleson    | Director, Investment Division |
| Drew Combs       | Director, Minerals Division   |
| Levi Erdmann     | Investment Analyst            |
| Linda Fisher     | Deputy Commissioner           |
| Catelin Newell   | Office Manager                |
| Kristie McCusker | Legal Assistant               |

##### Authorized Guests in Attendance:

|              |                                |
|--------------|--------------------------------|
| Hope Hogan   | Office of the Attorney General |
| Jason Nisbet | Governor's Office              |

During the executive session, the Board consulted with its attorney on legal strategy in the possible settlement of the referenced litigation and no formal action was taken. The executive session adjourned at 9:29 AM and the Board returned to open session and the public was invited to return to the meeting.

### R E P O R T S

**The Board reviewed an unaudited Summary of Total Assets for Period Ended August 31, 2016**

**The Board reviewed the results of its November 2016 Oil and Gas Lease Auctions**

**Report of Easements Issued by Land Commissioner 9-9-16 through 10-17-16**

|                     |  |
|---------------------|--|
| <b>Granted to:</b>  | <b>XTO ENERGY INC, FORT WORTH-TX</b>     |
| For the Purpose of: | On-lease Act. Amend: Horizontal Oil Well |
| Legal Description:  | MCK-149-96-36-NE4                        |

|   |  |
|---|--|
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b><br>Easement: Electric Transmission Line<br>MCK-152-95-36-LOTS 1,2, LOTS 3,4                                    |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>BASIN ELECTRIC POWER COOP INC, BISMARCK-ND</b><br>Easement-Amend: Electric Transmission Line<br>MCK-149-99-16-SE4, MCK-151-100-36-SE4, SW4<br>MCK-152-101-36-NE4, SE4 |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>HILAND CRUDE LLC, HOUSTON-TX</b><br>Easement-Amend: Oil Gathering Pipeline<br>WIL-157-99-36-SE4   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>TARGA BADLANDS LLC, HOUSTON-TX</b><br>Easement: Gas Gathering Pipeline<br>MCK-150-95-16-NE4, NW4, SW4   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>HENRY HILL OIL SERVICES LLC, WILLISTON-ND</b><br>Assignment: Salt Water Disposal Well-Assignment<br>WIL-154-100-16-SE4  |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>NORTH DAKOTA PIPELINE CO LLC, DBA NDPL LLC,SUPERIOR-WI</b><br>Easement: Oil Transmission Pipeline<br>WIL-156-95-36-SE4  |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>RESERVATION TELEPHONE COOPERATIVE, PARSHALL-ND</b><br>Easement: Communication Cable - Buried<br>MOU-154-94-16-SW4, MOU-155-94-32-NE4,<br>MOU-156-94-16-SW4            |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>NP RESOURCES LLC, DENVER-CO</b><br>Easement-Amend: Directional Wellsite Location<br>GOL-143-103-36-NE4  |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>BELLE FOURCHE PIPELINE CO, CASPER-WY</b><br>Easement: Drop Line-Oil Gathering Pipeline<br>GOL-143-103-36-NE4  |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT</b><br>Easement: Drop Line-Gas Gathering Pipeline<br>MCK-151-100-16-NW4  |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>WESTERN AREA WATER SUPPLY AUTHORITY, WILLISTON-ND</b><br>Easement: Potable Water Pipeline<br>WIL-157-96-36-NW4  |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>COYOTE CREEK MINING COMPANY LLC, BISMARCK-ND</b><br>Easement: Potable Water Pipeline<br>MER-142-89-12-N2NW4   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>SHD OIL &amp; GAS LLC, MCLEAN-VA</b><br>Easement-Amend: Drop Line-Multiple Pipelines<br>MCK-151-95-36-LOTS 1,2  |

|   |  |
|---|--|
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>OASIS PETROLEUM NORTH AMERICA LLC, HOUSTON-TX</b><br>On-lease Act. Amend: Horizontal Oil Well<br>MOU-157-92-15-N2NW4, SE4NW4      |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>WHITING OIL AND GAS CORPORATION, DENVER-CO</b><br>Letter of Permission: Access to School Land<br>MCK-153-97-16-NE4                |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>WENCK ASSOCIATES INC, MANDAN-ND</b><br>Permit: General Land Surveys<br>WAR-155-84-1-SW4NW4 LYING N & E OF RIVER CENTERLINE        |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND</b><br>Easement: Drop Line-Electric Distribution Line<br>WIL-156-101-36-SE4 |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>SELECT ENERGY SERVICES LLC, WILLISTON-ND</b><br>Letter of Permission: Access to School Land<br>WIL-154-100-16-NE4, NW4            |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>MBI ENERGY SERVICES, KILLDEER-ND</b><br>Letter of Permission: Access to School Land<br>DUN-146-94-16-NE4, NW4                     |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>AMES SAVAGE WATER SOLUTIONS LLC, WILLISTON-ND</b><br>Letter of Permission: Access to School Land<br>DIV-164-101-36-SE4            |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>BRIDGER PIPELINE LLC, CASPER-WY</b><br>Easement: Drop Line-Oil Gathering Pipeline<br>MCK-153-97-16-NE4                            |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>SLOPE ELECTRIC COOP INC, NEW ENGLAND-ND</b><br>Easement: Electric Distribution Line - Buried<br>SLO-133-98-36-SW4                 |

## A D J O U R N

There being no further business, the meeting was adjourned at 9:57 AM.

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Jack Dalrymple, Chairman  
Board of University and School Lands

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Lance D. Gaebe, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
November 29, 2016**

The November 29, 2016 meeting of the Board of University and School Lands was called to order at 9:30 AM in the Governor's Conference Room by Chairman Jack Dalrymple.

**Members Present:**

|                 |                                      |
|-----------------|--------------------------------------|
| Jack Dalrymple  | Governor                             |
| Alvin A. Jaeger | Secretary of State                   |
| Wayne Stenehjem | Attorney General (via telephone)     |
| Kelly Schmidt   | State Treasurer                      |
| Kirsten Baesler | Superintendent of Public Instruction |

**Department of Trust Lands Personnel present:**

|                  |                               |
|------------------|-------------------------------|
| Lance D. Gaebe   | Commissioner                  |
| Jeff Engleson    | Director, Investment Division |
| Drew Combs       | Director, Minerals Division   |
| Linda Fisher     | Deputy Commissioner           |
| Taylor Lee       | Director, Revenue Compliance  |
| Kristie McCusker | Legal Assistant               |
| Gerard Schwan    | Director, Grants and Claims   |

**Guests in Attendance:**

|              |                                     |
|--------------|-------------------------------------|
| Hope Hogan   | Office of the Attorney General      |
| Jason Nisbet | Governor's Office                   |
| Jerry Jurena | North Dakota Healthcare Association |
| Nick Smith   | Bismarck Tribune                    |
| Marcia Beard | RVK (via telephone)                 |

**APPROVAL OF MINUTES**

A motion to approve the minutes of the October 28, 2016 meeting was made by Secretary Al Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

**EXECUTIVE SESSION**

**Motion: Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, that the Board closes this meeting to the public and enters executive session for the purpose of consultation with its attorneys on pending and active specifically: EOG v. Soo Line, et al.**

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



At 9:33 AM the Board entered executive session for the purposes outlined in its adopted motion.

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### EXECUTIVE SESSION

#### Members Present:

|                 |                                      |
|-----------------|--------------------------------------|
| Jack Dalrymple  | Governor                             |
| Alvin A. Jaeger | Secretary of State                   |
| Wayne Stenehjem | Attorney General (via telephone)     |
| Kelly Schmidt   | State Treasurer                      |
| Kirsten Baesler | Superintendent of Public Instruction |

#### Department of Trust Lands Personnel present:

|                  |                               |
|------------------|-------------------------------|
| Lance D. Gaebe   | Commissioner                  |
| Jeff Engleson    | Director, Investment Division |
| Drew Combs       | Director, Minerals Division   |
| Linda Fisher     | Deputy Commissioner           |
| Taylor Lee       | Director, Revenue Compliance  |
| Kristie McCusker | Legal Assistant               |
| Gerard Schwan    | Director, Grants and Claims   |

#### Authorized Guests in Attendance:

|              |                                |
|--------------|--------------------------------|
| Hope Hogan   | Office of the Attorney General |
| Jason Nisbet | Governor's Office              |

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During the executive session, the Board consulted with its attorney on legal strategy in the possible settlement of the referenced litigation and no formal action was taken. The executive session adjourned at 9:40 AM and the Board returned to open session and the public was invited to return to the meeting.

**Motion: The Board agrees to the “substantially final” version of a proposed settlement of the litigation involving EOG Resources, Inc. v. Soo Line Railroad Company, et al.; and the Board authorizes the Attorney General to work on its behalf to resolve the few minor issues and when a mutually acceptable agreement is reached in the Attorney General’s judgement, it directs the Commissioner to sign the final agreement on the Board’s behalf.**

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

## ENERGY INFRASTRUCTURE AND IMPACT OFFICE

#### Summary

In the 2015-2017 Biennium, \$41,941,508 has been awarded of the \$139.3 million appropriated by the 2015 Legislature for grants.

### Critical Access Hospital Impact Grants

The 2015 Legislature assigned \$10 million of oil and gas impact grant fund for critical access hospitals (CAH), with 50% to be awarded during each January of the biennium. December 2015 the Board awarded \$5 million to critical access hospitals with the funds distributed in January 2016.

Sixteen western area critical access hospitals were provided notices of availability of funds.

Grant applications were accepted October 1, 2016 through November 4, 2016, with a total of eight applications requesting \$7 million received. Total loss from operations by these applicants was \$13.6 million.

#### 2017 Critical Access Hospitals Grant Round - Applications Received

| Critical Access Hospital Name         | City         | County    | App Number | Short Description       | Project Total       | Amount Requested   | Long Description                        |
|---------------------------------------|--------------|-----------|------------|-------------------------|---------------------|--------------------|---|
| Heart Of America Medical Center       | Rugby        | Pierce    | A170007    | HB 1176 Bad Debt Relief | \$1,436,255         | \$202,483          | Uncompensated Care Financial Assistance |
| McKenzie County Health Care Systems   | Watford City | McKenzie  | A170003    | HB 1176 Bad Debt Relief | \$3,592,882         | \$2,414,352        | Uncompensated Care Financial Assistance |
| Mountrail County Health Center        | Stanley      | Mountrail | A170005    | HB 1176 Bad Debt Relief | \$2,097,915         | \$873,674          | Uncompensated Care Financial Assistance |
| Southwest Healthcare Services         | Bowman       | Bowman    | A170004    | HB 1176 Bad Debt Relief | \$1,452,551         | \$117,767          | Uncompensated Care Financial Assistance |
| St. Andrew's Health Care              | Bottineau    | Bottineau | A170001    | HB 1176 Bad Debt Relief | \$210,811           | \$65,680           | Uncompensated Care Financial Assistance |
| St. Joseph's Hospital & Health Center | Dickinson    | Stark     | A170008    | HB 1176 Bad Debt Relief | \$3,291,283         | \$2,853,019        | Uncompensated Care Financial Assistance |
| St. Luke's Hospital                   | Crosby       | Divide    | A170006    | HB 1176 Bad Debt Relief | \$610,011           | \$64,080           | Uncompensated Care Financial Assistance |
| Tioga Medical Center                  | Tioga        | Williams  | A170002    | HB 1176 Bad Debt Relief | \$942,340           | \$411,584          | Uncompensated Care Financial Assistance |
|                                       |              |           |            |                         | <b>\$13,634,048</b> | <b>\$7,002,639</b> |   |

Grant guidelines utilized include:

- Must have incurred an operating loss in the most recently completed fiscal year that meets the eligibility requirements for this grant program, excluding any grant amount received in the 2015 CAH HB 1358 Grant program
- Uncompensated care provided by the facility must have exceeded 2.7% of Gross Patient Revenue.
  - Uncompensated care provided over the 2.7% threshold will be eligible for grant funds. However, the amount of the grant may not result in the CAH earning a positive operating margin.
  - Gross Patient Revenue is defined as Inpatient Hospital Revenue, Outpatient Hospital Revenue and Hospital Owned Clinic Revenue.

The Critical Access Hospital Grants Advisory Committee that the Board appointed in 2015, assisted with grant recommendations. The committee includes:

- Becky Hansen, Southwest Healthcare Services, Bowman
- Daniel Kelly, McKenzie County Healthcare, Watford City
- Darrold Bertsch, Sakakawea Medical Center, Hazen
- Matt Grimshaw, Mercy Medical Center, Williston
- Randall Pederson, Tioga Medical Center, Tioga
- Tom Nehring, ND Department of Health, Bismarck
- Jerry Jurena, President, ND Hospital Association, Bismarck

The CAH Impact Grants Advisory Committee met November 9, 2016. The committee evaluated all applications based upon:

- Qualifying for the established eligibility criteria
- Work sheet calculations
- That financial supporting documents
- Enhanced review of the scoring criteria including: safety improvement; financial need; result of energy activity; project readiness; and contribution to long-term service/department viability.

The following list of recommended awards was developed and offered by the CAH Impact Grants Advisory Committee and the Energy Infrastructure and Impact Office in coordination with staff from the Department of Human Services and the North Dakota Hospital Association:

#### 2017 Critical Access Hospitals Grant Round - Award Recommendations

| CRITICAL ACCESS HOSPITAL NAME         | CITY         | COUNTY    | APP NUMBER | DESCRIPTION                             | Award Recommended  |
|---------------------------------------|--------------|-----------|------------|---|--------------------|
| McKenzie County Health Care Systems   | Watford City | McKenzie  | A170003    | Uncompensated Care Financial Assistance | \$1,723,887        |
| Tioga Medical Center                  | Tioga        | Williams  | A170002    | Uncompensated Care Financial Assistance | \$293,878          |
| Mountrail County Health Center        | Stanley      | Mountrail | A170005    | Uncompensated Care Financial Assistance | \$623,818          |
| St. Joseph's Hospital & Health Center | Dickinson    | Stark     | A170008    | Uncompensated Care Financial Assistance | \$2,037,103        |
| St. Andrew's Health Care              | Bottineau    | Bottineau | A170001    | Uncompensated Care Financial Assistance | \$46,897           |
| St. Luke's Hospital                   | Crosby       | Divide    | A170006    | Uncompensated Care Financial Assistance | \$45,754           |
| Southwest Healthcare Services         | Bowman       | Bowman    | A170004    | Uncompensated Care Financial Assistance | \$84,087           |
| Heart Of America Medical Center       | Rugby        | Pierce    | A170007    | Uncompensated Care Financial Assistance | \$144,576          |
|                                       |              |           |            |   | <b>\$5,000,000</b> |

**Motion: The Board awarded \$5,000,000 from the Oil and Gas Impact Grant Fund to the eight critical access hospitals as identified in the preceding award recommendations. Distribution of these funds will be in January 2017. With this action, the Board affirms that \$10 million designated for critical access hospitals by the 2015 Legislative Assembly is satisfied.**

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

#### Providers Serving Individuals with Developmental Disabilities Award Recommendations

The 2015 Legislature allocated \$2 million of oil and gas impact funds for grants to providers that serve individuals with developmental disabilities located in oil producing counties. The Legislature directed that distributions to be made each January during the biennium and for the EIIO to work in consultation with the North Dakota Department of Human Services (DHS) regarding the procedures for these grants.

The grant guidelines set by the 2015 Legislature in HB 1176 directed that grant recommendations be based on the number of full-time equivalent (FTE) positions of each provider as determined by

the DHS. When setting rates for the grants, as specified in the legislation, the DHS excluded grant income received as an offset to costs.

The following counties were considered as oil producing counties for this grant round:

|          |           |               |           |
|----------|-----------|---------------|-----------|
| Billings | Bottineau | Bowman        | Burke     |
| Divide   | Dunn      | Golden Valley | McHenry   |
| McKenzie | McLean    | Mercer        | Mountrail |
| Renville | Slope     | Stark         | Ward      |
| Williams |           |               |           |

The following list of service providers was identified by the DHS as providing services to developmentally disabled individuals located in the identified counties. Also included in the list are the number of FTE positions for each service provider and a recommendation for award on each based on the number of FTE's and \$1 million prorated for this grant round.

**Developmental Disabilities Approved FTE's in Oil Producing Counties**

| Provider  | Total         | % of Total | Recommended Award  |
|---|---------------|------------|--------------------|
| ABLE, Inc.  | 112.38        | 15.68%     | \$156,850          |
| Community Options, Inc.                           | 42.03         | 5.87%      | \$58,661           |
| Easter Seals Goodwill                             | 51.21         | 7.15%      | \$71,473           |
| Knife River Group Home                            | 7.68          | 1.07%      | \$10,719           |
| Minot Vocational Adjustment Workshop d.b.a. Kalix | 220.21        | 30.73%     | \$307,345          |
| Opportunity Foundation                            | 82.29         | 11.49%     | \$114,851          |
| Pride, Inc.                                       | 0.37          | 0.05%      | \$516              |
| Rehab Services, Inc.                              | 10.77         | 1.50%      | \$15,032           |
| REM   | 136.76        | 19.09%     | \$190,874          |
| Support Systems, Inc.                             | 14.39         | 2.01%      | \$20,085           |
| Tri-City Cares, Inc.                              | 38.40         | 5.36%      | \$53,594           |
| <b>Grand Total FTE's</b>                          | <b>716.49</b> |            | <b>\$1,000,000</b> |

**Motion: The Board awarded \$1,000,000 from the Oil and Gas Impact Grant Fund to the 11 providers of services to individuals with developmental disabilities as identified in the award recommendations in the preceding list. Distribution of these funds will be performed in January 2017. With this action, the Board affirms that \$2 million designated for providers that serve individuals with developmental disabilities by the 2015 Legislative Assembly is fully satisfied.**

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

**Summary**

With the awards approved at this meeting, the Board has approved \$47,941,508 during the 2015-2017 biennium.

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

### **RVK Investment Performance Report – 3rd Quarter 2016**

RVK representatives reviewed the performance of the permanent trust funds' pool of investment assets for the period ending September 30, 2016. A copy of this performance report was provided to the Board and is available at the Department.

#### **Asset Class Review – Real Estate**

Each quarter, the Board does a review of a separate investment asset class in which the permanent trust funds participate. During this meeting, RVK reviewed the permanent trusts' real estate portfolio. The real estate portfolio, which has a 15% target allocation, is allocated among 5 different managers, including core managers Morgan Stanley (4%) and UBS (4%) and core plus managers Jamestown (2%), Prologis (2%) and J.P. Morgan (3%). The trusts' equity exposure is achieved through actively managed open ended real estate funds.

The presentation reviewed the asset class as a whole, as well as the specific strategies and managers. The real estate overview presentation is available at the Department.

### **STRATEGIC INVESTMENT AND IMPROVEMENTS FUND**

The Strategic Investment and Improvements Fund (SIIF) holds the assets and collects the revenues earned from sovereign mineral acres, including those formerly owned by the Bank of North Dakota and State Treasurer, as well as the minerals located under navigable rivers and lakes. The SIIF also receives a portion of the oil and gas production and extraction taxes collected by the State. It is invested in a short-term fixed income portfolio.

During the quarter ended September 30, 2016, the SIIF earned approximately \$6.7 million of oil and gas royalties, \$4.7 million of mineral bonuses, and approximately \$979,000 of investment income. Royalty income is down for the quarter due to the fact that most royalties received in July and August are applied back to the previous fiscal year.

|  | 09/30/16<br>Asset Balances | Yield/Total Return<br>for Qtr. Ended 9/30/16 |
|--|----------------------------|--|
| Strategic Investment and Improvements Fund |                            |  |
| Loan Guarantee – Fuel Production           | \$ 17,181,000              | 0.58% Yield                                  |
| Investments/Cash                           | <u>330,704,000</u>         | 0.26% Total Return                           |
| <b>Total</b>                               | <b>\$ 347,885,000</b>      |  |

The funds set aside to guarantee a loan for a biomass fuel production facility earned an annualized yield of approximately 0.58% during the quarter. The SIIF also receives an annual guarantee fee of 0.25% of the outstanding loan balance in June of each year.

A total of \$18.5 million of appropriations were transferred to other agencies including \$15.0 million to the Extension Service for a veterinarian diagnostic laboratory and \$3.0 million to the Department of Transportation for the short-line railroad loan program. \$200,000 remains to be transferred before the end of the biennium.

Spring forecasts show the SIIF is expected to have a balance of approximately \$519.2 million on June 30, 2017. Projections for the SIIF are currently being updated.

The assigned fund balance of the SIIF was \$142.33 million as of September 30, 2016. The assigned fund balance represents mineral royalties and bonus that has been set aside in connection to sovereign minerals lawsuits.

### **SCHOOL CONSTRUCTION ASSISTANCE LOAN FUND (SCALF)**

The SCALF was created by SB 2039, effective July 1, 2015, with a transfer of \$150 million of outstanding school construction loans from the SIIF. SB 2039 gave control of the SCALF to the BND, contingent on voter approval of a constitutional measure in November 2016.

As of September 30, 2016, the SCALF had a balance of approximately \$152.7 million and was made up of \$143.2 million of school construction loans, \$8.8 million of invested cash, and \$681,000 of accrued income.

The average yield of the outstanding total loan balance was 1.43% as of September 30, 2016. The invested cash is currently earning an annual yield of 0.20% at the BND.

### **COAL DEVELOPMENT TRUST FUND**

The Coal Development Trust Fund (CDTF) is a permanent fund from which the Board issues loans to energy impacted counties, cities and school districts as provided in NDCC Section 57-62-03 and lends to school districts pursuant to NDCC Ch. 15-60. The Board invests funds that are not loaned. Constitutionally, the income earned by the CDTF is transferred to the General Fund each year. The CDTF has historically been invested in a conservative short-term fixed income portfolio.

|                                    | 9/30/3016<br>Asset Balances | Yield/Total Return<br>for Qtr. Ended 9/30/16 |
|------------------------------------|-----------------------------|--|
| <u>Coal Development Trust Fund</u> |                             |  |
| School Construction Loans          | \$ 43,439,000               | 1.67% Yield                                  |
| Coal Impact Loans                  | 13,153,000                  | 3.36% Yield                                  |
| Investments/Cash                   | <u>11,615,000</u>           | 0.26% Total Return                           |
| Total                              | \$ 68,207,000               |  |

\$46,792 of principal and \$25,599.51 of interest were collected in the school construction loan program during the quarter. These payments were for the Powers Lake gross production tax backed school construction loan that was funded in 2015, most school loan payments are received in June of each year.

In August, the Department of Public Instruction approved a new school loan commitment of \$6.4 million to Richardton-Taylor. With that commitment, there is approximately \$161,000 of school loan capacity remaining from the CDTF.

### **CAPITOL BUILDING FUND**

The Capitol Building Fund is a Constitutional fund that was created for the construction and maintenance of "public buildings at the capital." It generates revenues from its 10,000 surface and 27,700 mineral acres. It is invested in conservative, short-term fixed income portfolio.

The Capitol Grounds Planning Commission (CGPC) has official control over the Capitol Building Fund; and it has an agreement with the Land Board for investing the assets.

|                              | 9/30/16<br>Asset Balance | Total Return<br>Qtr. Ended 9/30/16 |
|------------------------------|--------------------------|------------------------------------|
| <u>Capitol Building Fund</u> |                          |                                    |
| Investments/Cash             | \$ 6,876,000             | 0.26% Total Return                 |

The 64<sup>th</sup> Legislative Session, appropriated \$5.7 million from the Capitol Building Fund:

- \$4.0 million for a new Governor's residence (SB 2304)
- \$1.4 million for capitol building entrance and signage projects (SB 2015)
- \$310,000 for legislative wing electrical and ceiling repairs (SB 2015)

During the quarter, the Capitol Building Fund collected approximately \$140,000 of oil and gas royalties. A deposit of \$500,000 of private donations was received into the Capitol Building Fund by the CGPC.

The investment assets of the SIIF, Coal Development Trust Fund, and Capitol Building Fund are commingled in the Ultra-Short bond portfolio managed by Northern Trust. Following is RVK's review of the performance of the Ultra-short account.

### Asset Allocation

The asset allocation status of the permanent trusts as of October 31, 2016:

| Account/Asset Class               | Long-Term Asset Allocation | 10/31 Actual Allocation \$ | 10/31 Actual Allocation % |
|-----------------------------------|----------------------------|----------------------------|---------------------------|
| Large Cap US Equity               | 13.5%                      | \$ 504,252,487             | 13.3%                     |
| Small Cap US Equity               | 3.5%                       | \$ 126,041,043             | 3.3%                      |
| International Equity              | 12.0%                      | \$ 454,265,405             | 12.0%                     |
| Emerging Market Equity            | 3.0%                       | \$ 113,178,328             | 3.0%                      |
| <b>Total Equities</b>             | <b>32.0%</b>               | <b>\$ 1,197,737,263</b>    | <b>31.5%</b>              |
| Domestic Investment Grade         | 14.2%                      | \$ 533,328,722             | 14.0%                     |
| High Yield FI                     | 3.0%                       | \$ 113,673,345             | 3.0%                      |
| International/Global FI           | 5.8%                       | \$ 219,627,195             | 5.8%                      |
| <b>Total Fixed Income</b>         | <b>23.0%</b>               | <b>\$ 866,629,263</b>      | <b>22.8%</b>              |
| <b>Total Absolute Return</b>      | <b>20.0%</b>               | <b>\$ 759,509,276</b>      | <b>20.0%</b>              |
| Commodities                       | 3.0%                       | \$ 113,520,928             | 3.0%                      |
| MLPs                              | 3.0%                       | \$ 109,920,481             | 2.9%                      |
| TIPS                              | 2.0%                       | \$ 74,395,230              | 2.0%                      |
| Natural Resource Equities         | 2.0%                       | \$ 77,958,230              | 2.1%                      |
| <b>Total Inflation Strategies</b> | <b>10.0%</b>               | <b>\$ 375,794,869</b>      | <b>9.9%</b>               |
| Core Real Estate                  | 8.0%                       | \$ 331,859,018             | 8.7%                      |
| Core Plus Real Estate             | 7.0%                       | \$ 269,200,729             | 7.1%                      |
| <b>Total Real Estate</b>          | <b>15.0%</b>               | <b>\$ 601,059,746</b>      | <b>15.8%</b>              |
| <b>Total Asset</b>                | <b>100.0%</b>              | <b>\$ 3,800,730,416</b>    | <b>100.0%</b>             |

### Updates provided to the Board:

#### Change at SSGA (S&P and World Ex US Index Funds: total \$967 million, 25.5% of assets)

John Tucker, Co-Head of Global Equity Beta Solutions (GEBS) in the Americas, will assume the newly created role of Global Investments Chief Operating Officer for State Street Global Advisors (SSGA), effective January 1, 2017. When Mr. Tucker moves to his new position, Mike Feehily will become the sole head of GEBS at SSGA.

Mr. Feehily has co-led the GEBS group with Mr. Tucker for the past five years; he is a 20 year veteran of SSGA. Karl Schneider, another 20 year veteran of SSGA, will assume the role of Deputy Head of GEBS and will report directly to Mr. Feehily.

RVK nor the Department staff indicated concerns regarding the changes SSGA has implemented.

#### Changes at J.P. Morgan Real Estate (\$114.6 million, 3.0% of assets)

After more than 30 years at J.P. Morgan, Joe Azelby, head of the Global Real Assets (GRA) group will be retiring from the firm in February 2017. Until his retirement date, Joe will provide strategic advice and counsel to GRA broadly but will no longer participate in routine business management activities.

This change will not impact the day-to-day operations of the GRA group; responsibility for the GRA investment portfolios, including the Income and Growth Fund in which the permanent trusts' invest, will remain as before under the oversight of the group's individual portfolio managers.

RVK, nor the Department expressed any major concerns about this change.



### **Changes at PIMCO/Research Affiliates (\$247.5 million, 6.6% of assets)**

Chris Brightman, the CIO of Research Affiliates, was named co-portfolio manager along with Rob Arnott of the All Assets All Authority strategy in which the permanent invests.

RVK does not view this change as a cause for concern and the Department staff also indicated minimal issues.

### **Novarca – Investment Fees and Costs Analysis Services**

The Novarca presentation which had been included on the published agenda, was postponed to a future meeting due to weather and difficulty in travel for the anticipated out-of-state guests.

## **O P E R A T I O N S**

### **Information Technology Upgrade Plan**

The Commissioner presented a summary of the estimated costs and implementation schedule of the comprehensive information technology upgrade planned for the Department. The anticipated three-year project would entail customized off-the-shelf software in accounting, lands management, grants management and unclaimed property. The Department submitted a capital assets budget request of \$5.52 million for the project.

**Motion: The Board endorsed the project and indicated its support for the investment in the Department's Information Technology system replacement as presented.**

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

### **Proposed Legislation for 2017**

A legislative bill draft the Department intends to submit for consideration by the 2017 Legislature was presented to the Board:

#### Section 1 (15-02-02):

The proposed change would adjust the language so the commissioner's term, which starts on July 1, would coincide with the general election of the Governor.

#### Sections 2 (15-02-05.1) and Section 3 (54-01-05.5)

The changes proposed in sections 2 and 3 clarify language requiring the Commissioner to review the "highest and best use" of state land considered by the legislature to be sold or exchanged.

Other proposed language changes in the statutes provide for optional commissioner assessments as opposed to an obligatory review and opinion.

#### Section 4 (57-62-02)

The proposed changes in this section would reverse an unconstitutional provision adopted by the 2015 Legislature in SB 2039 which directed the transfer of income in the Board-managed Coal Development Trust Fund to the School Construction Loan Fund rather than to the general fund.

#### Section 5: (15-03-05.1)

This section proposes repeal of the following outdated section of statute related to the amortization of Coal Development Trust Fund income in equal installments.



*15-03-05.1. Calculation of fund income - Coal development trust fund.*

*At the end of each fiscal year, the board shall calculate the income earned by the coal development trust fund. The net gain or loss realized on the sale of investment securities for the year must be amortized to fund income in equal annual installments over a ten-year period.*

## R E P O R T S

**The Audited Financial Statements for the Year Ended in June 30, 2016 were presented to the Board for review.**

### **Fall 2016 Surface Leasing Auction Results**

The 2016 fall lease auctions were completed in October.

|   | <b>2015</b>      | <b>2016</b>    |
|---|------------------|----------------|
| Number of counties                                      | 34               | 34             |
| Total leases offered                                    | 1044             | 1498           |
| Number of leases bid                                    | 1002 (96%)       | 1455 (97%)     |
| Number of leases bid-up                                 | 122 (12%)        | 124 (9%)       |
| Total amount of minimum advertised bids (leased tracts) | \$1,603,223      | \$2,336,130    |
| Total amount received                                   | \$1,869,952      | \$2,534,640    |
| Competition factor (% of total income)                  | \$266,729 (14% ) | \$198,510 (9%) |

On behalf of the Board, the Commissioner has approved all fall surface leases.

**A summary of the November Oil and Gas Lease auction results was presented to the Board for review.**

### **Report of Easements Issued by Commissioner (10-19-16 through 11-14-16)**

|                     |  |
|---------------------|--|
| <b>Granted to:</b>  | <b>BISON MIDSTREAM LLC, DENVER-CO</b>                            |
| For the Purpose of: | Easement: Pipeline & Communication Cable                         |
| Legal Description:  | WIL-156-99-36-SE4, SW4   |
| <b>Granted to:</b>  | <b>BURLINGTON RESOURCES OIL &amp; GAS CO LP, BARTLESVILLE-OK</b> |
| For the Purpose of: | On-lease Act. Amend: Horizontal Oil Well                         |
| Legal Description:  | MCK-150-96-36-SE4  |
| <b>Granted to:</b>  | <b>GOLDENWEST ELECTRIC COOP INC, WIBAUX-MT</b>                   |
| For the Purpose of: | Easement: Drop Line-Buried Electric Distribution Line            |
| Legal Description:  | GOL-143-103-36-NE4   |
| <b>Granted to:</b>  | <b>STATOIL OIL AND GAS LP, AUSTIN-TX</b>                         |
| For the Purpose of: | On-lease Act. Amend: Drop Line-Pipeline & Communication Cable    |
| Legal Description:  | MOU-155-92-16-NW4  |
| <b>Granted to:</b>  | <b>CENTRAL POWER ELECTRIC COOP INC, MINOT-ND</b>                 |
| For the Purpose of: | Easement-Amend: Electric Transmission Line                       |
| Legal Description:  | MCH-159-76-16-SW4  |
| <b>Granted to:</b>  | <b>HENRY HILL OIL SERVICES LLC, WILLISTON-ND</b>                 |
| For the Purpose of: | Easement-Amend: Salt Water Disposal Well                         |
| Legal Description:  | WIL-154-100-16-SE4, SW4  |

(11/29/16)

|   |   |
|---|---|
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>OASIS MIDSTREAM SERVICES LLC, HOUSTON-TX</b><br>Easement-Amend: Multiple Pipelines<br>MOU-157-92-15-N2NW4, SE4NW4                          |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>ND STATE WATER COMMISSION, BISMARCK-ND</b><br>Easement: Potable Water Pipeline<br>MER-143-90-20-NW4  |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>MCKENZIE ENERGY PARTNERS LLC, BELFIELD-ND</b><br>Easement: Drop Line-Saltwater Pipeline<br>MCK-149-98-16-NE4, SE4                          |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>HESS BAKKEN INVESTMENTS II, LLC, MINOT-ND</b><br>Easement: Air Monitoring Station<br>WIL-158-95-36-SE4                                     |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>HILAND CRUDE LLC, HOUSTON-TX</b><br>Easement-Amend: Oil Gathering Pipeline<br>MCK-152-97-36-SW4  |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>SCOUT ENERGY MANAGEMENT LLC, DALLAS-TX</b><br>Permit: Access Road<br>BIL-141-101-16-SE4, NE4   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>ND DEPT OF TRANSPORTATION, BISMARCK-ND</b><br>Easement: Road Right-of-Way<br>WIL-154-99-16-SE4, SW4<br>WIL-154-99-20-NE4                   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>SCOUT ENERGY MANAGEMENT LLC, DALLAS-TX</b><br>Permit: Access Road<br>BIL-141-101-13-NE4, NW4   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>SCOUT ENERGY MANAGEMENT LLC, DALLAS-TX</b><br>Permit: Access Road<br>BIL-139-101-36-NE4, SE4   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>QEP RESOURCES INC, DENVER-CO</b><br>On-lease Act. Amend: Horizontal Oil Well<br>MCK-150-95-16-NE4  |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>WHITING OIL AND GAS CORPORATION, DENVER-CO</b><br>Easement: Tower Site<br>BIL-140-100-16-NW4   |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>QEP RESOURCES INC, DENVER-CO</b><br>On-lease Act. Amend: Horizontal Oil Well<br>MCK-150-95-16-NW4  |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b><br>Easement: Drop Line-Electric Distribution Line<br>DUN-147-95-16-NW4 NORTH OF HWY |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>BELLE FOURCHE PIPELINE CO, CASPER-WY</b><br>Easement-Amend: Drop Line-Pipeline<br>GOL-143-103-36-NE4                                       |
| <b>Granted to:</b><br>For the Purpose of:<br>Legal Description: | <b>ND STATE WATER COMMISSION, BISMARCK-ND</b><br>Easement-Amend: Potable Water Pipeline<br>OLI-141-81-16-NE4, NW4, SE4 LESS SCHOOL SITE       |

**Granted to:** CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK  
 For the Purpose of: On-lease Act. Amend: Horizontal Oil Well  
 Legal Description: MCK-153-94-36-SE4

**Granted to:** BRIDGER PIPELINE LLC, CASPER-WY  
 For the Purpose of: Easement: Drop Line-Oil Gathering Pipeline  
 Legal Description: MCK-153-94-36-SE4

**Granted to:** ROCKWATER ENERGY SOLUTIONS, DICKINSON-ND  
 For the Purpose of: Letter of Permission: Access to School Land  
 Legal Description: GOL-143-103-36-NE4, NW4

**Granted to:** SELECT ENERGY SERVICES LLC, WILLISTON-ND  
 For the Purpose of: Letter of Permission: Access to School Land  
 Legal Description: MCK-153-94-36-SE4, SW4

**Granted to:** MBI ENERGY SERVICES, KILLDEER-ND  
 For the Purpose of: Letter of Permission: Access to School Land  
 Legal Description: MCK-149-98-16-NE4, NW4

**Granted to:** SELECT ENERGY SERVICES LLC, WILLISTON-ND  
 For the Purpose of: Letter of Permission: Access to School Land  
 Legal Description: MCK-153-96-36-NE4, NW4

## A D J O U R N

There being no further business, the meeting was adjourned at 10:58 AM.

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Alvin Jaeger, Vice-Chairman  
 Board of University and School Lands

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Lance D. Gaebe, Secretary  
 Board of University and School Lands