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:

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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

APPROVAL OF MINUTES

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.

ENERGY INFRASTRUCTURE AND IMPACT OFFICE

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.

Agency	City	County	Sponsoring Political Subdivision	Grant #	Project	Grant Amount
Jamestown Regional			City Of			
Medical Center	Jamestown	Stutsman	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
			Grand Forks			
Altru Health System	Grand Forks	Grand Forks	County	G160241	Travel & Training	\$5,000
					Staffing, Travel, Training,	
Family Crisis Shelter	Williston	Williams	City Of Williston	G160246	Supplies	\$79,448

Transfer of Grants from Agencies to Sponsoring Political Subdivisions

\$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	Х		
Superintendent Baesler			Х		
Treasurer Schmidt			Х		
Attorney General Stenehjem	Х		Х		
Governor Dalrymple			Х		

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 days from the last day of each month of 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

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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 Law Implemented 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

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	Х		Х		
Superintendent Baesler			Х		
Treasurer Schmidt		Х	Х		
Attorney General Stenehjem			Х		
Governor Dalrymple			Х		

SURFACE DIVISION

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		Х	Х		
Superintendent Baesler	Х		Х		
Treasurer Schmidt			Х		
Attorney General Stenehjem					Х
Governor Dalrymple			Х		

OPERATIONS

Investment Updates

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

	Long-Term	Interim Target	Interim %	5/31 Actual	5/31 Actual
Account/Asset Class	Asset Allocation	Allocation	+/- Weight	Allocation \$	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%
Total Equities	32.0%	33.1%	3.4%	\$ 1,180,825,995	32.5%
Domestic Investment Grade	14.2%	14.7%	3.5%	\$ 568,407,533	15.6%
High Yield Fl	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%
Total Fixed Income	23.0%	23.8%	3.5%	\$ 886,852,420	24.4%
Total Absolute Return	20.0%	20.7%	3.5%	\$ 731,126,910	20.1%
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%
Total Inflation Strategies	10.0%	10.4%	4.0%	\$ 368,391,358	10.1%
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%
Total Real Estate	15.0%	12.0%	-20.0%	\$ 470,596,610	12.9%
Total Asset	100.0%	100.0%		\$ 3,637,793,293	100.0%

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.

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.

REPORTS

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 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)

Granted to: For the Purpose of: Legal Description:

Granted to:

For the Purpose of: Legal Description:

Granted to:

For the Purpose of: Legal Description:

Granted to: For the Purpose of:

Legal Description:

Granted to:

For the Purpose of:

Right-of-Way Number: Legal Description:

Granted to:

For the Purpose of:

Legal Description:

CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK On-lease Act. Amend: Horizontal Oil Well

DUN-147-96-36-NW4

ROUGHRIDER ELECTRIC COOPERATIVE, INC., DICKINSON-ND Easement: Electric Distribution Line - Buried BIL-142-100-28-N2SW4

BRADY WIND LLC, JUNO BEACH-FL Permit: Temporary Construction

STA-137-96-36-NW4

SELECT ENERGY SERVICES LLC, WILLISTON-ND

Letter of Permission: Access to School Land for the purpose of aTemporary Surface Frac Water Pipeline MCK-150-95-16-NW4, SW4

ROCKWATER ENERGY SOLUTIONS, DICKINSON-ND

Letter of Permission: Access to School Land for the purpose of aTemporary Surface Frac Water Pipeline RW0007846 MCK-153-97-36-SE4

WEST DAKOTA WATER LLC, WILLISTON-ND

Letter of Permission: Access to School Land for the purpose of aTemporary Surface Frac Water Pipeline 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.

Granted to:

For the Purpose of:

Legal Description: Legal Description: Legal Description:

NDSU (DEPT 7650), FARGO-ND

Letter of Permission: Access to School Land to survey the changes occurring on reference condition wetlands across the state of North Dakota KID-139-71-36-SE4 STU-139-66-36-NE4 STU-142-66-16-NW4

ADJOURN

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

Jack Dalrymple, Chairman Board of University and School Lands

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

(06/30/16)