

**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

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

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

Jack Dalrymple, Chairman
Board of University and School Lands

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