

**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
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**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 Crowell	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
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**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> For the Purpose of: Legal Description:	<b>MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND</b> Easement: Electric Transmission Line MCK-152-95-36-LOTS 1,2, LOTS 3,4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>BASIN ELECTRIC POWER COOP INC, BISMARCK-ND</b> Easement-Amend: Electric Transmission Line MCK-149-99-16-SE4, MCK-151-100-36-SE4, SW4 MCK-152-101-36-NE4, SE4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>HILAND CRUDE LLC, HOUSTON-TX</b> Easement-Amend: Oil Gathering Pipeline WIL-157-99-36-SE4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>TARGA BADLANDS LLC, HOUSTON-TX</b> Easement: Gas Gathering Pipeline MCK-150-95-16-NE4, NW4, SW4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>HENRY HILL OIL SERVICES LLC, WILLISTON-ND</b> Assignment: Salt Water Disposal Well-Assignment WIL-154-100-16-SE4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>NORTH DAKOTA PIPELINE CO LLC, DBA NDPL LLC,SUPERIOR-WI</b> Easement: Oil Transmission Pipeline WIL-156-95-36-SE4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>RESERVATION TELEPHONE COOPERATIVE, PARSHALL-ND</b> Easement: Communication Cable - Buried MOU-154-94-16-SW4, MOU-155-94-32-NE4, MOU-156-94-16-SW4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>NP RESOURCES LLC, DENVER-CO</b> Easement-Amend: Directional Wellsite Location GOL-143-103-36-NE4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>BELLE FOURCHE PIPELINE CO, CASPER-WY</b> Easement: Drop Line-Oil Gathering Pipeline GOL-143-103-36-NE4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT</b> Easement: Drop Line-Gas Gathering Pipeline MCK-151-100-16-NW4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>WESTERN AREA WATER SUPPLY AUTHORITY, WILLISTON-ND</b> Easement: Potable Water Pipeline WIL-157-96-36-NW4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>COYOTE CREEK MINING COMPANY LLC, BISMARCK-ND</b> Easement: Potable Water Pipeline MER-142-89-12-N2NW4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>SHD OIL &amp; GAS LLC, MCLEAN-VA</b> Easement-Amend: Drop Line-Multiple Pipelines MCK-151-95-36-LOTS 1,2

<b>Granted to:</b> For the Purpose of: Legal Description:	<b>OASIS PETROLEUM NORTH AMERICA LLC, HOUSTON-TX</b> On-lease Act. Amend: Horizontal Oil Well MOU-157-92-15-N2NW4, SE4NW4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>WHITING OIL AND GAS CORPORATION, DENVER-CO</b> Letter of Permission: Access to School Land MCK-153-97-16-NE4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>WENCK ASSOCIATES INC, MANDAN-ND</b> Permit: General Land Surveys WAR-155-84-1-SW4NW4 LYING N & E OF RIVER CENTERLINE
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND</b> Easement: Drop Line-Electric Distribution Line WIL-156-101-36-SE4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>SELECT ENERGY SERVICES LLC, WILLISTON-ND</b> Letter of Permission: Access to School Land WIL-154-100-16-NE4, NW4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>MBI ENERGY SERVICES, KILLDEER-ND</b> Letter of Permission: Access to School Land DUN-146-94-16-NE4, NW4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>AMES SAVAGE WATER SOLUTIONS LLC, WILLISTON-ND</b> Letter of Permission: Access to School Land DIV-164-101-36-SE4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>BRIDGER PIPELINE LLC, CASPER-WY</b> Easement: Drop Line-Oil Gathering Pipeline MCK-153-97-16-NE4
<b>Granted to:</b> For the Purpose of: Legal Description:	<b>SLOPE ELECTRIC COOP INC, NEW ENGLAND-ND</b> Easement: Electric Distribution Line - Buried 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