

**Minutes of the Meeting of the
Board of University and School Lands
January 30, 2017**

The January 30, 2017 meeting of the Board of University and School Lands was called to order at 1:00 PM in the Governor's Conference Room by Chairman Doug Burgum.

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kelly Schmidt	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction

Department of Trust Lands Personnel present:

Lance D. Gaebe	Commissioner
Linda Fisher	Deputy Commissioner
Jeff Engleson	Director, Investment Division
Drew Combs	Director, Minerals Division
Susan Dollinger	Unclaimed Property Administrator
Levi Erdmann	Investment Analyst
Peggy Gudvangen	Director, Accounting
Taylor Lee	Director, Revenue Compliance
Kristie McCusker	Legal Assistant
Catelin Newell	Office Manager
Gerard Schwan	Director, Grants and Claims Section

Guests in Attendance:

Chris Friez	North American Coal
David Straley	North American Coal
Craig Smith	ND Petroleum Council
Ron Ness	ND Petroleum Council
Amy Dalrymple	Forum News Service
Jon Patch	Self
Bill Kalanek	APT Inc.
Garland Erbele	State Water Commission
John Paczkowski	Office of State Engineer/State Water Commission
David Garner	Office of the Attorney General
Hope Hogan	Office of the Attorney General
Jen Verleger	Office of the Attorney General
J Roger Kelley	Continental Resources, Inc.
Cassandra Torstenson	Governor's Office
Jason Nisbet	Governor's Office

APPROVAL OF MINUTES

A motion to approve the minutes of the November 29, 2016 meeting was made by Attorney General Wayne Stenehjem and seconded by Secretary Al Jaeger and the motion carried unanimously on a voice vote, from which Governor Burgum abstained since he was not sworn in until after the November 29 meeting.

ENERGY INFRASTRUCTURE AND IMPACT OFFICE

Sexual Assault Nurse Examiners Grant Recommendations

As part of the \$10 million that it allocated for law enforcement grants, the 2015 Legislature assigned \$250,000 of oil and gas impact funds to Sexual Assault Nurse Examiner program activities. The Legislature directed the EIO to work with the Bureau of Criminal Investigations (BCI) regarding the procedures and awards. In January of 2016 the Board awarded \$247,767 to seven recipients.

For the remaining \$2,233, the EIO, in coordination with the BCI, recommended three awards to be distributed from the oil and gas impact funds as follows:

Applicant	City	Awarded Jan 2016	Rounded for Whole Dollars
CENTRAL DAKOTA FORENSIC NURSE EXAMINERS	BISMARCK	\$171,060	\$745
DAKOTA CHILDREN'S ADVOCACY CENTER	BISMARCK	\$27,419	\$744
JAMESTOWN REGIONAL MEDICAL CENTER	JAMESTOWN	\$12,785	\$744
Total Remaining to be Awarded			\$2,233

Motion: The Board awards \$2,233 from the Oil and Gas Impact Grant Fund to the three providers of sexual assault nurse examiner services to victims as identified in the three award recommendations in the preceding list. With this action, the Board affirms that the entire \$250,000 designated for sexual assault nurse examiner programs by the 2015 Legislative Assembly has been approved.

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

Removal of Suspensions on Previously Approved Grants

Due to lower than anticipated Oil and Gas Impact Grant Funds, in February 2016 the Board suspended 59 grant projects totaling \$7,396,006.77.

Presently, the grant fund's balance contains enough resources to support the suspended grants. It was recommended that the Board lift the suspension on previously awarded grants. The complete list of February 2016 EIO Grant suspension list was provided to the Board and is available at the Department upon request.

The Board directed the EIO to notify grantees to determine if projects are still needed or planned, and if not, cancelations could be authorized. If the political subdivision still has a need for the project as fund, it can restart the effort and submit for reimbursement.

Motion: The Board lifts the suspension of 59 grant projects that it implemented in February 2016, but authorizes the Director to work with these grantees to determine project need and viability. For projects that will be completed, the Board consents to payment of grants based upon satisfactory documentation of project completion.

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

Cancelation of Unused Grant Balances

Several grants awarded during Fiscal Years 2013, 2014, 2015, and 2016 were fully completed during the 2016 construction season.

A number of projects, for which the Board approved grants, finished under budget and the remaining funds are no longer necessary. The remaining balances are included in the list of recommended cancelations and closure of grants for the Board's consideration:

Political Subdivision	Year	Grant Number	Amount Awarded	Amount Paid	Balance to Cancel	Project Description
Williams County	2014	G140265	\$200,000.00	\$160,569.59	\$39,430.41	Four miles of Cty Rd #15
Williams County	2015	G150259	\$300,000.00	\$297,072.16	\$2,927.84	Road safety, gravel and road stabilization
Williams County	2015	G150260	\$30,400.00	\$26,499.66	\$3,900.34	Two miles of Cty Rd #10
Williams County	2015	G150294	\$205,378.00	\$184,794.53	\$20,583.47	Grading & Gravel of Cty Rd #10
Langberg Township	2015	G150163	\$48,000.00	\$46,746.50	\$1,253.50	Culvert replacement and graveling
Lindahl Township	2015	G150195	\$100,000.00	\$0.00	\$100,000.00	Local oil & wind companies paid for repairs
Pearl Township	2015	G150192	\$52,922.00	\$51,520.00	\$1,402.00	Resurfacing township roads
Daneville Township	2015	G150150	\$24,000.00	\$4,345.50	\$19,654.50	Widen road & install culvert
Fay Township	2015	G150194	\$30,000.00	\$25,895.00	\$4,105.00	Road maintenance from pipeline install
City of Stanley	2013	G130005	\$2,278,400.00	\$2,237,752.74	\$40,647.26	Water storage reservoir
City of Stanley	2014	G140008	\$2,682,160.00	\$1,971,209.01	\$710,950.99	Water, sewer, and street improvements
City of Stanley	2015	G150003	\$1,000,000.00	\$684,391.95	\$315,608.41	Trunk water line piping
City of Mandan	2013	G120027	\$6,000.00	\$5,450.00	\$550.00	Hazmat training
Alamo Rural Fire Dept.	2013	G130051	\$60,000.00	\$59,883.40	\$116.60	Trucks and foaming equipment
New PSD #8	2016	G160081	\$258,876.00	\$212,558.68	\$46,317.32	Renovations & improvements
Garrison Municipal AP	2016	G160007	\$46,001.00	\$45,589.97	\$411.03	Reconstruct Fueling Apron
Dickinson Regional AP	2016	G160200	\$35,940.00	\$35,341.00	\$599.00	Runway pavement maintenance
Dickinson Regional AP	2016	G160197	\$51,800.00	\$47,463.61	\$4,336.39	Runway 32 safety improvement
Dickinson Regional AP	2016	G160003	\$307,000.00	\$282,069.23	\$24,930.77	Apron lighting and security upgrade
Dickinson Regional AP	2015	G150130	\$103,250.00	\$96,484.86	\$6,765.14	General aviation apron expansion
Mohall Municipal Airport	2014	G140082	\$265,900.00	\$260,897.59	\$5,002.41	Design new airport fueling system
Mohall Municipal Airport	2015	G150138	\$88,506.00	\$83,363.44	\$5,142.56	Apron and access road improvements
Mohall Municipal Airport	2016	G160208	\$189,200.00	\$141,657.07	\$47,542.93	Access road construction
Parshall Municipal AP	2015	G150140	\$141,668.00	\$122,181.62	\$19,486.38	South apron pavement rehabilitation
Tioga Municipal Airport	2015	G150141	\$124,549.00	\$116,449.58	\$8,099.42	Apron, taxi, and hangar improvements
Tioga Municipal Airport	2015	G150142	\$42,066.00	\$34,333.94	\$7,732.06	Corporate Taxi and Hangar reconstruction
Watford City Municipal AP	2015	G150145	\$69,300.00	\$69,293.71	\$6.29	Airport site study
Watford City Municipal AP	2016	G160213	\$72,000.00	\$71,315.27	\$684.73	Master plan phase five
Total Cancelations					\$1,438,186.75	

Motion: The Board cancels the remaining balances of the 28 grants identified in the preceding list for a total of \$1,438,186.75, and makes these funds available within the oil and gas impact grant fund for expenses or other grants.

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

Consideration of Grants Plan for Remainder of Fiscal Year

Due to reduced revenues, of the \$140 million appropriated by the 2015 Legislature for grants, the Board has awarded \$47,941,508.

If revenues continue to be deposited into the Oil and Gas Impact Grant Fund at a rate similar to recent months, the Board may be able to consider additional grants. Presented in the chart below, the shaded green area labeled "Total Remaining Allocations", are legislative allocations of grants distributions that could be authorized as funds become available.

2015-2017 Biennium Breakdown (Combining like FY Rounds)					
Round or Award	#Applications	Amt of Projects	Amt 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	\$3,684,898
K-12 FY 2016	62	\$15,000,193	\$15,000,193	62	\$14,988,201
Law Enforcement FY 2016	59	\$22,102,479	\$19,853,329	54	\$7,778,869
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	15	\$23,333,247	\$12,408,584	15	\$10,000,000
Providers to Developmental Disabled	22	\$2,000,000	\$2,000,000	22	\$2,000,000
Domestic Violence	3	\$9,425,624	\$2,178,280	0	\$0
Sexual Assault Examiner	7	\$309,733	\$309,733	7	\$247,767
Human Trafficking	6	\$1,207,510	\$1,207,510	6	\$750,000
	316	\$119,001,294	\$83,893,348	266	\$47,941,508

As of: 1/24/2017		Admin		\$700,000
Current Balance	4,493,579			
Projected Revenue	18,000,000 (at \$3m/mo)			
Focused Spending	\$16,038,466			
Pro-rated amount if funds are available	\$6,455,112.60			
Unmet obligations by July 2017	\$69,320,025			

Total Remaining Allocations	
Sexual Assault Examiner ¹	\$2,233
Domestic Violence (Feb) ²	\$2,000,000
Law Enforcement (Apr) ²	\$1,221,131
EMS ²	\$2,315,102
Bowman/Divide Counties (May) ³	\$8,000,000
City of Stanley (May) ³	\$1,700,000
City of Kenmare (May) ³	\$500,000
City of Berthold (May) ³	\$200,000
City of Burlington (May) ³	\$100,000
K-12 Schools	\$6,000,000
Unmet from above	
K-12 Schools	\$9,011,799
Fire Districts	\$9,001
Nursing Homes	\$4,000,000
Eligible General	\$5,000,000
Other Airports	\$1,369,225
Dickinson Airport	\$4,630,000
Williston Airport	\$39,000,000
Contingency	\$6,300,000
Total Remaining Allocations	\$91,358,491

Appropriation Total = \$140,000,000

¹ = Required by statute
² = Land Board focus is Safety & Security
³ = Derived as a packaged distribution

Motion: The Board authorized the Director to initiate grant rounds for Domestic Violence Shelters, Law Enforcement and Emergency Medical Services using the criteria outlined in law and used in prior consideration, and to submit award recommendations at a future Board meeting.

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

MINERALS MANAGEMENT

Modification of Existing Coal Leases with the Falkirk Mining Company (North American Coal)

The Falkirk Mining Company (a subsidiary of North American Coal Corporation) requested the Board's consideration of an adjustment to ten existing coal leases within the Falkirk Mine in McLean County.

The royalty rates in the Board issued leases are often higher than the prevailing rates that the mining firm has with private mineral owners. This was due to N.D.C.C. § 15-05-01 which previously required the Board to issue coal leases with a royalty rate of the greater of \$0.25 per ton or 6% of the cost of coal. The statute was modified by the 2013 Legislature to remove the royalty minimums and to allow the Board to negotiate and renegotiate terms of leases.

In March 2014 the Board discussed similar requests from other mines and the Board:

- 1) Directed the Commissioner to examine individual coal leases to determine which tracts may not be mined because the existing royalty rate makes the coal uneconomical to access and extract.
- 2) Asked the Commissioner to evaluate the value of lignite compared with other energy sources to ensure the competitiveness of the trusts' lignite compared with the potential displacement by Powder River Basin Coal, natural gas, or energy produced in other parts of the region.
- 3) Requested Attorney General Stenehjem review of the Board's authority to renegotiate active coal leases.

The Board reviewed a June 4, 2014 memo from the Attorney General to the Board indicates that it cannot divert or forego revenue to which the trusts are due, for any reasons other than the benefit of those trusts.

In 2014 the Board granted royalty reductions in 19 of 24 coal leases at the requests of BNI Coal and North American Coal subsidiaries. The Board has able to adjust the specific leases because in each case, the coal tract was located such that it would not be mined by the leasing firms because it was considered uneconomical at the initial royalty rate. With the renegotiated royalty rate, the State trust tracts were considered minable by the firms. In all instances, the "fair market" royalty rate was established by an examination the rate at which the companies had leased the neighboring tracts.

Of the ten leases on which Falkirk requested adjustments, the Department has reviewed six tracts that will be mined within a 15 year window of the initial primary lease term. The majority of the Board's leases carry a primary term of 15 years with an option to extend for an additional 15 years.

The Falkirk Mining company has indicated that it will not mine these tracts if a royalty reduction is not obtained.

The following chart shows the leases that the Department recommended amending to Falkirk's offer of \$0.16 per ton with an annual 3% escalator, starting one year from the effective date of the amended coal leases.

Lease No.	Lease Date	Legal Description	Gross Acres	Surface Acres	Coal Acres	Projected Dates of Mining
3RO-03652	10/30/2003	T145N-R83W SEC 34 – SE4	160.00	0.00	80.00	2017-2019
3UN-03800	04/26/2007	T146N-R82W SEC 01 – SE4	160.00	0.00	80.00	2017-2019
3UN-03801	04/26/2007	T146N-R82W SEC 16 – SE4 and NE4SW4 lying East of Hwy 83	108.19	0.00	54.095	2017-2024
3RO-03682	07/29/2010	T144N-R84W SEC 01 – SE4	160.00	0.00	8.00	2018-2026
3RO-03686	07/29/2010	T146N-R84W SEC 36 – SE4	160.00	0.00	80.00	2018-2025
3RO-03687	07/29/2010	T146N-R84W SEC 36 – SW4	160.00	0.00	80.00	2018-2025

This second chart shows the remaining leases Falkirk would also like a reduced royalty. These are projected to be mined in more than 15 years.

Lease No.	Lease Date	Legal Description	Gross Acres	Surface Acres	Coal Acres	Projected Dates of Mining*
3RO-03649	10/30/2003	T145N-R83W SEC 15 – NW4	160.00	0.00	8.00	2045-2049
3RO-03683	07/29/2010	T145N-R83W SEC 16 – NE4	160.00	0.00	80.00	2046-2049
3RO-03684	07/29/2010	T145N-R83W SEC 16 – SE4	160.00	0.00	80.00	2045-2049
3RO-03685	07/29/2010	T146N-R84W SEC 36 – NE4	160.00	0.00	80.00	2045-2046

*projected timeframe may change.

A large-scale map of the mine and tracts considered was shown to the Board and is available at the Department.

North American Coal Company suggested that due to the 3% per year escalation factor, the remaining four leases which presently have a fixed rate, could potentially collect more royalty at the time of mining due to compounding.

The Department recommended that the Board approve the revised lease for the six tracts that will be mined within 15 years and that the staff evaluate the remaining four tracts slated for mining in 25 to 30 years and provide a recommendation. The Board discussed the recommendation and decided that the value of the 3% escalator over the long-term would generate additional value for the trusts.

Motion: Under its current rules, the Board approved the issuance of amended coal leases for a revised royalty \$0.16 per ton with an annual 3% escalator to the Falkirk Mining Company, for the ten leases requested and presented herein.

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

REVIEW OF PERTINENT LEGISLATION

2017-2019 Executive Budgets

To accommodate the executive request for a 90 percent budget, in late 2016, the Department:

1. recommended two currently authorized FTEs be phased out: a natural resources manager and the assistant director of the Energy Infrastructure and Impact Office,
2. submitted a reduced operating budget for travel, information technology software and licenses, data processing and technology fees, and
3. reduced the budget request for operations appropriation authority for the EIIO from \$700,000 to \$207,000.

In its options package, the Department requested authorization for two additional FTEs: a Geographic Information Systems (GIS) Specialist and a Mineral Title Specialist. The December executive budget contained one of these FTEs, the January executive budget has neither.

The Department request and the executive budgets include \$5 million for a capital asset of a comprehensive information management system upgrade relative to a 2016 business process modeling effort that identified several opportunities for process and system improvements in lands management, accounting, grants administration and unclaimed property.

The Department's budget bills are Senate Bill Nos. 2013 and 2073.

Budget Requests and Executive Budgets

	2015-17 Appropriation	Proposed for 2017-19 Biennium	2017-19 Optional Request	Proposed Optional for 2017-19	Executive Recommendation (Dalrymple)	Executive Recommendation (Burgum)
SALARIES AND WAGES	\$6,123,516	\$5,864,209	\$368,031	\$6,232,240	\$6,245,692	\$5,881,283
CONTINGENCIES	100,000	100,000		100,000	100,000	100,000
OPERATING EXPENSES	2,019,637	1,727,698	46,050	1,773,748	1,775,723	1,775,723
CAPITAL ASSETS (comprehensive IT upgrade)		5,520,000			5,520,000	5,305,000
GRANTS	\$140,000,000	0	0	0	\$24,100,00	24,100,000
FTE	33	31	2	33	32	31

Legislative Bill Status (as of January 24, 2017)

The Department's testimony regarding the following list of bills was provided to the Board and is on record at the Department.

The Department Budget Bills:

SB 2013 Legislative appropriation and budget for the commissioner of university and school lands.

SB 2073 Executive budget for the commissioner of university and school lands.

Both bills were heard by the Senate Appropriations Committee on January 20, 2017. The Department presented supporting testimony.

The Department submitted Senate Bills 2101 and 2102:

SB 2101 Relating to management of the Coal Development Trust Fund.

The bill updates two sections of law related to distributions from, and the calculation of, income earned by the Coal Development Trust Fund. The hearing with the Senate Finance and Taxation Committee was held on January 4, 2017. The Department supported SB 2101. No action has yet been taken.

SB 2102 Relating to duties of the Commissioner and assessing state owned lands for highest and best use.

Clarifies the term of office and duties of the commissioner and regarding evaluating state lands for its highest and best use.

The hearing on SB 2102 was held on January 13, 2017 with the Senate Government and Veterans Affairs Committee. The Department supported SB 2102. The bill passed the Senate 45-0 on January 17, 2016.

Other bill have been introduced that have a direct impact on the Land Board, Department or the trusts and funds that they manage:

HB 1199 Relating to the definition of sovereign lands.

Sets the determination of sovereign minerals to the historic ordinary high water mark of the Missouri River under the Lake Sakakawea prior to inundation, extending to the Corps "take line".

Has been assigned to the House Energy and Natural Resources Committee. No hearing has yet been scheduled.

The Department provided a fiscal note for HB 1199 showing a total negative impact on the Strategic Investment and Improvements Fund of approximately \$30 million through fiscal year 2021. The Department will offer background testimony.

HB 1300 Relating to agencies exempt from the definition of an administrative agency.

This Bill would remove the Board's exemption from the Administrative Agencies Practice Act.

The hearing on HB 1300 was on January 27, 2017 with the House Political Subdivisions Committee.

The Department provided a fiscal note for HB 1300 which indicated a cost could not be determined. Based upon opposition to previous similar efforts, the Department presented testimony in opposition to HB 1300.

HB 1366 Relating to oil and gas gross production tax definitions and allocations and to provide an appropriation to the board of university and school lands.

The Bill would restore \$60 million in EIO grant funds to support legislative targets that were not met during the 2015-2017 biennium.

The bill has been assigned to the House Finance and Taxation Committee. The Department will provide testimony on the background of EIO grants.

HB 1384 Relating to the duties of the state treasurer and the administration of abandoned property.

This bill would transfer the administration of the Uniform Unclaimed Property Act from the Department of Trust Lands to the office of the State Treasurer.

The hearing on HB 1384 was on January 27, 2017 with the House Political Subdivisions Committee. The Department presented neutral background on the purposes and operations of the Unclaimed Property Office.

SB 2134 Relating to the ownership of sovereign minerals beneath the Missouri River in areas that are inundated by Lakes Sakakawea and Oahe.

The Bill would change the method that the Board has used to determine and lease State minerals, by defining the riverbed channel under Lake Sakakawea and Lake Oahe as the last known survey by the Army Corp of Engineers.

N.D.C.C. 61-33-01 defines sovereign land as "...those areas, including beds and islands, lying within the ordinary high watermark of navigable lakes and streams...". In January, 2010, the Board authorized the examination of the historical ordinary high water mark of the Missouri River as it existed prior to inundation. In 2011, Bartlett and West completed "Task Order 2" for the river channel from near Williston to the Four Bears Bridge near New Town.

This sovereign acreage determination has been used as the basis for what has been leased for oil and gas production. Bonus and royalties collected are deposited into the Strategic Investment and Improvements Fund (SIIF).

The Department provided a fiscal note for SB 2134 showing a negative revenue impact on the Strategic Investment and Improvements Fund of an estimated \$243 million through fiscal year 2021.

The hearing on SB 2134 was held on January 12, 2016 with the Senate Energy and Natural Resources Committee. The Department provided background testimony. No action has yet been taken.

SB 2245 Relating to listing state parcels for use as wetlands mitigation.

This act would require the Commissioner, by July 2018, to provide a list of trust land parcels that may qualify for use as wetlands mitigation.

The Department provided a Fiscal Note, which indicated that a cost cannot be determined.

The hearing on SB 2245 was on January 26, 2017 with the Senate Agriculture Committee. The Department presented neutral testimony on the background and purpose of trust lands.

SB 2272 Relating to school construction loans from the coal development trust fund and the school construction assistance revolving loan fund (and other issues).

This Bill raises from \$50 million to \$60 million, the amount of the Coal Development Trust Fund for school loans; and changes the program from a broad school construction loan program to one for unanticipated construction, replacement and emergency repair projects.

The bill also consolidates the various school construction loan programs under BND. (The transfer of \$150 million transfer referred to in Section 12 of the Bill has already been completed.)

The hearing on SB 2272 was on January 25, 2017 with the Senate Education Committee.

R E P O R T S

The Summary of Total Assets (Unaudited) for periods ended October 31, 2016 and November 30, 2016 was provided to the Board for its review.

Revenue Compliance Division Update

Through its Revenue Compliance Division, the Department ensures that royalties and other collections are complete and accurate. The division reviews oil and gas royalty payments to determine if payments are in accordance with the Board's lease terms, rules and regulations, and North Dakota statutes. The total oil and gas royalties, interest and penalties collected in biennium to date is \$282,991,899. Included in this total is \$2,206,445, which is a result of enhanced efforts to examine royalty reports and submittals. The oil and gas royalties received and the additional collections and corrections are detailed in the following tables:

OIL AND GAS ROYALTIES	
FY-14	\$351,286,564
FY-15	333,750,365
FY-16	192,733,443

	Biennium 2013-2015	Biennium to Date (07-01-15 thru 12-31-16)
Additional Royalties Collected	\$10,519,938	\$1,181,545
Additional Taxes or Other Deductions Collected	720,158	395,836
Penalties Collected	563,726	629,064
Total Collected	\$11,803,822	\$2,206,445
NDIC Report Corrections	221	14

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 in N.D.C.C. 47-16-39.1.

Additional royalty collections are reduced due to lower commodity prices and improvements in the operators' payment process. Last biennium, the Department received royalties from 4,853 producing properties. During the current biennium through December 2016, the Department received royalties from 5,520 producing properties.

The division has developed and implemented a comprehensive oil and gas audit program during the current biennium that will further enhance compliance with lease terms. To date, the Department has engaged in the following audits:

(01/30/17)

Operator	Audit Initiated	Audit Status
ConocoPhillips	August 2015	Preliminary findings sent to operator
Continental Resources	August 2015	Preliminary findings sent to operator
Hess	August 2015	Need additional information from operator
Fidelity Exploration	February 2016	Preliminary findings sent to operator
Statoil	February 2016	Need additional information from operator
Marathon	March 2016	Need additional information from operator
Newfield Exploration	June 2016	Preliminary findings sent to operator
Zavanna	June 2016	Need additional information from operator
Oasis Petroleum	August 2016	Need additional information from operator
Slawson Exploration	August 2016	Need additional information from operator
XTO Energy	October 2016	Received documentation, audit in progress
Whiting Petroleum	November 2016	Awaiting receipt of documentation

The Department continues efforts to encourage operators to pay or escrow royalties based on the OHWM survey of the Missouri and Yellowstone Rivers. These efforts have resulted in more wells that were held in suspense to be placed in pay status and increased escrowing of royalties from disputed wells. Currently 11 oil and gas operators have escrowed revenue from 214 wells totaling \$60,478,594 as of December 31, 2016. Escrow balances at the Bank of North Dakota:

BND ROYALTY ESCROW BALANCES	
June 30, 2014	\$11,280,421
June 30, 2015	18,736,053
June 30, 2016	51,478,917
December 31, 2016	60,478,594

Investment Updates

The table below shows the status of the asset allocation of the permanent trusts as of December 31, 2016. Final valuations in some of the real estate funds were not available thus the figures for the three non-core real estate portfolios are September 30, 2016 values.

Account/Asset Class	Long-Term Asset Allocation	12/31 Actual Allocation \$	12/31 Actual Allocation %
Large Cap US Equity	13.5%	\$ 523,118,170	13.5%
Small Cap US Equity	3.5%	\$ 134,291,172	3.5%
International Equity	12.0%	\$ 461,592,699	11.9%
Emerging Market Equity	3.0%	\$ 113,981,109	2.9%
Total Equities	32.0%	\$ 1,232,983,150	31.8%
Domestic Investment Grade	14.2%	\$ 548,332,933	14.1%
High Yield FI	3.0%	\$ 114,718,326	3.0%
International/Global FI	5.8%	\$ 219,788,792	5.7%
Total Fixed Income	23.0%	\$ 882,840,052	22.8%
Total Absolute Return	20.0%	\$ 767,229,519	19.8%
Commodities	3.0%	\$ 118,304,755	3.1%
MLPs	3.0%	\$ 117,971,878	3.0%
TIPS	2.0%	\$ 72,898,821	1.9%
Natural Resource Equities	2.0%	\$ 76,513,846	2.0%
Total Inflation Strategies	10.0%	\$ 385,689,300	10.0%
Core Real Estate	8.0%	\$ 337,890,667	8.7%
Core Plus Real Estate	7.0%	\$ 269,200,729	6.9%
Total Real Estate	15.0%	\$ 607,091,396	15.7%
Total Asset	100.0%	\$ 3,875,833,416	100.0%

Change at Brandywine (Global Fixed Income: \$86.9 million, 2.2% of assets)

Brandywine recently announced the departure of Chen Zhao, the Co-Director of Global Macro Research. RVK has no concerns due primarily to the fact that as the firm's Economist, Mr. Zhao was not a key decision maker for the organization.

Fee Reduction at Dimensional Fund Advisors (\$56.8 million, 1.5% of assets)

On January 20, 2017, it was learned that the fee charged for investing in DFA's Emerging Markets All Cap Core Fund would be reduced by 8 basis points effective January 1, 2017. The previous fee schedule included a management fee of 55 basis points with a cap of total fees of 62 basis points. Under the new fee schedule the management fee is 47 basis points and the cap of total fees is 55 basis points.

New CEO at Grantham Mayo and Van Otterloo (GMO) (\$257.8 million, 6.6% of assets)

In January after an extensive search, GMO hired Scott Hayward as its new CEO. Mr. Hayward was previously the CEO of Quantitative Management Associates for 11 years.

Concurrent with the search for a new CEO, GMO's Board of Directors concluded that the previous CEO had too many direct reports. As a result, GMO's Board decided to create a new position responsible for direct oversight over most investment teams at GMO. Andy Martin was recently hired to fill this new role at the firm. Mr. Martin was previously a managing director at consulting firm Cambridge Associates.

Long-time portfolio manager Ben Inker and the Asset Allocation Team that manages the Land Board funds will not report to Mr. Martin, but instead will continue to report directly to the CEO. This direct line of authority reflects the importance the Asset Allocation team plays at GMO, it is currently responsible for almost a third of the \$77.3 million of asset under management at GMO.

RVK will continue to monitor the firm for organizational stability, the stability of the specific investment team that manages Board assets, and how the two new major hires impact the organization going forward.

Sovereign Lands Litigation Update

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.

EOG Resources, Inc. v. Soo Line Railroad Co., et. al.

Mountrail County District Court

Case No. 31-10-C-00010

EOG brought a Quiet title action to determine ownership of minerals under the railroad right of ways in eight tracts located in Mountrail County, only two of which the Board claims interest. At issue are lands that the railroad acquired by condemnation and through right-of-way deeds. The District Court ruled in favor of the Board on one of the tracts in which the Board claims an interest. The decision was appealed to the Supreme Court. The Supreme Court recently remanded the case back to the District Court for further proceedings on one of the tracts. The parties are currently negotiating a settlement.

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 estimated location of the OHWM prior to inundation of Lake Sakakawea – 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 of 2016, 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. Both EOG Resources, Inc. and Statoil Oil and Gas LP filed cross-appeals. Due to proposed legislation, on January 18, 2017 the State Defendants filed with the Supreme Court a Motion to stay until the end of the 65th Legislative Assembly concludes.

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 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." The appeal time has expired. The file will be closed.

Whitetail Wave, LLC v. XTO Energy, Inc., et al.**McKenzie District Court****Case No. 27-2015-CV-00164****Honorable Robin Schmidt**

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, near the northern border of the Fort Berthold Indian Reservation. 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 Energy Inc., 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. A six person jury trial has been scheduled for March 12-16, 2018.

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.

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.

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. In 1945, the State re-sold the property through a contract for deed 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 and a trial has been set for December 11-13, 2017.

Willard Burk v. State of North Dakota by and through the Board of University and School Lands and Ryan Rauschenberger, Tax Commissioner

Burleigh County District Court

Case No. 08-2015-CV-01849

Honorable Thomas Schneider

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 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 production taxes on the royalties he is receiving pursuant to this agreement.

The district court granted a summary judgment motion brought by the state and dismissed the case. The district court specifically found that Burk's claim was frivolous and awarded the State costs and attorney fees. Burk has appealed the decision to the North Dakota Supreme Court and oral argument was held October 26, 2016. The Board is waiting for a decision on the appeal.

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 spacing unit. On January 25, 2016, Whiting filed this interpleader action to resolve alleged title questions that have arisen due to the movement of 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.

***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 Interior Board of Land Appeals. The State is waiting for a decision on the appeal.

Continental Resources, Inc. v. North Dakota Board of University and School Lands, et al., 8th Circuit District Court

Case No. 1:17-cv-00014

Honorable David Hovland

On December 23, 2016, the Attorney General’s Office was served with an interpleader action filed by Continental Resources for certain lands underlying Continental operated wells located in McKenzie, Mountrail and Williams Counties where there are overlapping mineral interests claimed by the State and the United States. Continental is requesting the Court determine the property interests for the lands so that Continental can correctly distribute the proceeds from the wells. The United States removed this action to federal district court on January 11, 2017. The Board has until February 13, 2017 to respond to the complaint.

Other Litigation

State of Arkansas, et al. v. State of Delaware

United States Supreme Court

This case is an attempt to have the Supreme Court of the United States assume jurisdiction over a lawsuit involving unclaimed property brought by 21 states, including the state of North Dakota, against the state of Delaware. The substantive issue involved is whether sums payable on unclaimed and abandoned checks sold by MoneyGram Payments Systems, Inc. should be remitted to the Plaintiff States, as the states of purchase, or to Defendant Delaware, as MoneyGram’s state of incorporation. Plaintiff State of Arkansas, on behalf of other plaintiff states, has filed a Motion for Leave to File Bill of Complaint, Bill of Complaint and Brief in Support with the Supreme Court of the United States. Since this filing, six other states have joined as plaintiffs.

Report of Easements Issued by Land Commissioner 11-28-2016 through 01-10-17

Granted to: MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND
 For the Purpose of: Easement: Drop Line-Electric Distribution Line
 Legal Description: MOU-153-91-16-N2

Granted to: PIERCE COUNTY WATER DISTRICT, WOLFORD-ND
 For the Purpose of: Easement: Flowage
 Legal Description: PIE-157-69-20-SE4

Granted to: LIME ROCK RESOURCES III-A LP, HOUSTON-TX
 For the Purpose of: Easement: Drop Line-Gas Gathering Pipeline
 Legal Description: BRK-160-90-16-NW4

Granted to: HENRY HILL OIL SERVICES LLC, WILLISTON-ND
 For the Purpose of: Easement-Amend: Salt Water Disposal Well
 Legal Description: WIL-154-100-16-S2

Granted to: ND DEPT OF TRANSPORTATION, BISMARCK-ND
 For the Purpose of: Easement: Road Right-of-Way
 Legal Description: MOU-153-92-32-N2N2SW4, S2NW4
 Legal Description: MOU-153-93-36-NE4 NORTH OF HWY, NW4 NORTH OF HWY, SE4 NORTH OF HWY, SE4 SOUTH OF HWY

Granted to: For the Purpose of: Legal Description:	HESS NORTH DAKOTA PIPELINES LLC, MINOT-ND Easement: Salt Water Pipeline WIL-156-95-16-S2
Granted to: For the Purpose of: Legal Description:	WEST DAKOTA WATER LLC, WILLISTON-ND Letter of Permission: Access to School Land WIL-156-101-36-SE4
Granted to: For the Purpose of: Legal Description:	QEP ENERGY COMPANY, DENVER-CO On-lease Act. Amend: Tank Battery Site MCK-150-95-16-N2
Granted to: For the Purpose of: Legal Description:	NEON INC, BOULDER-CO Easement-Amend: Tower Site STU-143-67-36-ALL
Granted to: For the Purpose of: Legal Description:	ROCKWATER ENERGY SOLUTIONS, DICKINSON-ND Letter of Permission: Access to School Land DUN-147-95-16-NE4 SOUTH OF HWY, NW4 NORTH OF HWY, NW4 SOUTH OF HWY, SE4
Granted to: For the Purpose of: Legal Description:	UINTAH ENG & LAND SURVEYING, SIDNEY-MT Permit: General Land Surveys All - State of ND
Granted to: For the Purpose of: Legal Description:	BROSZ ENGINEERING INC, BOWMAN-ND Permit: General Land Surveys All - State of ND
Granted to: For the Purpose of: Legal Description:	HIGHLANDS ENGINEERING & SURVEYING PLLC, DICKINSON-ND Permit: General Land Surveys All - State of ND
Granted to: For the Purpose of: Legal Description:	WILLIAM H SMITH & ASSOCIATES PC, GREEN RIVER-WY Permit: General Land Surveys All - State of ND
Granted to: For the Purpose of: Legal Description:	KADRMAS LEE & JACKSON INC, DICKINSON-ND Permit: General Land Surveys All - State of ND
Granted to: For the Purpose of: Legal Description:	STREAMLINE WATER SERVICES LLC, WATFORD CITY-ND Letter of Permission: Access to School Land DUN-148-96-36-SW4
Granted to: For the Purpose of: Legal Description:	MICROSEISMIC INC, HOUSTON-TX Permit: Water Test Well WIL-153-100-36-ALL
Granted to: For the Purpose of: Legal Description:	SELECT ENERGY SERVICES LLC, WILLISTON-ND Letter of Permission: Access to School Land MCK-153-94-36-S2

Granted to: **SAVAGE WATER SOLUTIONS LLC, WILLISTON-ND**
For the Purpose of: Letter of Permission: Access to School Land
Legal Description: WIL-154-100-36-S2

Granted to: **CARLSON MCCAIN, BISMARCK-ND**
For the Purpose of: Permit: General Land Surveys
Legal Description: All - State of ND

Granted to: **MBI ENERGY SERVICES, KILLDEER-ND**
For the Purpose of: Letter of Permission: Access to School Land
Legal Description: DUN-146-94-16-N2

Granted to: **BARTLETT & WEST INC, BISMARCK-ND**
For the Purpose of: Permit: General Land Surveys
Legal Description: All - State of ND

A D J O U R N

There being no further business, the meeting was adjourned at 2:17 PM.

Doug Burgum, Chairman
Board of University and School Lands

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