

**Minutes of the Meeting of the
Board of University and School Lands
February 23, 2017**

The February 23, 2017 meeting of the Board of University and School Lands was called to order at 9:40 AM in the Governor's Conference Room by Vice-Chairman Al Jaeger, Chairman Doug Burgum joined the meeting a few moments later.

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
Allisen Bement	Mineral Title Specialist
Susan Dollinger	Unclaimed Property Administrator
Levi Erdmann	Investment Analyst
Taylor Lee	Director, Revenue Compliance
Catelin Newell	Office Manager
Gerard Schwan	Director, Grants and Claims Section

Guests in Attendance:

Charles Tuttle	Himself
Josh Kevan	RVK
Roger Kelley	Continental Resources, Inc.
Blair Thoreson	Lobbyist/Continental Resources, Inc.
Leslie Bakken Oliver	Governor's Legal Counsel
Cassandra Torstenson	Governor's Office
David Garner	Office of the Attorney General
Jen Verleger	Office of the Attorney General

APPROVAL OF MINUTES

A motion to approve the minutes of the January 30, 2017 meeting was made by Attorney General Wayne Stenehjem and seconded by Superintendent Kirsten Baesler and the motion carried unanimously on a voice vote.

ENERGY INFRASTRUCTURE AND IMPACT OFFICE

Consideration of Grants to Domestic Violence / Sexual Assault Organizations

The 2015 Legislature assigned \$2 million of oil and gas impact funds for grants to domestic violence sexual assault organizations located in oil-producing counties. The requirements include local matching funds of at least two dollars of non-state funds for each dollar of grant funds.

In June 2015 the Board made appointments to the Domestic Violence Grants Advisory Committee. The purpose of the advisory committee is to assist in formulating recommendations of grants for Board consideration. The committee included:

Adele Sigl, ND Department of Commerce
 Bonnie Malo, ND Department of Commerce
 Sherry Leno, ND Department of Commerce (Replaced by Ali Hochhalter)
 Janelle Moos, CAWS of ND
 Mary Dasovick, ND Department of Health (Replaced by Deanna Askew)
 Mallory Sattler, ND Department of Health
 Lori Mickelson, ND Attorney General's Office

For the purposes of the 2017 reviews, two representative were replaced by others because of departures or responsibility changes within state agencies.

Grant guidelines utilized include:

- Two dollars of non-state funds for each dollar of state grant funds
- Projects to construct, renovate or purchase facilities to provide shelter to victims of domestic violence
- Priority given to communities with the greatest need

Grant applications were accepted through February 9, 2017. Two were received:

Name	City	Application	Project	Project Total	Amount Requested	Long Description
Family Crisis Shelter	Williston	A170024	New Building	\$2,629,096 (building) and \$333,950 (furnishings / equip) = \$2,963,046	\$1,000,000	Current Shelter is Old 2 br/1 ba House and Unable to Meet the Needs of Staff/Clients. Added Population Due to Oil Activity Forcing Into a New Facility
Domestic Violence & Rape Crisis Center	Dickinson	A170023	New Building	\$3,194,557	\$1,000,000	Influx of People Coming to the Area Caused by Oil Activity has Created an Increase in Needs for Services. Ground Breaking Delayed Until April 2017
					\$2,000,000	

The Domestic Violence Grants Advisory Committee met February 13, 2017. Applications were evaluated and scored by the EIO and the Advisory Committee using the following criteria:

- The need being a direct impact resulting from energy development.
- The project meeting the objective identified for the grant round.
- Address public health, welfare, and safety.
- Community need.
- Budget and financial statements.
- Financial need with consideration to cash on hand, other revenue, previous grants, and debt.
- A clear program description and business plan.
- Sustainable staffing plan.

The following list of recommended awards was developed and were offered by the Domestic Violence Impact Grants Advisory Committee and the Energy Infrastructure and Impact Office:

Name	City	Application	Project	Long Description	Recommended Amount
Family Crisis Shelter	Williston	A170024	New Building	Current Shelter is Old 2bd/1ba House and Unable to Meet the Needs of Staff/Clients. Added Population Due to Oil Activity Forcing Into a New Facility	\$987,682
Domestic Violence & Rape Crisis Center	Dickinson	A170023	New Building	Influx Of People Coming To The Area Caused By Oil Activity Has Created An Increase In Needs For Services. Ground Breaking Delayed Until April 2017	\$1,000,000
					\$1,987,682

Motion: The Board awards \$1,987,682 from the Oil and Gas Impact Grant Fund to the two Domestic Violence providers as identified in the two award recommendations in the preceding list.

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

Authorization of Distributions to Eligible Cities (2015 Legislature HB 1176)

In HB 1176, Section Five, Subsections 13-16, the 2015 Legislature designated \$2.5 million of oil and gas impact funds for grants to specific political subdivisions located in oil-producing counties. The earmarks were designated to the communities of Stanley (\$1.7 million), Kenmare (\$500,000), Berthold (\$200,000), and Burlington (\$100,000) based on specific populations in the last official decennial federal census.

The available balance of the oil and gas impact grant fund is \$5.7 million which could allow the Board to consider approving grant fund distribution of \$2.5 million to the eligible cities of Stanley, Kenmare, Berthold, and Burlington. Of the \$5.7 million balance, \$3.5 million is planned to be awarded over the next three months to Law Enforcement and Emergency Medical Services' applications.

The infrastructure projects that the communities either completed, completed with loans, or are awaiting funds to support the enhancements:

- 1) Stanley – Several items on a priority list dependent upon funds delayed from 2016
- 2) Kenmare – New landfill and new lagoon (borrowed funds)
- 3) Berthold – Purchased building to expand City Hall (borrowed funds) and lagoon expansion to support the community's growth
- 4) Burlington – Water transmission line (in progress) and sanitary lift station (no available funding)

The EIO recommended that the Board authorize distribution of Oil and Gas Impact Funds of \$2.5 million for these communities as specified by the 2015 Legislature.

Motion: The Board awarded \$2,500,000 from the Oil and Gas Impact Grant Fund to: Stanley; Kenmare; Berthold; and Burlington, as identified in HB 1176, Section Five, at Subsections 13-16. With this action, the Board affirms that \$2,500,000 designated for these communities by the 2015 Legislative Assembly is satisfied.

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

INVESTMENT MANAGEMENT

Review of Investments and Asset Class Structures

RVK's Josh Kevan reviewed and summarized the Board's investment portfolio and described how asset allocation and its risk tolerance decisions were made to establish the present investment mix.

There are two investment pools that the Board oversees, one for the permanent trusts which has a perpetual time horizon, and another pool that is invested in shorter term bonds in which three non-permanent funds participate—the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, and the Capitol Building Fund.

The Portfolio Overview was presented to the Board and a copy is available at the Department.

RVK Investment Performance Report

RVK's Josh Kevan reviewed the performance of the permanent trust funds' pool of investment assets for the period ending December 31, 2016. Mr. Kevan also reviewed a summary of the performance of many of the Trusts' assets as of January 31, 2017.

The Permanent Funds Performance Reports and Short-term Pooled Funds Performance Report were presented to the Board and copies are available at the Department.

Investment Updates

On February 5, 2017 RVK announced the departure of its real estate consulting group based in Chicago. This team joined RVK in 2007 and focused on real estate-only consulting mandates.

The departure was a result of this team desiring to engage in discretionary mandates in which they would act as a money manager. The leadership at RVK felt that this would go against the firm's consulting philosophy and be a conflict of interest with its non-discretionary mandates. RVK has a staff of 18 professionals based in Portland who will continue to work in real estate research, and RVK plans to continue to add to this team as appropriate.

The Department staff are not concerned this development and appreciate that RVK has chosen to avoid potential conflicts by maintaining its focus on investment consulting services.

MINERALS MANAGEMENT

Royalty Calculation and Payment Issues

Under the authority of the North Dakota Constitution and State statutes, the Board of University and School Lands acts as a trustee in managing land, minerals and proceeds of the permanent trust funds for the exclusive benefit of specific beneficiaries.

Operators submit royalties to the North Dakota Department of Trust Lands under the provisions of the Board's oil and gas lease (lease). The operators who produce oil and gas, calculate royalties due on behalf of the Board's lessees. This lease is a contract that has been willingly entered by both parties. In managing trust assets, the Board's fiduciary role operates in the context of contractual relationships.

Since at least 1979, the lease which includes the Board's Rules requires oil and gas royalties to be calculated based on the greater of:

- 1) Highest posted price
- 2) Highest market price
- 3) Gross proceeds of sale

The lease contains a penalty provision for failure to pay royalties timely and state law also obligates the operator to calculate interest on a late payment.

The Board was informed that during its recent oil and gas audits, the Department identified issues with some operators improperly calculating royalties due under the lease. Specifically, the gross proceeds clause of the lease has not consistently been applied as some operators deduct transportation and other expenses from royalty payments. NDCC 38-08-6.3 requires the amount and purpose of each deduction accompany each payment. Some operators have not included royalty deductions on statements which portrays that the royalty is based on gross proceeds, but Department audits have identified inconsistencies. While some operators are in compliance, the Department has been working to collect royalties due from those who are underpaying.

The Department has increased assessment of penalties and interest for delinquent royalties. Penalties and interest on delinquent royalties per Board Rule 85-06-06-10 and NDCC 47-16-39.1 are used as a means to encourage the timely payment of royalties. The authority to assess a penalty of 1% per month has been in the Board rules since at least 1979. Since 1981, NDCC 47-16-39.1 has obligated an operator to pay 18% interest on any late payment. The Department's consistency of assessing penalties and interest was critiqued during its recent performance audit.

The Board's Oil and Gas Rules are an extension of the lease and have essentially remained unchanged since 2010.

- In April 2010, 85-06-06-08.1 *Disputed Title Royalty Escrow Account* was added, and public comment was requested and considered.
- In January 2012, 85-06-06-05 *Forms and Term of Lease* and 85-06-06-8 *Royalties* were amended to update the royalty rates. During this amendment process, industry input was received and considered.
- In June 2016, Board Rule 85-06-06-10 *Reports of Lessee- Delinquent Penalty* was amended to extend the reporting period for gas from 30 days to 60 days of the last day of the month of production.

The preceding royalty calculation issues and summary of actions were supplied for the Board's information and no action was requested.

LEGISLATIVE BILL STATUS (as of February 17, 2017)

The Board reviewed a summary of bills under consideration by the 2017 Legislature, that have a direct impact on the Board, Department of Trust Lands, or the funds managed. Unless the Board wishes to direct a different position, the Department's planned support or opposition to be offered in testimony on each bill is referenced and no additional Board action was requested.

Department Bills:

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

This Bill that includes the Department's budget was heard by the Senate Appropriations Committee on January 20, 2017, and in several subsequent subcommittee meetings.

The subcommittee has adopted amendments with reductions in operating expenses, one FTE less than the Department's current authorization, and a slight reduction of funding authority for the information technology project.

The Department will continue to present supporting testimony.

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

This Bill, submitted by the Department, 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. The Bill passed the Senate 45 - 0 on February 3, 2017.

The Department will present supporting testimony to the House committee.

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

This Bill, submitted by the Department, 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, where the Department supported SB 2102. The Bill passed the Senate 45-0 on January 17, 2017.

The Department will support the Bill in testimony to committee.

Other Bills:**HB 1199** Relating to the definition of sovereign lands.

This Bill 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" west of Williston.

The Department provided a fiscal note for HB 1199 showing a negative revenue impact on the Strategic Investment and Improvements Fund of an estimated \$30.2 million through fiscal year 2021.

A hearing with the House Energy and Natural Resources Committee was held on February 2, 2017 where the Department offered background testimony and opposition to the provision which extends the use of historical records further west than current practice.

The Committee amended the Bill and recommended a Do Pass, as has the House Appropriations Committee.

The Department intends to offer background testimony and oppose the provisions of the Bill that change the Board's leasing practice and will affect active litigation.

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

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

The Department provided a fiscal note for HB 1300 which indicated a cost could not be determined.

The hearing with the House Political Subdivisions Committee was held on January 27, 2017, where the Department presented testimony in opposition.

The Committee recommended a Do Pass and on February 6, 2017 the House passed HB 1300 by a vote of 88 – 2.

In its opposing testimony, the Department will present examples to the Senate committee of the limitations that would be placed on the Board's fiduciary authority and ability to manage trust assets.

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.

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

The Bill was heard in the House Finance and Taxation Committee. The Department was prepared with background testimony on EIO grants, but did not present.

On February 14, 2017 the House defeated HB 1366 by a vote of 37 – 54.

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 House Political Subdivisions Committee heard the Bill on January 27, 2017 where the Department presented neutral background on the purposes and operations of the Unclaimed Property Office.

The Committee recommended a Do Pass and on February 7, 2017 the House passed HB 1384 by a vote of 84 – 5.

Because of mischaracterizations regarding the Department's operation of the Unclaimed Property Division and missing consideration of the cost of transferring the functions to another agency, in the Senate Committee the Commissioner intends to present testimony in opposition of HB 1384.

Since the Bill does not amend NDCC 47-30.1-32, the Board would remain the appellate for unclaimed property issues.

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

This 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 determination of the 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 acreage determination has been used as the basis for what depicts sovereign lands and what has been leased for oil and gas production. Bonus and royalties collected are deposited into the SIIF.

The Senate Energy and Natural Resources Committee heard SB 2134 on January 12, 2017 with the Department providing background testimony.

The Department provided a fiscal note for amended SB 2134 indicating a negative revenue impact on the SIIF of an estimated \$322 million through fiscal year 2021, and an estimate of \$350,000 to detail survey acreage.

The Committee amended the Bill and recommended a Do Pass and the Senate passed SB 2134 by a vote of 37 – 9 on February 9, 2017. Amended SB 2134 extends use of the pre-inundation federal survey further west, and defers to federal law regarding ownership of the river within the Fort Berthold Reservation.

In the House Committee, the Department intends to provide background and opposing testimony, and additional explanation of the Board's 2010 technical investigation of the historical riverbed and its use of this information in the determination of mineral acres.

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

This Bill 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 Senate Agriculture Committee heard SB 2245 on January 26, 2017 where the Department presented testimony on the background and purpose of trust lands.

The Committee gave the Bill a Do Pass recommendation and on February 13, 2017 the Senate passed SB 2245 by a vote of 43 – 3.

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 Coal Development Trust Funds available for school loans. It also changes the program from a broad school construction program to a loan program for unanticipated construction, replacement and emergency repair projects.

The Senate Education Committee heard SB 2272 on January 25, 2017 and gave the Bill a Do Pass recommendation and on February 16, 2017 the Senate unanimously passed the Bill.

R E P O R T S

The results of the February oil and gas lease auction conducted online was presented to the Board.

Report of Easements Issued by the Commissioner (01-13-17 through 2-15-17)

Granted to:	ROUGH RIDER ELECTRIC COOPERATIVE, INC., DICKINSON ND
For the Purpose of:	Easement: Drop Line-Buried Electric Distribution Line
Legal Description:	BIL-142-100-28-N2SW4, S2NW4
Granted to:	WESTERN AREA POWER ADMINISTRATION, BISMARCK ND
For the Purpose of:	Easement: Electric Transmission Line
Legal Description:	STU-139-69-5-SE4NE4, LOTS 1,2,9
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:	ONEOK ROCKIES MIDSTREAM LLC, SIDNEY MT
For the Purpose of:	Easement: Drop Line-Gas Gathering Pipeline
Legal Description:	MCK-149-96-16-NE4, NW4
Granted to:	BRIDGER PIPELINE LLC, CASPER WY
For the Purpose of:	Easement: Drop Line-Oil Gathering Pipeline
Legal Description:	MCK-149-96-16-NE4, NW4
Granted to:	MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY ND
For the Purpose of:	Easement: Drop Line-Electric Distribution Line
Legal Description:	MCK-153-94-36-SE4, SW4

Granted to: For the Purpose of: Legal Description:	ONEOK ROCKIES MIDSTREAM LLC, SIDNEY MT Easement-Amend: Drop Line-Pipeline MCK-153-94-36-SE4, SW4
Granted to: For the Purpose of: Legal Description:	QEP FIELD SERVICES LLC, SAN ANTONIO TX Assignment: Salt Water Disposal Well-Assignment BIL-140-100-16-NW4
Granted to: For the Purpose of: Legal Description:	WHITE ROCK OIL&GAS LLC, DALLAS TX Permit: Access Road MCK-146-102-36-NE4, SE4
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:	MCKENZIE ENERGY PARTNERS, LLC, WATFORD CITY ND Easement-Amend: Multiple Pipelines WIL-156-100-9-S2SE4

A D J O U R N

There being no further business, the meeting was adjourned at 11:21 AM.

Doug Burgum, Chairman
Board of University and School Lands

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