

**Minutes of the Meeting of the
Board of University and School Lands
May 25, 2017**

The May 25, 2017 meeting of the Board of University and School Lands was called to order at 9:01 AM in the Harvest Room of the State Capitol by Chairman Doug Burgum.

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General – Via Telephone
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
Linda Fisher	Deputy Commissioner
Jeff Engleson	Director, Investments Division
Allisen Bement	Mineral Title Specialist
Drew Combs	Director, Minerals Division
Susan Dollinger	Unclaimed Property Administrator
Levi Erdmann	Investment Analyst
Taylor Lee	Director, Revenue Compliance
Kristie McCusker	Legal Assistant
Catelin Newell	Office Manager

Guests in Attendance:

Hope Hogan	Office of the Attorney General
Jen Verleger	Office of the Attorney General
Brent Lohnes	Hess Corporation
Duane Kram	Self
Wes Thomas Jr	Self
Bill Thomas	Self
Terry Thomas	Self
Josh Swanson	Wilkinson and Vohs Families
Cheryl Patch	Self
Jon Patch	Self
Jerry Heiser	Office of State Engineer
Kate Black	Inland Oil & Gas
Alexis Baxley	North Dakota Petroleum Council
Savannah Schmidt	North Dakota Bureau of Criminal Investigation
Jeff Herman	Petro-Hunt, LLC
Garland Erbele	State Water Commission
Aaron Friess	Self
Ron Ness	North Dakota Petroleum Council
Roger Kelley	Continental Resources
Rob Lindberg	Bakken Backers
Lacee Anderson	XTO
Janice Arnson	Self
David W. Arnson	Self
Michael Patch	Self

Ron Rauschenberger	Self
Peter Masset Jr.	Self
Danielle Yourk	Self
Finton L. Dooley	Self
Josh Kevan	RVK
Brent Bogar	Self
Beau Backman	Self
Robert Lauf	Governor's Office
Troy Seibel	Office of the Attorney General
Leslie Bakken Oliver	Governor's Legal Counsel
Cassandra Torstenson	Governor's Office
Brent Sanford	Lieutenant Governor

APPROVAL OF MINUTES

A motion to approve the minutes of the April 27, 2017 meeting was made by Treasurer Kelly Schmidt and seconded by Secretary of State Al Jaeger and the motion carried unanimously on a voice vote.

ENERGY INFRASTRUCTURE AND IMPACT OFFICE

Legislative Summary and Authorization to Initiate Grant Programs for

1. Organizations Which Address Human Trafficking Impacts, and
2. An Organization Which Supports the Developmentally Disabled

A summary of the 2017 Legislation impact on the funding and operation of the Energy Infrastructure and Impact Office (EIIO) was presented. The appropriation from grants and operations will drop from \$140 million in the present biennium, to \$40 million of grants in the 2017-2019 biennium

Section 10 of Senate Bill 2013 authorizes the carryover of Oil and Impact Grant Funds from the present biennium and authorizes appropriation for grants and administrative costs associated with the fund during the 2017-2019 biennium.

Sections 3 and 13 of Senate Bill 2013 contain one-time \$25 million funding from the Oil and Gas Impact Grant Fund for grants of \$20 million to the Williston airport and \$5 million to the Dickinson airport.

Sections 1, 5, 7, 14, 16, and 17 create and fund the \$15 million Energy Impact Fund that may be granted to the Williston airport. The fund is created by: \$3 million from the Strategic Investment and Improvement Fund (SIIF); \$4 million taken from the gross production tax distribution to the larger oil producing counties; and \$8 million from the Political Subdivision Allocation Fund.

Grants to the Williston Airport are contingent upon related federal funding being committed and available to be spent on the new airport construction.

Senate Bill 2013, Section 11 relates to a flood infrastructure impact grant the Board awarded to the City of Minot in 2012. The legislation authorized that up to \$1,325,500 of the general fund grant is extended through June 30, 2019 for a landfill expansion project.

Section 14 of House Bill 1015, which passed with an emergency clause, directs the Board to provide a grant up to \$261,000 from the Oil and Gas Impact Grant Fund to a community based organization serving the developmentally disabled population. The organization is operating intermediate care facilities within the northwest and north central human service region, and money is for settlement of amounts owed to the Department of Human Services (DHS) or a bank. The grant is to be provided from Oil and Gas Impact funds generated during the current biennium, but the legislation allows until June 30, 2019 for its distribution. The potential grant is legislatively prioritized higher than remaining grant designations made by the 2015 Legislature.

The DHS may use a portion of the settlement payment received from the provider for repayments to the federal government. Before any grant funding are paid to the provider, the Board must receive certification:

- 1) That DHS has reviewed actual cost reports and estimated audit settlement amounts;
- 2) The provider has exhausted insurance recovery options and has restructured any outstanding debt; and,
- 3) Of the amounts owed to DHS and a bank

The Board had planned to proceed with the grants allocated by the 2015 Legislature for Law Enforcement. However, the 2017 Legislature changed the appropriation of the remaining \$1,221,331 into two separate categories:

- a) \$500,000 is reserved, under HB 1003, until the Attorney General can determine whether or not \$500,000 rental savings can be realized by moving part of its operations. If savings are not realized then \$500,000 of oil impact grant funds can be utilized for operations of the Statewide Automated Victim Information Notification (SAVIN) program.
- b) \$700,000 is appropriated, under SB 2203, for the use to address impacts of human trafficking. The bill also carried an emergency clause and is in effect.

Motion: The Board redirects the previous allocation of \$1.2 million of Oil and Gas Impact Grant Funds from law enforcement grants to instead be designated as \$700,000 for grants to combat the effects of Human Trafficking and to reserve \$500,000 for the Statewide Automated Victim Information Notification, as stipulated by 2017 Legislation. The Board authorizes the EIO to work with the Attorney General regarding recommendations for these allocations.

The EIO is directed to coordinate with the Department of Human Services in announcing the availability of up to \$261,000 to a community-based provider serving individuals with developmental disabilities meeting the criteria detailed in Section 14 of SB 1015 as adopted by the 2017 Legislature.

City of Ross Grant Extension Request

In August 2014, the Board awarded a \$1 million grant to the City of Ross to repair its sewage lagoon and to begin expanding the capacity once mitigation efforts were successful on the interior and exterior walls of the current lagoon. This grant's deadline for the grant is August 2017.

The City of Ross requested an extension to Grant G150012 until December 31, 2018 in order to overcome obstacles to purchase easements, design the repair, seek bids, and execute the lagoon repairs in 2018.

The system was overused during peak population and risks failure. Removal of sludge and repair of the lagoon embankments should help alleviate the potential for a release of untreated waste. The Director recommended a grant extension be approved.

No action was taken on the recommendation, the Board instead requested additional information regarding the delay before an extension is given.

Remaining Grant Designations

Funds available within the Oil and Gas Impact Grand Fund that the Board is able to award total \$12,165,823. This is derived from the total of \$14,165,823 less the \$2 million reserved for the Nursing Homes / Basic Care grants which the Board will consider in June.

Remaining allocations for the Board's possible consideration are:

- 1) K-12 school districts - \$15 million – based on a ratio of previous oil tax distributions
- 2) Bowman and Divide Counties - \$8 million - equal amounts must be awarded to the two counties.
- 3) Seven counties (Eligible General) - \$5 million
- 4) Nursing Home / Basic Care - \$2 million
- 5) Other airports - \$1.4 million
- 6) Williston airport - \$39 million (though the 2017 Legislature addressed this need with \$35 million)
- 7) Dickinson airport - \$4.6 million (the 2017 Legislature directed \$5 million during 2017-2019)

The Board asked the Energy Impact Office Director to develop and present grants plan for the remaining allocations.

I N V E S T M E N T M A N A G E M E N T

Quarterly Investment Reports – 1st Quarter 2017

Josh Kevan from RVK reviewed the performance of the permanent trust funds' pool of investment assets for the period ending March 31, 2017.

Documents provided to the Board during the meeting included the RVK Permanent Trust Funds Performance Report; a report detailing the activities of the Strategic Investment and Improvements Fund, the Coal Development Trust Fund and the Capitol Building Fund as well as the performance of the investment pool that holds the assets of these three funds.

Permanent Trusts Asset Allocation Study

The Board's Investment Policy Statement (IPS) calls for a formal review of its asset allocation policy at least every four years. Much of the Board's previous work on the permanent trust's allocation study was performed in 2013.

RVK presented an update on the asset allocation study and the Board discussed its expectations for the project.

The Department staff and RVK have:

- Reviewed possible additional asset classes to add to the trusts' allocation
- Evaluated RVK models of return, risk and correlation projections of various asset classes
- Updated cash flow assumption scenarios including:
 - current (\$200 million/year),
 - reduced (\$100 million/year)
 - improved (\$300 million/year).

A summary of issues and factors and several asset allocation options were presented for the Board's review.

Preliminary work done by RVK indicates that adding illiquid private equity investments to the permanent trusts' investment portfolio probably is not presently advisable. The Department staff and RVK both believe that the potential addition to long term returns does not sufficiently compensate for the increased risk, lower liquidity, higher manager fees and extra transaction costs associated with implementing and maintaining a private equity investment.

RVK requested Board comment related to basic investment philosophy, specific asset classes of interest to guide the development of recommended asset allocation options that meet the long-term risk and return expectations to serve the beneficiaries of the permanent trust funds. No formal action was taken.

SOVEREIGN MINERALS

Summary of Senate Bill 2134 (2017 Legislature)

The Board reviewed a summary of Senate Bill 2134, as passed by the 2017 Legislature, which adopts a definition of sovereign minerals within the Lake Sakakawea and Lake Oahe reservoirs as limited to the ordinary high watermark (OHWM) of the historical riverbed channel and the bill implements a study to determine this location. The bill directs the adjustment of State mineral leasehold and authorizes the Board to refund revenue that have been collected on lands outside of that provided for in the bill.

Under the Equal Footing Doctrine, North Dakota owns the beds of navigable lakes and streams. The Board leases the rights to produce oil and gas from the minerals associated with sovereign lands, which N.D.C.C. Ch. 61-33 defines as “those areas, including beds and islands, lying within the ordinary high watermark [OHWM] of navigable lakes and streams.” The Office of the State Engineer has responsibility for defining the OHWM and management responsibility for the bed of navigable waters and any other minerals therein. Revenue from the leasing of minerals underlying sovereign lands is deposited into the Strategic Investment and Improvements Fund (SIIF) which the Board also oversees. The Board has had this management responsibility since at least 1977.

Under the Missouri River within Lake Sakakawea, the Board has historically leased mineral acres based upon the location of the OHWM of the river channel as it existed prior to inundation by the reservoir. West of the lake, sovereign minerals beneath the Missouri and Yellowstone Rivers are leased based upon the current OHWM of the river channel. The Highway 85 Bridge near Williston has served as the division between these practices.

Starting in 2009, the Board hired Bartlett and West to complete four studies of the Yellowstone and Missouri River OHWM for areas with potential oil and gas development. Phase I of the study focused on the area west of the Williston. Bartlett and West used the State Engineer’s OHWM delineation guidelines and conducted an on-the-ground analysis of the vegetation, soils and hydraulic characteristics for a determination of the OHWM of the rivers. The State Engineer’s Office participated in this study and concurred in the resulting survey. The Phase II and IV studies focused on the areas east of Williston. Bartlett and West used a combination of pre-reservoir maps and photos from 1943, 1951, and 1958 to determine the OHWM of the Missouri River prior to the formation of Lake Sakakawea.

Senate Bill 2134 makes the U.S. Army Corps of Engineers’ river surveys, conducted prior to inundation by Lakes Sakakawea and Oahe and for the purpose of determining the amount of land needed for the impoundment of Lake Sakakawea and Lake Oahe, the presumptive determinant of the State’s sovereign mineral boundary. Because the method that the Board has used to determine the historic OHWM differs from the method used by the Corps in creating the federal surveys, mineral acres that the Board has leased as sovereign lands belonging to the State may be surrendered under the provisions of the bill. Additionally, the bill applies the use of the historic OHWM further west than the Highway 85 Bridge to an area where the Board has leased minerals based on the current OHWM.

The definition of the “Historical Missouri riverbed channel” in SB 2134 states the closure of the project as the reference. The Garrison Dam was closed on June 11, 1953.

The bill initiates a study of U.S. Army Corps of Engineers’ pre-inundation surveys and historic records to determine the extent of the State sovereign acreage. It appropriates \$800,000 to the Department of Mineral Resources (DMR) to hire a contractor to review the acreage and tracts within the “historical Missouri riverbed channel” as determined by the Army Corps of Engineers’ surveys.

The contractor's review must determine whether a portion of the Corps' survey does not reasonably reflect the OHWM of the historical Missouri riverbed channel under state law. The following parameters, historical data, materials, and applicable state laws must be considered in its review:

- a. Aerial photography of the historical Missouri riverbed channel existing before the dam's closure date;
- b. Corps' historical records pertaining to its survey;
- c. Army corps of engineers and US Geological Survey elevation and Missouri River flow data;
- d. State case law regarding the identification of the point at which the presence of action of the water is so continuous as to destroy the value of the land for agricultural purposes, including hay lands. Land where the high and continuous presence of water has destroyed its value for agricultural purposes, including hay land, generally must be considered within the ordinary high water mark. The value for agricultural purposes is destroyed at the level where significant, major, and substantial terrestrial vegetation ends or ceases to grow. Lands having agricultural value capable of growing crops or hay, but not merely intermittent grazing or location of cattle, generally must be considered above the ordinary high water mark; and
- e. Subsection 3 of section 61 - 33 - 01 and section 47 - 06 - 05, which provide all accretions are presumed to be above the ordinary high water mark and are not sovereign lands. Accreted lands may be determined to be within the ordinary high water mark of the historical Missouri riverbed channel based on clear and convincing evidence. Areas of low - lying and flat lands where the ordinary high water mark may be impracticable to determine due to inconclusive aerial photography or inconclusive vegetation analysis must be presumed to be above the ordinary high water mark and owned by the riparian landowner.

The contractor must complete the review within six-months of entering the contract, though DMR can extend that deadline if needed. After the contractor submits its findings, the DMR must publish and hold hearings on the contractor's findings.

After the review of public input, the DMR presents a final recommendation to the Industrial Commission, which may adopt or modify the recommended determination of the OHWM.

Within six months of the adoption by the Industrial Commission, the Land Board must release any royalty proceeds it holds for mineral tracts located above both the Corps' survey and the Phase II survey. Absent additional title disputes, the operators are to distribute the proceeds to owners.

The Land Board has two years after the Industrial Commission adoption of the review findings, to implement any acreage adjustments, lease bonus and royalty refunds, and payment demands related to state-issued oil and gas leases. The Bill appropriates \$100,000,000 from the SIIF for the purpose of repayments of mineral revenues, and authorizes the Commissioner to borrow up to \$87,000,000 from the Bank of North Dakota and appropriates the amount needed for mineral revenue repayments.

The bill also defers to the U.S. Bureau of Land Management's determination of the OHWM on public domain tracts owned by the federal government. Where these nonpatented lands are within the historic OHWM of the Missouri River as determined by the Phase II investigation, the State has claimed ownership and leased these acres. Of the estimated 25,000 acres that could be surrendered under the bill, the Department estimates that 7,300 acres (30%) are public domain acres, even if they are located within the historic OHWM.

Senate Bill 2134 exempts application of the historic OHWM determination within the boundaries of the Fort Berthold and Standing Rock Indian Reservations.

The Board has leased acreage underlying the historic Missouri River channel within the area of the Fort Berthold Reservation and has set-aside, in an assigned fund balance, \$41.8 million of bonus that has been collected from leasing these acres. Minimal royalties have been collected because the Bureau of Indian Affairs has also leased these areas. Due to the ongoing dispute, operators are holding proceeds in their suspense accounts.

Litigation of the 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

Starting in 2014, the United States Bureau of Land Management (BLM) began resurveying land along the Missouri River to locate the boundary, ordinary high watermark (OHWM), between the public domain land owned by the United States and the sovereign riverbed owned by the state of North Dakota. Generally, the term “public domain”, references land that the United States has never patented, or ceded title. The BLM resurvey plats were done “for the purpose of delineating the boundaries of public domain oil and gas interests and determining the acreage of the areas that were affected by the movement of the Missouri River prior to the artificial flooding of Lake Sakakawea”.

In identifying the OHWM, the BLM applied federal delineation standards rather than state standards. Specifically, the BLM reviewed and adopted the survey conducted by the Corps of Engineers as part of the Garrison Dam project. The Corps surveys were completed for the purpose of acquiring tracts subject to inundation by the creation of the Garrison Dam. The Corps survey applied the federal definition of the OHWM and federal delineation standards.

After the resurvey work was complete, the BLM published a “Notice of Filing Plats of Survey; North Dakota” in which BLM intended to formally adopt the resurvey plats as Official Plats. The BLM can only lease federal minerals pursuant to its Official Plats. In certain areas, the survey overlaps with the state’s claim to sovereign lands. After the Federal Register Notice appeared, the State Engineer and the Board both filed protests challenging the designation of these plats as Official Plats.

The BLM rejected the State’s protest and in 2016 the State appealed that decision to the Department of Interior Board of Land Appeals.

Senate Bill 2134 passed by the 2017 Legislature asserts that public domain tracts within the OHWM are decided by federal law. This suggests that the ownership of public domain tracts should defer to BLM surveys as the determination of ownership of public domain tracts. The bill does not include a mechanism for the State to review or otherwise challenge the federal survey results on the public domain tracts.

The State’s pleadings filed in the appeal were reviewed by the Board. The briefs describe differences between the federal and state OHWM delineation standards and why State standards should apply in determining the OHWM regardless of whether land is public domain or fee title.

No decision has been received from the Board of Land Appeals. However, the deference in SB 2134 to the BLM cadastral study in the determining the OHWM of public domain tracts conflicts with the position that the Board and State Engineer have asserted on behalf of North Dakota.

The following items were presented to the Board: August 4, 2014 Protest of Filings of North Dakota Plats, June 22, 2016 State of North Dakota Statement of Reasons, September 8, 2016 North Dakota Reply Brief.

Summary of Sovereign Lands Litigation with Responses or Briefs Due

Several cases have briefs or status conferences scheduled which seek to ascertain the Board’s position in light of recent changes in the law. A summary of four lawsuits with responses due soon was offered:

William S. Wilkinson v. Board of University and School Lands, et al.
Williams County District Court

The Wilkinson lawsuit was filed on January 10, 2012. The Plaintiffs assert that they own minerals in a 200 acre tract 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 as determined by the Phase II investigation.

In January of 2016, the State Engineer sought and was granted intervention. A joint motion for summary judgment was filed by the Board and the State Engineer on March 1, 2016. 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. The parties filed briefs in the appeal. On May 1, 2017, Plaintiff/Appellees filed a letter with the Supreme Court requesting supplemental briefing, alleging newly enacted legislation (SB 2134), creating and enacting N.D.C.C. Ch. 61-33.1, impacts the pending appeal.

Whitetail Wave, LLC v. XTO Energy, Inc., et al.

McKenzie District Court

On August 1, 2015, the Attorney General’s Office was served with a complaint in the above referenced case. This case is 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 plaintiff moved for Partial Summary Judgment in September, response briefs were filed and the Court denied that motion. The parties are currently engaged in discovery. A six-person jury trial has been scheduled for March 12-16, 2018.

Mary K. Starin v. Kelly Schmidt, et al.

Williams County District Court

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.

Linda Fisher	Deputy Commissioner
Allisen Bement	Mineral Title Specialist
Drew Combs	Director, Minerals Division
Susan Dollinger	Unclaimed Property Administrator
Taylor Lee	Director, Revenue Compliance
Kristie McCusker	Legal Assistant
Catelin Newell	Office Manager

Authorized Guests in Attendance:

Hope Hogan	Office of the Attorney General
Jen Verleger	Office of the Attorney General
Troy Seibel	Office of the Attorney General
Jerry Heiser	Office of the State Engineer
Garland Erbele	Office of the State Engineer
Brent Sanford	Lieutenant Governor
Leslie Bakken Oliver	Governor's Legal Counsel
Cassandra Torstenson	Governor's Staff
Robert Lauf	Governor's Staff

During the executive session, the Board consulted with its attorney on legal strategy on the referenced litigation and no formal action was taken. The executive session adjourned at 11:58 AM and the Board returned to open session and the public was invited to return to the meeting.

O P E R A T I O N S

Term of the Commissioner of University and School Lands

Regarding the Commissioner of University and School Lands, NDCC 15-02-02 states:

The term of office of the commissioner is four years beginning July first of the year following the general election of the board members and ending June thirtieth of the fourth calendar year after appointment or until a successor is appointed and qualified. The commissioner may be removed for cause at any time during the commissioner's term of office, by a vote of four or more board members. Upon vacancy by death, resignation, or removal, the board shall appoint a commissioner for the remainder of the four-year term.

The current Commissioner was appointed on April 8, 2010 in a mid-term appointment. On May 30, 2013, the Board appointed Commissioner Gaebe to full term, which will expire on June 30, 2017.

Commissioner Lance Gaebe respectfully requested the Board's consideration of his appointment to a second full term, effective July 1, 2017.

Motion: The Board extends the appointment of Commissioner Lance Gaebe until December 31, 2017, or until a new commissioner, if it were not to be Commissioner Gaebe, would be appointed. Each Board member will appoint a representative to a five person screening committee. State Government Human Resource Management Services (HRMS) will be the repository for applications. HRMS will forward applicants to the five person screening committee, which will review applicants, choose finalists, and present a list of those finalists to the Board.

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		

Information Technology Project Update

The Department's 2017-2019 biennial budget appropriation includes \$3.6 million to replace legacy information technology systems.

Due to limitations in the current system, many of which were highlighted in the 2016 performance audit, the Department has been planning an IT replacement project. A significant step toward the IT system replacement included the services of a business process modeling (BPM) contractor in 2016 to identify and document processes and to recommend efficiencies for most operations.

The contractor, Major Oak, assembled documentation to be used in procurement of project design and installation of a presumed customized-off-the-shelf (COTS) software product. Major Oak helped establish the \$5.2 million cost estimate for a 3-year project in the Department's budget request to include 1) Land Management, 2) Accounting, 3) Unclaimed Property and 4) Energy Infrastructure and Impact Office programs.

Subsequent to the Major Oak estimate, the State Information Technology Division (ITD) also provided preliminary project estimates for building a Land Management and Accounting component and an Unclaimed Property package – as an alternative to procuring a COTS product. The Land Management and Accounting component was estimated at \$1.8 million, but it did not include Geographic Information Systems. The ITD estimate was \$400,000 for an Unclaimed Property system build. Both estimates provided baseline cost and time estimates that would be revised upon completion of a more formal project analysis.

With recent legislative reductions to the scope of the Energy Infrastructure and Impact Office, the Commissioner indicated that plans to replace its software application will not be pursued.

NDCC § 54-59-32 requires an executive steering committee (ESC) be appointed to oversee each major state information technology project. The ESC includes a project sponsor, the director of OMB (or designee), the state Chief Information Office (or designee), the agency head, and a large project oversight analyst designated by the state CIO. This committee has been formed to oversee the Department's project. State procurement professionals and Attorney General staff assist with contract negotiation and administration.

The ITD has assigned large project oversight analyst, Aaron Kielhack, to this project. Mr. Kielhack, was also the ITD project manager for the BPM project.

Legislative Bill Report

A summary of bills adopted by the 2017 Legislature that have a direct impact on the Board, Department of Trust Lands or the funds managed was presented:

Department Bills:

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

This Bill includes the Department's budget.

Department operations

1. Reduced the current authorized FTEs from 33 to a net 31. It eliminated authority for three presently vacant FTEs, but added one geographic information systems (GIS) technician.
2. Reduced Department operating authority by \$243,914 to \$1,775,723.
3. Authorized \$3.6 million for a comprehensive Department IT project- Governor Burgum vetoed the provision that would have necessitated Budget Section approval for \$1.8 million of this appropriation.

Energy Infrastructure and Impact Office

4. Provided a carryover exemption for the remaining balance of \$1.325 million for a Flood Impact Grant awarded Minot in 2012.
5. Authorized carryover of current biennium energy impact funds is authorized for administration and remaining 2015-2017 grants.
6. Provided one-time \$25 million funding for the Oil and Gas Impact Grant Funds awards of \$20 million to the Williston airport and \$5 million to the Dickinson airport.
7. Created a new \$15 million Energy Impact Fund that may be granted to the Williston airport contingent upon its receipt of federal funds. Source:
 - \$3 million from the Strategic Investment and Improvements Fund (SIIF)
 - \$4 million from the gross production tax distribution to the larger oil producing counties
 - \$8 million from the political subdivision allocation fund

Operational and governance

8. Removed a provision that had historically provided the Board with authority to transfer between appropriation line items.
9. Included in Section 20 a statement of legislative intent regarding the Board/Commissioner's interpretation of "gross production," "market value" and "gross proceeds of sale" portion of the Board's oil and gas lease to the advantage of the producer. Section 20 was vetoed by Governor Burgum. The veto was based upon the fact that the Attorney General provides legal advice to the Commissioner, and this section of the bill encroached on that authority.
10. Stipulated a study by the Tax Department, the Land Board, the Industrial Commission and other appropriate agencies to review the methods of determining valuation of oil and gas to determine mineral royalty payments and tax liability. The study and recommendations are to be reported to the interim Energy Committee before October 2018. NOTE: By subsequent passage of Section 28 of HB 1015, this provision was changed to make the Tax Commissioner's study optional.
11. Delayed the effective date of HB 1300 until January 1, 2018. NOTE: This section was modified by the later passage of section 29 in HB 1015 which set the effective date back to August 1, 2017. Section 29 of HB 1015 was then subsequently vetoed by Governor Burgum, making the effective date January 1, 2018.

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

This Bill, submitted at the Department's request, updates two sections of law related to distributions from, and the calculation of, income earned by the Coal Development Trust Fund.

SB 2102 Relating to term of office and to duties of the Commissioner in 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 makes optional a provision regarding a highest and best use evaluation of any state lands considered for sale.

Other Bills:

HB 1003 Relating to the appropriation for the Attorney General

Section 8: Contingent on rent savings as a result of relocating part of the AG's operations, directs the Board to provide up to \$500,000 from oil and gas impact grant fund allocated in 2015 for law enforcement grants, to be used instead for the operations of the Statewide Automated Victim Information notification (SAVIN) program.

HB 1012 Relating to the appropriation for the Department of Human Services

Section 39: Changes the deposit of 45% of the proceeds of the tobacco settlement trust fund to the Common Schools Trust Fund (CSTF) instead to the Community Health Trust Fund. This one-biennium adjustment will divert an estimated \$18 million from the CSTF.

HB 1015 Relating to the appropriation for the Office of Management and Budget

Section 14: Directs the Board to award a \$261,000 oil and gas impact grant to a community based group that serves the developmentally disabled population in several northwestern communities. The section, which was adopted with an emergency clause, states that the recipient may use the grant to repay debts owed to the Department of Human Services or a bank.

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

The Bill removes the Board's exemption from the Administrative Agencies Practice Act.

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 changes the method that the Board has used to determine the ordinary high water mark and lease State sovereign minerals. It defines the historical riverbed channel under Lake Sakakawea and Lake Oahe as the channel depicted in the last known survey by the Army Corp of Engineers (Corps) prior to closure of the dams. The bill moves the utilization of historical channel method of determining sovereign minerals acres to an area between Williston and the confluence. It also defers to federal law, the ownership of public domain tracts of the River. The Bill's definition of the historic channel excludes the area of the river within the Fort Berthold Reservation.

The Bill includes an \$800,000 appropriation for an Industrial Commission study of the Corps' survey and factors related to historical records, applicable state law, accretions, and agriculture use.

The Bill appropriates \$100,000,000 from the SIIF for the purpose of repayments of mineral revenues, and authorizes the Commissioner to borrow up to \$87,000,000 from the Bank of North Dakota and appropriates the amount needed for mineral revenue repayments.

SB 2203 Appropriation to the attorney general for human trafficking victim treatment and support

Section 2: Directs the Board to award up to \$700,000 of funds reserved in 2015 for law enforcement grants instead for grants to organizations which provide prevention and treatment services related to human trafficking. Adopted with an emergency clause.

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

This Bill as introduced would have required the Commissioner, by July 2018, to provide a list of trust land parcels that may qualify for use as wetlands mitigation. The bill was converted into a study of the desirability and feasibility of creating a state wetlands bank.

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 the amount of the Coal Development Trust Fund available for school loans from \$50 million to \$60 million, and changes the loan program to focus on unanticipated construction, replacement and emergency repair projects limited to \$2 million per district.

HCR 3019 Requests the U.S. Army Corps of Engineers to sell Garrison and Oahe project land.

The resolution requests the Corps sell land not needed for Missouri River reservoir project purposes, to prior owners, their heirs, and their successors. Includes a reference to the Board to develop an agreement with the Corps to implement a purchase right for prior owners, or their successors, who own the land from which the parcels were detached.

The Board manages the Strategic Investment and Improvements Fund (SIIF). A number of bills stipulate transfers and expenditures from the SIIF:

Emergency clause with appropriations due by June 30, 2017:

HB 1015	NDSU – Minard Hall	costs of collapse	\$ 1,634,854
HB 1024	Legal Counsel of Indigents	defray expenses	\$ 189,000
HB 1024	Department of Health	operating expenses	\$ 250,000
HB 1024	Department of Human Services	Grants – medical assistance	\$ 9,000,000
HB 1024	Office of Adjutant General	disaster cost	\$ 79,500
HB 1024	State Historical Society	litigation expenses	\$ 50,000
HB 1024	Office of State Treasurer	property tax relief	\$ 8,100,000
HB 1024	Office of Management & Budget	General fund	\$ 155,000,000
Total			<u>\$ 174,303,354</u>

Emergency clause with appropriations due by June 30, 2019:

HB 1024	Office of the Attorney General	court ordered – PW Enterprises	\$ 15,872,000
SB 2134	Department of Mineral Resources	contract with survey firm	\$ 800,000
Total			<u>\$ 16,672,000</u>

2017-19 Appropriations/Transfers

HB 1008	Public Service Commission	legal costs	\$ 100,000
HB 1009	Department of Agriculture	federal environmental law impact review fund	\$ 1,000,000
HB 1015	Office of Management & Budget	general fund	\$ 248,000,000
HB 1016	Office of Adjutant General	Mobile repeaters and programming radios	\$ 300,000
SB 2004	Department of Health	EPA legal fees	\$ 500,000
SB 2011	Highway Patrol	equipment replacement	\$ 358,000
SB 2013	Office of State Treasurer	energy impact fund	\$ 3,000,000
SB 2014	Industrial Commission	lignite research	\$ 3,000,000
SB 2015	Department of Corrections & Rehabilitation	electronic medical records	\$ 935,907
SB 2018	Department of Commerce	base retention grants	\$ 600,000
SB 2018	Department of Commerce	drone test site	\$ 2,000,000
SB 2018	Department of Commerce	enhanced land use	\$ 2,000,000
SB 2134	Department of Trust Lands	mineral revenue refunds	\$100,000,000
SB 2191	Office of the Attorney General	domestic violence grants	\$ 150,000
Total			<u>\$ 362,943,907</u>
GRAND TOTAL			<u>\$ 553,919,261</u>

(05/25/17)

The Summary of Total Assets (Unaudited) for period ended February 28, 2017 was reviewed by Board.

Report of Easements Issued by Land Commissioner (4/19/17 to 5/10/17)

Granted to: **NORTHWEST COMMUNICATIONS COOP, RAY-ND**
 For the Purpose of: Easement: Communication Cable - Buried
 Right-of-Way Number: RW0007971
 Trust: N – ND State University
 Legal Description: WIL-154-99-20-NE4

Granted to: **NEON INC, BOULDER-CO**
 For the Purpose of: Easement: Tower Site
 Right-of-Way Number: RW0008004
 Trust: A – Common Schools, N – ND State University
 Legal Description: STU-142-66-16-NE4, NW4, SE4, SW4
 Legal Description: STU-143-67-16-NE4, NW4, SE4
 Legal Description: STU-143-67-36-NE4, NW4, SE4, SW4
 STU-143-66-28-SW4

Granted to: **NORTHWEST COMMUNICATIONS COOP, RAY-ND**
 For the Purpose of: Easement: Communication Cable - Buried
 Right-of-Way Number: RW0008011
 Trust: A – Common Schools
 Legal Description: WIL-157-101-16-SW4
 Legal Description: WIL-158-102-16-NE4, SE4, SW4

Granted to: **WESTERN AREA WATER SUPPLY AUTHORITY, WILLISTON-ND**
 For the Purpose of: Easement: Potable Water Pipeline
 Right-of-Way Number: RW0008015
 Trust: A – Common Schools
 Legal Description: WIL-154-99-16-SE4, SW4

Granted to: **SACAGAWEA PIPELINE CO LLC, IRVING-TX**
 For the Purpose of: Easement: Gas Gathering Pipeline
 Right-of-Way Number: RW0008021
 Trust: A – Common Schools
 Legal Description: MCK-151-95-36-LOTS 3,4

Granted to: **BOE MIDSTREAM, DENVER-CO**
 For the Purpose of: Easement: Easement Release
 Right-of-Way Number: RW0008047
 Trust: A – Common Schools
 Legal Description: DUN-148-96-16-N2SE4, SW4SE4, LOT 2

Granted to: **MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND**
 For the Purpose of: Easement: Electric Distribution Line - Above Ground
 Right-of-Way Number: RW0008055
 Trust: A – Common Schools
 Legal Description: WIL-155-95-16-NE4, SE4

Granted to:	ROCKWATER ENERGY SOLUTIONS, DICKINSON-ND
For the Purpose of:	Letter of Permission: Access to School Land
Right-of-Way Number:	RW0008056
Trust:	A – Common Schools
Legal Description:	MCK-149-96-16-NE4, NW4
Granted to:	PETRO-HUNT DAKOTA LLC, KILLDEER-ND
For the Purpose of:	Permit: Access Road
Right-of-Way Number:	RW0008063
Trust:	A – Common Schools
Legal Description:	MCK-148-102-16-NE4, NW4, SE4
Granted to:	PETRO-HUNT DAKOTA LLC, KILLDEER-ND
For the Purpose of:	Permit: Access Road
Right-of-Way Number:	RW0008064
Trust:	A – Common Schools
Legal Description:	MCK-145-102-8-NE4, NW4, SE4
Granted to:	PETRO-HUNT DAKOTA LLC, KILLDEER-ND
For the Purpose of:	Permit: Access Road
Right-of-Way Number:	RW0008065
Trust:	A – Common Schools
Legal Description:	MCK-145-102-16-NE4, NW4
Legal Description:	MCK-145-102-8-NE4, NW4, SE4
Granted to:	TERRITORIAL LANDWORKS INC, MISSOULA-MT
For the Purpose of:	Permit: Planning & Preconstruction Survey
Right-of-Way Number:	RW0008066
Trust:	A – Common Schools
Legal Description:	WAR-155-84-1-SW4NW4 LYING N & E OF RIVER CENTERLINE
Granted to:	WEST DAKOTA WATER LLC, WILLISTON-ND
For the Purpose of:	Letter of Permission: Access to School Land
Right-of-Way Number:	RW0008068
Trust:	A – Common Schools
Legal Description:	MOU-154-93-16-NE4, SE4, SW4
Granted to:	WEST DAKOTA WATER LLC, WILLISTON-ND
For the Purpose of:	Letter of Permission: Access to School Land
Right-of-Way Number:	RW0008071
Trust:	A – Common Schools
Legal Description:	MOU-153-93-36-NE4 SOUTH OF HWY, NW4 SOUTH OF HWY, SE4 SOUTH OF HWY

Results of Online May Oil and Gas Mineral Lease Auction

On behalf of the Board, the Department conducted an oil and gas mineral lease auction on www.energynet.com which concluded on May 2, 2017.

There were 240 tracts offered and all but six received competitive bids. The highest bid per acre was \$7,002 for 80 net mineral acres in Mountrail County.

There were 48 bidders registered, 37 of which submitted bids in the seven-day auction. Bidders were from 12 states (AZ, CA, CO, IN, MN, MO, MT, ND, NE, TX, WA and WY).

A total \$2,415,178.55 of bonus was collected from the auction.

May 2017				
	Mineral Acres	Total Bonus	Bonus/Acres	
BILLINGS	2675.77	\$ 40,003.70	\$ 14.95	
BOWMAN	1080.43	\$ 8,640.68	\$ 8.00	
BURKE	120.00	\$ 42,560.00	\$ 354.67	
DIVIDE	3049.27	\$ 569,075.51	\$ 186.63	
DUNN	4519.13	\$ 120,351.65	\$ 26.63	
GOLDEN VALLEY	1280.00	\$ 5,120.00	\$ 4.00	
MCKENZIE	1251.16	\$ 614,583.64	\$ 491.21	
MOUNTRAIL	408.00	\$ 592,728.00	\$ 1,452.76	
ROLETTE	80.00	\$ 2,560.00	\$ 32.00	
SLOPE	2537.78	\$ 7,095.56	\$ 2.80	
STARK	1688.25	\$ 66,122.45	\$ 39.17	
WILLIAMS	2967.08	\$ 346,337.36	\$ 116.73	
GRAND TOTAL	21656.87	\$ 2,415,178.55	\$ 111.52	

A D J O U R N

There being no further business, the meeting was adjourned at 12:38 PM.

Doug Burgum, Chairman
Board of University and School Lands

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