

**Minutes of the Meeting of the  
Board of University and School Lands  
September 29, 2017**

The September 29, 2017 meeting of the Board of University and School Lands was called to order at 9:00 AM in the Governor's Conference of the State Capitol 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
Jeff Engleson	Director, Investments Division
Drew Combs	Director, Minerals Division
Levi Erdmann	Investment Analyst
Mike Humann	Director, Surface Division
Kristie McCusker	Legal Assistant
Catelin Newell	Office Manager
Gerard Schwan	Director, Grants and Claims

**Guests in Attendance:**

Leslie Bakken Oliver	Governor's Legal Counsel
David Garner	Office of the Attorney General
Hope Hogan	Office of the Attorney General
Shelly Peterson	North Dakota Long Term Care Association
Anthony Ford	Crowley Fleck PLLP
Josh Kevan	RVK
Amy Dalrymple	Bismarck Tribune
Ron Rauschenberger	PetroGulf
Steve Zenker	K-L/Zenker Ranch
Kelly Moldenhauer	K-L/Zenker Ranch
Launa Moldenhauer	K-L/Zenker Ranch

**APPROVAL OF MINUTES**

A motion to approve the minutes of the August 21, 2017 meeting was made by Secretary of State Al Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

**ENERGY INFRASTRUCTURE AND IMPACT OFFICE**

**Grant to Statewide Automated Victim Information and Notification (SAVIN) Program**

Within House Bill 1003, the 2017 Legislative Assembly redirected \$500,000 of grant funds reserved for law enforcement in the 2015-2017 biennium to be available instead for the Statewide Automated Victim Information and Notification (SAVIN) program during the 2017-2019 biennium. Section 8 of HB 1003 states that if the Attorney General does not realize rent savings by moving into the Job Service central office building, that the Land Board shall provide a grant of up to \$500,000 for the purpose of defraying the expenses of enhancing the SAVIN program.

The EIO received notification from the Attorney General's Office that it is unable to achieve rent savings because the available space in the Job Service Building is insufficient. The EIO recommended approval of a grant of \$500,000 to the Attorney General to defray expenses of enhancing the SAVIN program for the current biennium, as defined in NDCC Ch. 12.1-34.

**Motion: The Board approves a grant of \$500,000 to the Office of Attorney General for the purpose of defraying the expenses of enhancing the statewide automated victim information and notification program in accord with House Bill 1003 adopted by the Sixty-fifth Legislative Session.**

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		

### **Bowman and Divide County Grants**

Of the appropriation for oil and gas impact grants, in House Bill 1176, the 2015 Legislature provided up to \$8 million for grants to Bowman and Divide Counties for impacts of oil and gas development. The 2017 Legislature, in Senate Bill 2013, authorized the carryover of grants beyond the end of the 2015-2017 biennium in order to satisfy appropriations based on gross production tax revenues deposited in July and August 2017.

In August 2017 the Board authorized the announcement of the availability of a total of \$7,511,366 in possible grants to both counties. Applications from Bowman County and Divide County indicate plans for utilization of the funds. Both counties will perform improvements to roadways that have heavy oilfield traffic and to make the roadways safer for local citizens. The EIO recommended grants of \$3,755,683 each to Bowman County for reconstruction of the Marmarth Road and to Divide County for the paving of County Roads 11 and 14.

**Motion: The Board approves a grant of \$3,755,683 to Bowman County and a grant of \$3,755,683 to Divide County from the Oil and Gas Impact Grant Fund for infrastructure projects related to oil and gas development impacts.**

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		

### **Nursing Homes Grant Recommendations**

House Bill 1176 adopted by the 2015 Legislative Assembly appropriated up to \$4 million for nursing home, basic care facilities, home health care and hospice programs impacted by oil and gas development activities. Within Senate Bill 2013, the 2017 Legislature authorized the continuation of grant authority into the current biennium.

In June 2017, the Board approved grants which totaled \$487,366 less than the \$2 million that it had previously made available for this purpose. The Board then directed the EIO to conduct an additional grant round for the remaining portion of funds.

The supplemental grant round applied priority consideration to facilities that had not previously submitted in the initial grant round, but applications were accepted from all eligible Nursing Home and Basic Care facilities in oil and gas producing counties.

Eighteen applications were reviewed and scored based on seven factors:

- 1) Operated at a loss in either type of facility the last two fiscal year ends
- 2) Stopped or restricted admissions due to a staffing shortage
- 3) Has a high reliance on contracted staff
- 4) Realizes a significant staff turnover rate or has unfilled openings
- 5) Exceeds the direct care, other direct, or indirect care limit
- 6) Limited access to affordable housing
- 7) Limited access to affordable daycare

A summary of the grant round applications and the EIIO and advisory committee recommended grants amounts:

NURSING HOME / BASIC CARE GRANT - 2ND ROUND						
Applicant	City	App#	Project	Amount of Project	Amount Requested	Amount Recommended
ST. LUKE'S HOME	DICKINSON	A180065	STAFF EDUCATION	\$187,053	\$50,000	\$29,947
ST. BENEDICT'S HEALTH CENTER	DICKINSON	A180066	CAPITAL PROJECTS	\$50,000	\$50,000	\$26,947
MCKENZIE COUNTY HEALTH CARE SYSTEMS	WATFORD CITY	A180067	HOUSING SUPPLEMENT	\$203,688	\$150,000	\$30,947
MCKENZIE COUNTY HEALTH CARE SYSTEMS	WATFORD CITY	A180068	HOUSING SUPPLEMENT	\$203,688	\$50,000	\$29,947
REDWOOD VILLAGE	WILTON	A180069	WAGE INCREASES AND BUILDING UPGRADES	\$150,000	\$76,354	\$31,000
BETHEL LUTHERAN NURSING & REHAB CENTER	WILLISTON	A180070	SIGN-ON BONUSES & EDUCATION LOAN REPAYMENT	\$330,000	\$50,000	\$31,947
BETHEL LUTHERAN NURSING & REHAB CENTER	WILLISTON	A180071	SIGN-ON BONUSES & EDUCATION LOAN REPAYMENT	\$330,000	\$50,000	\$31,947
GOOD SAMARITAN SOCIETY - MOHALL	MOHALL	A180072	EMPLOYEE ENGAGEMENT PROGRAM	\$130,000	\$50,000	\$26,000
SOURIS VALLEY CARE CENTER	VELVA	A180073	WAGE INCREASES	\$50,000	\$50,000	\$17,947
GOOD SAMARITAN SOCIETY - BOTTINEAU	BOTTINEAU	A180074	EMPLOYEE ENGAGEMENT PROGRAM	\$150,000	\$50,000	\$36,000
GARRISON MEMORIAL HOSPITAL	GARRISON	A180075	EMPLOYEE TUITION ASSISTANCE	\$75,000	\$50,000	\$25,000
KNIFE RIVER CARE CENTER	BEULAH	A180076	WAGE INCREASES	\$123,000	\$50,000	\$35,000
RICHARDTON HEALTH CENTER	RICHARDTON	A180077	CONTRACT EMPLOYEES & ACCOUNTING SVCS	\$510,300	\$50,000	\$18,947
NORTHWEST HOSPITAL TAX DISTRICT	CROSBY	A180078	RESIDENT SAFETY PROJECT	\$50,700	\$50,000	\$20,947
TRINITY HOMES	MINOT	A180079	UNREIMBURSED COSTS	\$5,152,479	\$50,000	\$17,947
SENIOR SUITES AS SAKAKAWEA	HAZEN	A180080	WAGE INCREASES	\$94,490	\$50,000	\$30,000
MOUNTRAIL BETHEL HOME	STANLEY	A180081	UNREIMBURSED COSTS	\$528,514	\$50,000	\$25,947
SOUTHWEST HEALTHCARE SERVICES-LTC	BOWMAN	A180082	SIGN-ON AND SHIFT BONUSES	\$180,000	\$50,000	\$20,947
				\$8,498,912	\$1,026,354	\$487,364

**Motion: In accord with House Bill 1176 adopted by the 64<sup>th</sup> Legislature, the Board approves grants to the identified oil and gas development impacted nursing homes and basic care facilities for the amounts indicated in the right-hand column in the preceding chart.**

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		

### Upper Missouri District Health Unit Reallocation Request

In October 2015 the Board awarded grant G160214 for \$542,700 of Oil and Gas Impact Grant Funds to the Upper Missouri District Health Unit (Williston) for staffing, computer hardware and a software package, and building improvements.

The district health requested authority to utilize \$29,051 from the staffing allocation of its grant to instead be used for:

- 1) \$6,332.70 to purchase an autoclave and centrifuge.
- 2) \$19,279 to increase its software and hardware allocation for five years of subscriptions, and to allow connectivity with the North Dakota Immunization Information System.
- 3) \$3,439.44 to replace five portable refrigerator/freezer units to transport vaccines to schools, worksites, and health-related events.

The EIO recommended approval of the request to reallocate funds granted for staffing to be used for equipment and computer improvements.

**Motion: The Board approves the reallocation of \$29,051 of grant G160214 to the Upper Missouri District Health Unit from staffing to instead be available for equipment and higher than anticipated software and hardware costs.**

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		

### Northwest Narcotics Task Force Reallocation Request (Williams County)

In July 2015, the Board awarded \$646,460 to Williams County (G160122) for the Northwest Narcotics Task Force for salaries, overtime, equipment, housing costs, and supplies.

The grant allowed for hiring two task force officers but neither of these personnel were hired. A balance of \$507,651.84 remains of the grant, with \$330,467.52 of that for personnel costs. Williams County requested a reallocation of some of the salary dollars to purchase two pieces of equipment.

The EIO and the Bureau of Criminal Investigation (BCI) both recommended the request be approved including \$27,850 to purchase a TruNarc machine; a portable narcotics testing machine to provide quicker detection of drugs and keep officers from touching samples; and \$10,188.66 for the purchase of interactive video equipment to enhance agency coordination and training.

**Motion: Within grant G160122 previously awarded to the Williams County for the Northwest Narcotics Task Force, the Board approves the reallocation of \$38,038.66 from salaries instead for equipment as requested and recommended.**

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		

### **City of Kenmare Reallocation Request**

In July 2015, the Board awarded \$112,055 to the City of Kenmare (G160154) for its police department for salaries, a vehicle, housing assistance, and equipment costs.

The squad car was purchased, the housing allowances were fully expended in August 2017, and the equipment identified in the city's initial application were all acquired.

The city hired a fourth officer at the beginning of the grant period, however, another officer resigned and the city was unable to fill the position.

A balance of \$39,663.06 remains in the grant for salary and fringe benefits for one police officer, but the city budget will not support a four officer force after the grant funding period expires. The city requested authority to use the funds instead for continued housing allowance, specific equipment, including a radar detector, laptop computer, interior car lighting, body cameras and Tasers.

The director informed the Board that he intended to notify the City of Kenmare that the reallocation request is not supported by the EIO and BCI, and that the use of remaining \$39,663.06 is not authorized to be used for alternate purchases.

## **MINERALS MANAGEMENT**

### **Mineral Title Dispute of Historic River Bed within the Fort Berthold Reservation**

There is a competing claim to around 30,000 acres of land within the historic boundaries of the Fort Berthold Indian Reservation. The land is the bed of the Missouri River as the river existed prior to closing Garrison Dam. Development of minerals under the riverbed triggered the dispute. Over 170 wells are producing minerals from the disputed lands.

State title to the riverbed, and underlying minerals, is based on the equal footing doctrine, which provides, with some exceptions, that at statehood all states take title to the beds of navigable rivers and lakes within their borders. The State has consistently claimed title to the bed of the Missouri River up to the ordinary high watermark (OHWM), and in doing so it has never excluded from that claim any part of the river bordered by the reservation. Historically, the State's all-encompassing claim has often been made in briefs defending the State's ownership in legal disputes.

The dispute involves the Three Affiliated Tribes of the Fort Berthold Reservation (MHA Nation), the federal government through the Department of the Interior (DOI) and its Bureau of Indian Affairs (BIA), some allottees (individual tribal members), and the State of North Dakota.

The mineral acres within the historic river channel are leased in most cases by both the State and the MHA Nation or the BIA. Some operators took leases from both the state and the tribe/BIA. The State has 263 active leases in this area. Wells that produce the minerals in dispute are operated by seven companies: QEP Energy, WPX Energy, HRC Operating, PetroGulf, Slawson Exploration, Marathon Oil, and SHD Oil & Gas. Some operators suspend payment of royalties because of the title dispute, others pay royalties into escrow, and a few submit royalties to the State. It is unknown if the MHA Nation or the BIA receive royalties from their lessees.

In early 2015 leaders of the MHA Nation requested collaboration with the State to discuss the disputed mineral claim. Two meetings were organized by Indian Affairs Commissioner Scott Davis to review options to resolve the overlapping claims. Though no resolution was reached.

In October of 2015, letters were sent to operators under the Board's lease requesting payment of delinquent royalties to the State. In response, the DOI Assistant Secretary—Indian Affairs sent a letter to the Department of Trust Lands (DTL) asserting that the United States holds in trust the title of the Fort Berthold Reservation on behalf of the MHA Nation; and requested the State not collect royalties, but to instead place them into escrow.

At the suggestion of BIA officials, who wished to meet to discuss the dispute in the hope of resolving it by agreement, a meeting was held in Bismarck in June of 2016 involving tribal, regional and national BIA, and State officials. The general result of that discussion was a consensus to jointly request production and royalty payment information from the operators producing on disputed acres and to request that royalties be placed into 3<sup>rd</sup>-party escrow, rather than held in operators' suspense accounts. At the meeting, state representatives expressed a willingness to discuss a compromise to the title dispute, but MHA Nation Chairman Mark Fox said the tribe had little interest in resolving the dispute through a negotiated settlement. Earlier this year the tribe confirmed that its assertion of title is non-negotiable.

On January 19, 2017, a joint letter signed by BIA Director Loudermilk and including Commissioner Gaebe's name (without signature) was sent to six oil and gas operators requesting the status of leases within each spacing unit; number of acres within each lease; copies of title opinions; production statistics; royalties generated, etc.

The responses from oil and gas operators indicate that most of the royalty generated has not been paid to the MHA Nation, the BIA, or the State, but because of the title dispute, remain in suspense with companies or in escrow accounts. Collectively, the operators have reportedly suspended \$35.6 million of royalties.

Most of the Board's leases require disputed royalties to be escrowed with the Bank of North Dakota, and \$29 million has been deposited there.

These suspended and escrowed amounts, coupled with the \$41.8 million of rent and lease bonus received by the State attributable to the disputed minerals which would be returned if the State does not own the disputed minerals, means there is an estimated \$106.4 million presently in dispute, and more if future production is considered.

On January 18, 2017 the Solicitor of the U.S. Department of Interior issued an opinion regarding ownership of the disputed minerals. The opinion concludes that Congress intended that the bed of the Missouri River did not pass to North Dakota upon statehood and that under the 1984 Mineral Restoration Act the riverbed minerals are to be held in trust by the United States for the benefit of the MHA Nation.

According to federal law, DOI officials and divisions including the BIA, Bureau of Land Management (BLM), the Office of Natural Resources Revenue, and the Interior Board of Indian Appeals are required to abide by this Solicitor Opinion.

Notwithstanding the meetings with the MHA Nation, the preparation of the joint letter with the BIA, and a commitment from both to jointly work to get well operators to deposit royalties into escrow accounts, efforts to coordinate replies and to consider a joint escrow deposit agreement have effectively ceased.

Some oil and gas operators believe that as a result of the opinion, the BIA will take a more aggressive effort to collect royalties from federal lessees rather than allow them to continue to suspend or escrow royalties. It is believed that the DOI is resurveying the historic riverbed to establish the master survey used for BIA leasing.

The Commissioner recommended the Board enter executive session for consultation with legal counsel regarding potential litigation, negotiation strategy and efforts to avoid litigation.

## EXECUTIVE SESSION

**Motion: Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board close the meeting to the public and go into executive session for purposes of attorney consultation to consult with the Board's attorneys relating to: Title Dispute of Historic Riverbed within the Fort Berthold Indian Reservation.**

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		

At 9:39 AM the Board entered executive session for the purposes outlined in its adopted motion.

## EXECUTIVE SESSION

### 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
Drew Combs	Director, Minerals Division
Levi Erdmann	Investment Analyst
Kristie McCusker	Legal Assistant
Catelin Newell	Office Manager
Gerard Schwan	Director, Grants and Claims

### Authorized Guests in Attendance:

Hope Hogan	Office of the Attorney General
Charles Carvell	Special Assistant Attorney General
David Garner	Office of the Attorney General
Leslie Bakken Oliver	Governor's Legal Counsel

The executive session adjourned at 10:51 AM and the Board returned to open session and the public was invited to return to the meeting. During the executive session, the Board consulted with its attorneys on title disputes related to the historic riverbed within the Fort Berthold Indian Reservation, and no formal action was taken.

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

### Proposed Restructure of the International Equity Portfolio

In August, the Board approved a revised asset allocation for the permanent trust funds and directed the Commissioner to undertake an asset class review of both the international equity and fixed income portfolios.

During the meeting, RVK's Josh Kevan presented an assessment of the current allocation to non- US equities and provided recommendations related to the permanent trusts' international equity portfolio, including a change of the benchmark used to evaluate the performance of the international equity portfolio and adoption of a revised portfolio structure that includes an allocation to actively managed small cap stocks.

It was recommended that the Board change the benchmark for the broad international equity portfolio from the MSCI All Country World ex US Index to the MSCI All Country World ex US Investable Markets Index (IMI).

It is also recommended that the Board adopt a revised structure to the permanent trusts' international equity portfolio. The new structure would be part of implementing the recently adopted 2% increase in the trusts' allocation to international equities. The new structure would involve a search for one or more investment firms to actively manage a small cap developed market portfolio for the trusts.

The recommended structure is designed to:

- Improve both the risk and return profile of the overall international equity portfolio though a slight overweighting to both small cap developed market equities and emerging market equities relative to the MSCI All Country World ex US IMI.
- Provide broader international equity exposure/diversification through the addition of small cap developed market equities to the international portfolio.
- Increase the potential to outperform the benchmark over the current international equity portfolio through the addition of more active management in those markets where active management has historically worked well.
- Improve the risk/return profile of the permanent trusts' overall portfolio and increase the probability that the portfolio meets the trusts' long-term goals and objectives.

**Motion: The Board**

1. **approves a change to the benchmark used to evaluate international equity performance from the MSCI All Country World ex USA Index to the broader MSCI All Country World ex USA Investable Markets Index;**
2. **adopts a new structure within the permanent trusts' 17% allocation to international equities that includes a 10.7% passive allocation to large/mid cap developed equities, a 2.6% actively managed allocation to small cap developed market equities and a 3.7% actively managed allocation to core emerging market equities;**
3. **directs the Commissioner to work with its consultant, RVK, to conduct a search to identify a manager(s) to fill the new active small cap developed market equity allocation, and to provide the Board with a recommendation of one or more finalist candidates.**

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		

**The Investment Policy Statement Review and Update was tabled to be reviewed at a subsequent meeting.**

**Investment Updates**

The status of the asset allocation of the permanent trusts as of August 31, 2017:

Account/Asset Class	Long-Term Asset Allocation	8/31/17 Actual Allocation \$	8/31/17 Actual Allocation %
Large Cap US Equity	13.3%	\$ 562,852,940	13.4%
Mid/Small Cap US Equity	3.7%	\$ 150,929,384	3.6%
International Equity	12.0%	\$ 510,965,648	12.1%
Emerging Market Equity	3.0%	\$ 133,659,821	3.2%
<b>Total Equities</b>	<b>32.0%</b>	<b>\$ 1,358,407,793</b>	<b>32.2%</b>
Domestic Investment Grade	14.2%	\$ 582,397,133	13.8%
High Yield FI	3.0%	\$ 124,741,755	3.0%
International/Global FI	5.8%	\$ 242,502,833	5.8%
<b>Total Fixed Income</b>	<b>23.0%</b>	<b>\$ 949,641,721</b>	<b>22.5%</b>



<b>Total Absolute Return</b>	<b>20.0%</b>	<b>\$ 843,690,674</b>	<b>20.0%</b>
Commodities	3.0%	\$ 136,553,411	3.2%
MLPs	3.0%	\$ 124,814,977	3.0%
TIPS	2.0%	\$ 80,775,267	1.9%
Natural Resource Equities	2.0%	\$ 85,152,586	2.0%
<b>Total Inflation Strategies</b>	<b>10.0%</b>	<b>\$ 427,296,241</b>	<b>10.1%</b>
Core Real Estate	8.0%	\$ 348,306,361	8.3%
Core Plus Real Estate	7.0%	\$ 288,171,494	6.8%
<b>Total Real Estate</b>	<b>15.0%</b>	<b>\$ 636,477,855</b>	<b>15.1%</b>
<b>Total Asset</b>	<b>100.0%</b>	<b>\$ 4,215,514,284</b>	<b>100.0%</b>

### **Lazard (US High Yield Fixed Income: \$125.1 million, 3.0% of assets)**

Lazard announced the retirement of Tom Dzwil, lead portfolio manager of the Board's High Yield mandate with Lazard. Jeff Clark has replaced Tom in his role and Edith England was added to the team to assist with high yield research.

### **Impact of Hurricanes on Real Estate Investments**

Through investments with various real estate funds, the Board has exposure to many individual properties located across the country. The following real estate funds own properties in areas affected by recent major hurricanes:

- UBS Trumbull Property Fund (\$167.6 million, 4.0% of assets)
- Morgan Stanley Prime Property Fund (\$180.7 million, 4.3% of assets)
- JP Morgan Income and Growth Real Estate Fund (\$121.5 million, 2.9% of assets)
- Prologis Targeted US Logistics Fund (\$90.2 million, 2.1% of assets)

Managers of several of these funds have communicated updates of the specific properties affected. To this point there is no report of significant financial impact to the trusts as a result of these storms.

### **Harvest Fund Advisors (Diversified Inflation Strategies: \$125.9 million, 3.0% of assets)**

Harvest Fund Advisors, a manager of the Board's investment in Master Limited Partnerships (MLP's), has announced it is being acquired by Blackstone Group LP. In addition one of the founding partners, David Martinelli, has announced his retirement. The investment process will not change, staff incentives will remain intact, and the Harvest team will retain a significant portion of the cash flow of their operations.

### **Van Eck Global (Diversified Inflation Strategies: \$83.8 million, 2.0% of assets)**

Van Eck Global, the manager of the permanent trusts' natural resource equity investment, recently announced that Chief Compliance Officer Janet Squitieri has resigned. Deputy Chief Compliance Officer Lrina Toyberman will be taking over Janet's position on an interim basis until a replacement is identified.

## **S U R F A C E   M A N A G E M E N T**

### **Land Sale Policy and Study of Land Exchange Options**

Of the original 3.2 million acre land grant provided to the State at statehood for the common schools and specific trusts, by the 1970s, approximately 80% had been sold by the Board. In 1981 it adopted a position which limited land sales to smaller and isolated tracts, and to parcels that caused management problems, the Board has had a limited land sale policy since.

On March 26, 2015 the Board revised its land sale policy to:

1. clarify that the general policy is to not sell land, unless certain conditions are met;
2. added language requiring that sales of larger tracts be coupled with a provision of "no net loss" of acres;
3. removed language specifically related to rates of return and low potential for development as being reasons for sale consideration; and
4. added a provision to authorize selling land in higher value urban locations.

The provision of no-net-loss of “leasable trust land” was adopted to provide an option to consider the sale of tracts that are larger than 80 grassland acres and 40 crop acres to be offered for sale without reducing the trust’s leasable real estate holdings. It allows for either an exchange of land between the two parties or a donation of land to the trust from which the original land was sold. To date, the no-net-loss policy has not been used and no procedures have been developed to implement the policy.

### **Grant County Tracts**

A number of times since 2006, Kelly Moldenhauer, a lessee of several trust tracts in Grant County- has approached the Department requesting to purchase three tracts he currently leases. Because these tracts do not fall within the parameters of the land sale policy, the requests have not been previously presented to the Board.

The following trust tracts leased by Mr. Moldenhauer within Township 136 North, Range 86 West: Section 28: NW4; Section 32: N2N2 Section 36: SE4 are tracts that he would like to nominate for purchase.

The NW4 of Section 28 was acquired through foreclosure in 1927. Access provided by the road provides for easy public access. The current land use is grassland. There is a livestock water well on the portion northeast of the road.

The N2N2 of Section 32 was acquired through foreclosure in 1935. Non-vehicular access to this tract is difficult, with the Heart River preventing access from the west while steep topography make access difficult along the section line from the east. The land use is grassland and there is currently no developed livestock water on this tract.

The SE4 of Section 36 is original grant land assigned to the common schools trust fund and has never been sold.

The land sale policy, while focused on the sale of smaller, difficult to manage tracts, permits consideration of land exchanges of larger pieces. The provision is complicated by statute which indicates that land is to be sold at competitive bid and by the fiduciary duty that trust value cannot be diminished.

In accordance with the Board’s Land Sale policy, the Commissioner asked for authority to investigate and develop the mechanics and policies that might permit a trade to occur.

**Motion: The Board directs the Commissioner to investigate and explore procedural options to implement the Board’s no net loss of “leasable trust land” policy through land exchanges of like or equal acres and value.**

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

The following items were presented to the Board: The Department of Trust Lands’ Land Sale Policy, History of Land Sale Policy, Aerial maps of the referenced tracts, and materials presented by Kelly Moldenhauer.

## O P E R A T I O N S

**The Common Schools Trust Fund Revenue Distribution History memo was tabled to be discussed at a subsequent Board Meeting.**

### **Board of University and School Lands Meeting Dates For 2017-2018**

North Dakota Century Code 15-01-03 states that the Board shall meet on the last Thursday of each month, unless it appears a quorum will not be present at which time it may be rescheduled. Special meetings of the Board may be held at any time at the written call of the chairman, the commissioner, or any two members of the Board.

The statutory schedule for the next 14 months:

- November 30, 2017
- December 28, 2017
- January 25, 2018
- February 22, 2018
- March 29, 2018
- April 26, 2018
- May 31, 2018
- June 28, 2018
- July 26, 2018
- August 30, 2018
- September 27, 2018
- October 25, 2018
- November 29, 2018
- December 27, 2018

Traditionally, the Board has combined its late November and December meeting dates into one meeting in early December.

## O T H E R   B U S I N E S S

### **Commissioner Selection Process**

Governor Burgum reported that the closing date for applications is September 30, 2017 and that 26 applications had been received as of the meeting date. He indicated that Jodi Uecker will chair the search committee, which first meeting will be on October 6, 2017.

## R E P O R T S

### **Report of Easements Issued by Land Commissioner (8/5/17 to 9/12/17)**

<b>Granted to:</b>	<b>TESORO HIGH PLAINS PIPELINE CO LLC, SAN ANTONIO-TX</b>
For the Purpose of:	Easement: Gas Gathering Pipeline
Right-of-Way Number:	RW0008067
Trust:	A = Common Schools
Legal Description:	MOU-155-93-36-NW4, SW4

<b>Granted to:</b>	<b>PETRO-HUNT LLC, BISMARCK-ND</b>
For the Purpose of:	Easement: Salt Water Disposal Well - Extension
Right-of-Way Number:	RW0008081
Trust:	A = Common Schools
Legal Description:	MCK-153-96-36-NE4

<b>Granted to:</b>	<b>ROCKWATER ENERGY SOLUTIONS, WILLISTON-ND</b>
For the Purpose of:	Letter of Permission: Access to School Land for the purpose of laying a temporary surface frac water pipeline
Right-of-Way Number:	RW0008112
Trust:	A = Common Schools
Legal Description:	MOU-154-93-36-NW4, SW4

<b>Granted to:</b>	<b>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND</b>
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(09/28/17)

For the Purpose of:  
 Right-of-Way Number:  
 Trust:  
 Legal Description:

Easement: Drop Line-Electric Distribution Line  
 RW0007529  
 A = Common Schools  
 WIL-153-99-22-W2SE4 LESS ACRES CONDEMNED

**Granted to:**

For the Purpose of:  
 Right-of-Way Number:  
 Trust:  
 Legal Description:

**MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND**

Easement: Drop Line-Electric Distribution Line  
 RW0007632  
 A = Common Schools  
 WIL-154-95-16-RW0007632

**Granted to:**

For the Purpose of:  
 Right-of-Way Number:  
 Trust:  
 Legal Description:

**TARGA BADLANDS LLC, HOUSTON-TX**

Easement-Amend: Gas Gathering Pipeline  
 RW0008109  
 A = Common Schools  
 MCK-150-95-16-NE4, NW4, SW4

**Granted to:**

For the Purpose of:  
 Right-of-Way Number:  
 Trust:  
 Legal Description:

**BEAVER CREEK ARCHAEOLOGY, BISMARCK-ND**

Permit: Planning & Preconstruction Survey  
 RW0008118  
 A = Common Schools  
 WAR-155-84-1-SW4NW4 LYING N & E OF RIVER CENTERLINE

**Granted to:**

For the Purpose of:

Right-of-Way Number:  
 Trust:  
 Legal Description:

**STARK COUNTY HWY DEPT, DICKINSON-ND**

Letter of Permission: Access to School Land for the purpose of establishing a location along the Heart River to place a water pump and truck access for drawing water for nearby road work and dust control.  
 RW0008121  
 A = Common Schools  
 STA-138-93-16-NW4

**Granted to:**

For the Purpose of:  
 Right-of-Way Number:  
 Trust:  
 Legal Description:

**CARLSON MCCAIN INC, BISMARCK-ND**

Permit: Planning & Preconstruction Survey  
 RW0008122  
 A = Common Schools  
 WAR-155-84-1- SW4NW4 LYING N & E OF RIVER CENTERLINE

**Granted to:**

For the Purpose of:  
 Right-of-Way Number:  
 Trust:  
 Legal Description:

**MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND**

Easement: Drop Line-Electric Distribution Line  
 RW0007671  
 A = Common Schools  
 WIL-154-100-36-NW4, SE4, SW4

**Granted to:**

For the Purpose of:  
 Right-of-Way Number:  
 Trust:  
 Legal Description:

**BUCKHORN SWD SOLUTIONS LLC, GREENWOOD VILLAGE-CO**

Easement: Salt Water Pipeline  
 RW0008080  
 A = Common Schools  
 MOU-154-94-16-SE4

**Granted to:**

For the Purpose of:  
 Right-of-Way Number:  
 Trust:  
 Legal Description:

**ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT**

Easement: Drop Line-Gas Gathering Pipeline  
 RW0008020  
 A = Common Schools  
 WIL-154-100-16-SE4

**Granted to:**

**ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT**

For the Purpose of: Easement: Drop Line-Gas Gathering Pipeline  
 Right-of-Way Number: RW0008088  
 Trust: A = Common Schools  
 Legal Description: DUN-147-96-36-NE4

**Granted to: ATWELL LLC, SOUTHFIELD-MI**  
 For the Purpose of: Permit: Planning & Preconstruction Survey  
 Right-of-Way Number: RW0008124  
 Trust: A = Common Schools  
 Legal Description: WAR-155-84-1- SW4NW4 LYING N & E OF RIVER CENTER

### Other Funds Managed by the Board – 2<sup>nd</sup> Quarter 2017

#### Strategic Investment and Improvements Fund Report

The Strategic Investment and Improvements Fund (SIIF) holds the assets and collects the revenues earned from sovereign mineral acres, including those formerly owned by the Bank of North Dakota and State Treasurer, as well as the minerals located under navigable rivers and lakes. The SIIF also receives a portion of the oil and gas production and extraction taxes collected by the State. Because the entire balance of this fund can be appropriated each biennium, it is invested in a conservative, short-term fixed income portfolio.

	6/30/17 Asset Balances	Yield/Total Return for Qtr. Ended 6/30/17
<b>Strategic Investment and Improvements Fund</b>		
Loan Guarantee – Fuel Production	\$ 17,222,000	<b>0.39%</b> Yield
Investments/Cash	322,617,000	<b>0.35%</b> Total Return
<b>Total</b>	<b>\$ 339,839,000</b>	

- During the quarter ended June 30, 2017, the SIIF declined in value by approximately \$34.8 million, primarily due to the transfer of \$172.1 million of emergency clause funding during the quarter.
- The primary sources of trust growth for the quarter were oil tax revenues (\$121.4 million) and mineral royalties (\$17.7 million). Interest income totaled approximately \$1.0 million for the quarter.
- The funds set aside to guarantee a loan for the Dakota Spirit AgEnergy biomass fuel production facility earned an annualized yield of approximately 0.39% during the quarter. The SIIF also received the annual loan guarantee fee of 0.25% (\$40,000) in June.
- The investment assets of the SIIF, Coal Development Trust Fund, and Capitol Building Fund are commingled in the Ultra-Short bond portfolio managed by Northern Trust.

#### School Construction Assistance Loan Fund (SCALF)

- The SCALF was created by SB 2039 in 2015 with a transfer of \$150 million of outstanding school construction loans from the SIIF. Control of the SCALF was transferred to the Bank of North Dakota (BND) in January 2017, when \$143,012,155.13 of school construction loans, \$1,147,621.82 of interest receivable and \$9,060,398.16 of cash were moved to the BND.

#### Coal Development Trust Fund

The Coal Development Trust Fund (CDTF) is a permanent fund from which the Board issues loans to energy impacted counties, cities and school districts as provided in NDCC Section 57-62-03, and lends to school districts pursuant to NDCC Chapter 15-60. The Board is responsible for investing funds not loaned to political subdivisions. As directed in the Constitution, the income earned by the

CDTF is transferred to the General Fund each year. The CDTF has historically been invested in a conservative short-term fixed income portfolio.

	6/30/3017 Asset Balances	Yield/Total Return for Qtr. Ended 6/30/17
<b>Coal Development Trust Fund</b>		
School Construction Loans	\$ 48,318,000	1.53% Yield
Coal Impact Loans	12,660,000	3.36% Yield
Investments/Cash	7,948,000	0.35% Total Return
<b>Total</b>	<b>\$ 68,926,000</b>	

- ♦ A total of \$10.27 million of school construction loans to the Richardton-Taylor, Flasher, Emerado, and Glenburn school districts were funded during the quarter ended June 30, 2017.

### Capitol Building Fund

The Capitol Building Fund is a Constitutional fund that was created for the construction and maintenance of public buildings at the capital. It generates revenues from nearly 10,000 surface and 27,700 mineral acres it owns. Because the Fund can be appropriated by the legislature each biennium, it is invested in a conservative, short-term fixed income portfolio.

The Capitol Grounds Planning Commission (CGPC) has official control over the Capitol Building Fund; the Land Board is responsible for investing the assets, which it has done within the Northern Trust Ultra Short bond fund.

	6/30/17 Asset Balance	Total Return Qtr. Ended 6/30/17
<b>Capitol Building Fund</b>		
Investments/Cash	\$ 5,017,000	0.35% Total Return

- ♦ The 65<sup>th</sup> Legislature authorized carryover spending authority for the Capital Building Fund for the 2017-19 biennium:
  - \$1.4 million previously designated in 2015 for Capitol Building entrance and signage projects.
  - \$1.75 million for the new Governor's residence. This authority was approved by the carryover committee in June of 2017.
- ♦ During the quarter ended June 30, 2017, the Capitol Building Fund collected approximately \$222,000 of oil and gas royalties. Investment assets generated approximately \$17,200 of interest income during the quarter.
- ♦ \$1.64 million was transferred out of the fund to Facilities Management during the quarter ended June 30, 2017.

## ADJOURN

There being no further business, the meeting was adjourned at 11:37 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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