

**Minutes of the Meeting of the
Board of University and School Lands
January 25, 2018**

The January 25, 2018 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 (via telephone)

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Allie Bement	Mineral Title Specialist
Drew Combs	Minerals Manager
Kristie McCusker	Legal Assistant
Catelin Newell	Office Manager
Adam Otteson	Revenue Compliance Manager
Gerard Schwan	Director of Grants and Claims

Guests in Attendance:

Lt. Governor Sanford	
Leslie Bakken Oliver	Governor's Legal Counsel
David Garner	Office of the Attorney General
Hope Hogan	Office of the Attorney General
Jen Verleger	Office of the Attorney General
Amy Dalrymple	Bismarck Tribune
Casey Furey	Crowley Fleck
Shane Goettle	Odney Enterprises

APPROVAL OF MINUTES

A motion to approve the minutes of the December 6, 2017 meeting with the amended Energy Infrastructure and Impact Office motion for the Williston and Dickinson Airport Grant total of \$19,900,000.00 to the correct amount of \$19,902,065.00 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

Cancelation of Grant Balances

Several grants awarded during Fiscal Years 2013, 2015, 2016, 2017 and 2018 were fully completed and have balances remaining. These grants have finished their project under budget or no longer are in need of the funds. The total of \$513,171.67 will be moved to the contingencies allocation for future use where there are unmet needs or used as administrative or operational costs.

The list of recommended retirement of grants for the Board's consideration:

GRANT RETIREMENTS					
Grant	Political Sub	Project	Paid	Balance	Notation
G130029	CITY OF ARNEGARD	POLICE DEPARTMENT	\$99,946.71	\$53.29	PROJECT COMPLETE
G130081	CITY OF STANLEY	POLICE OFFICERS, VEHICLES, & EQUIP	\$99,428.66	\$571.34	PROJECT COMPLETE
G130254	CLINTON TOWNSHIP	WIDEN & RECLAIM WASHED OUT ROAD	\$14,392.85	\$7.15	PROJECT COMPLETE
G130267	GOOSENECK TOWNSHIP	REPAIR ROADWAY AND MAINTENANCE	\$0.00	\$100,000.00	AGED GRANT
G130269	MISSOURI RIDGE TOWNSHIP	134TH AND 58TH STREET	\$0.00	\$100,000.00	AGED GRANT
G150169	MOUNT ROSE TOWNSHIP	BUILD UP KIP FOLTYN ROAD	\$4,187.34	\$15,812.66	PROJECT COMPLETE
G150204	BIG STONE TOWNSHIP	ROAD GRAVELING	\$56,796.24	\$803.76	PROJECT COMPLETE
G160005	DICKINSON MUNICIPAL AIRPORT	MASTER PLAN 2 AMENDMENT	\$244,590.40	\$21,183.60	PROJECT COMPLETE
G160055	CENTRAL ELEMENTARY SCHOOL DISTRICT #32	RENOVATION & IMPROVEMENT PROJECTS	\$0.00	\$88,583.00	CLOSING SCHOOL MAY 2018
G160153	CITY OF BURLINGTON	PERSONNEL & FRINGE, SUPPLIES	\$11,631.57	\$41,546.43	DID NOT HIRE THE PEACE OFFICER
G160192	RHAME RURAL FIRE DISTRICT	TRUCK TANK REPLACEMENT	\$4,819.03	\$580.97	PROJECT COMPLETE
G160198	DICKINSON MUNICIPAL AIRPORT	FAA 2015 AIP #34: ENVIR. ASSESSMENT	\$62,390.00	\$210.00	PROJECT COMPLETE
G160203	DICKINSON MUNICIPAL AIRPORT	COMPATIBLE LAND USE PLAN	\$93,812.50	\$4,937.50	PROJECT COMPLETE
G160206	GARRISON MUNICIPAL AIRPORT	FAA 2015 AIP #12 - RUNWAY 13-31	\$7,282.54	\$1,124.46	PROJECT COMPLETE
G160214	UPPER MISSOURI DHU	SUPPORT FOR LOCAL PUBLIC HEALTH	\$401,126.65	\$141,573.35	DID NOT HIRE THE RN POSITION
G160216	SOUTHWESTERN DHU	SUPPORT FOR LOCAL PUBLIC HEALTH	\$956,874.82	\$10,925.18	PROJECT COMPLETE
G160235	CITY OF BISMARCK	SANE PROGRAM	\$170,977.50	\$82.50	PROJECT COMPLETE
G160236	MERCER COUNTY	SANE PROGRAM	\$10,119.66	\$11.34	PROJECT COMPLETE
G160238	CITY OF JAMESTOWN	SANE PROGRAM	\$11,214.06	\$1,570.94	PROJECT COMPLETE
G160239	PEMBINA COUNTY	SANE PROGRAM	\$6,442.08	\$443.92	PROJECT COMPLETE
G160241	GRAND FORKS COUNTY	SANE PROGRAM	\$4,975.72	\$24.28	PROJECT COMPLETE
G170022	CITY OF JAMESTOWN	SANE PROGRAM	\$0.00	\$744.00	CHOSE NOT TO UTILIZE THE FUNDS
G180015	CENTRAL ELEMENTARY SCHOOL DISTRICT #32	RENOVATION & IMPROVEMENT PROJECTS	\$0.00	\$82,382.00	CLOSING SCHOOL MAY 2018
				\$513,171.67	

Retiring grants with remaining balances will continue on a semi-annual basis through calendar year 2020. Any of the funds would be accounted for in the contingency balance for future consideration by the board, or as administrative/operational costs associated with running the grant program as approved by the board in the June 2017.

Motion: The Board retires the 22 grants identified in the preceding list for a total of \$513,171.67. Subsequently, that the Board declares these funds within the oil and gas impact grant fund as contingent for future unmet needs.

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		

Contingency Grant

In June 2017, the Board approved the establishment of a contingency grant to utilize undistributed funds from the 2013-2015 and 2015-2017 biennia. Section 10 of Senate Bill 2013 allowed the use of unexpended funds to provide for grants and administrative costs during the 2017-2019 biennium:

SECTION 10. EXEMPTION - OIL AND GAS IMPACT GRANT FUND. The amount appropriated from the oil and gas impact grant fund for the energy infrastructure and impact office line item in section 1 of chapter 13 of the 2015 Session Laws and for oil and gas impact grants in section 5 of chapter 463 of the 2015 Session Laws is not

subject to section 54-44.1-11. Any money deposited in the fund for taxable events occurring through June 30, 2017, and any unexpended funds from the appropriation are available for grants and administrative costs associated with the fund during the biennium beginning July 1, 2017, and ending June 30, 2019. (Emphasis added).

The Energy Infrastructure and Impact Office nominated members to serve on the Contingency Grant Advisory Committee, which the Board approved at its December 6, 2017 meeting:

Dan Kalil (Williams County), Jay Elkin (Stark County), Justin Voll (McKenzie County), Marcia Lamb (Billings County), Mark Spooner (Divide County), John Bruce (Burke County), Dave Mahon (Bowman County), Gary Weisenberger (Mountrail County), and Reinhard Hauck (Dunn County)

The Advisory Committee met on December 19, 2017 and reviewed potential grant criteria and application requirements. The committee decided to adopt the following criteria and recommends the Board approve the grant publicly, commencing on February 1, 2018:

- 1) Eligibility will be to any political subdivision within an oil producing county in order to offset costs incurred for an emergency or unknown and unanticipated need.
- 2) Grant funds will be through reimbursement of expenditures by the grantee, up to the maximum amount identified in the grant award letter.
- 3) Applicants are allowed to supplement the application after an application deadline. Supplements must arrive at the EIIO before the grant advisory committee is able to review and consider its recommendation for the Land Board.
- 4) Grant advertisement will commence February 1, 2018 for a three-month period, with an advance authorization to allow for repetitive announcements if there are no such applicants within the previous window, or there are remaining funds left in the grant fund.
- 5) Applications will:
 - a. Be signed by two appointed/elected officials, one being a primary fiscal official;
 - b. Address how current oil and gas development activities has impacted the applicant since December 6, 2017;
 - c. Show phases, or time lines, of how the project will be completed within a 24-month window, upon approval of the project;
 - d. Identify how local funds, or other sources of financial support will combine with grant funding, or if there is no other sources of funding available;
 - e. Address factors of health, welfare, and/or safety of the citizens; and
 - f. Provide supporting bids from contractors, estimates not considered.

The advisory committee will review each application submitted for this grant and make recommendations for approval or disapproval to the Land Board at the next available meeting.

Motion: **The Board approves the Contingency Grant guidelines addressed above, including repetitive application periods, and make recommendations to the Land Board for contingency grants.**

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		

Vacancy of EIO Director

Century Code authorizes the appointment of the Energy Infrastructure and Impact Office director:

57-62-04. Energy infrastructure and impact office - Appointment of director. There is hereby created an energy infrastructure and impact office, to be a division within the office of the commissioner of the board of university and school lands, the director of which must be appointed by and serve at the pleasure of the board of university and school lands. The director shall have knowledge of state and local government and shall have experience or training in the fields of taxation and accounting. The salary of the director must be set by the commissioner of university and school lands within the limits of legislative appropriations. The director may employ such other persons as may be necessary and may fix their compensation within the appropriation made for such purpose. The board of university and school lands shall fill any vacancy in the position of director in the same manner as listed above. All action by the board of university and school lands, including appointment of a director, must be by majority vote.

With EIO Director Gaebe's departure, the Board should consider its preference in the appointment of the next director.

Motion: **The Board appoints the Land Commissioner to the position of EIO Director.**

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		

MINERALS MANAGEMENT

Board of University and School Lands Major Case Summary as of January 19, 2018

Case: State of Arkansas, et al. v. State of Delaware
Date Filed: June 9, 2016
Court: United States Supreme Court
Judge: Pierre N. Leval, *Special Master*
Attorney: David Garner
Opposing
Counsel: Delaware Attorney General's Office

Issues: The United States Supreme Court assumed original jurisdiction over this lawsuit involving unclaimed property brought by 30 states, including the state of North Dakota, against the state of Delaware. The substantive issue involved is whether sums payable on unclaimed and abandoned checks sold by MoneyGram Payments Systems, Inc. should be remitted to the Plaintiff States, as the states of purchase, or to Defendant Delaware, as MoneyGram's state of incorporation. Texas and Arkansas are the lead states on behalf of the other Plaintiff states.

Current Status: A Complaint and Answer have been filed. A Special Master has been appointed to preside over the case. The Special Master has accepted the Case Management Order agreed to by the parties. The parties issued discovery requests and responses in November/December 2017.

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

Date Filed: Jan. 20, 2010

Court: Mountrail County District Court

Judge: Cresap

Attorney: Hope Hogan/Matthew Sagsveen

Opposing

Counsel: Multiple parties.

Issue: At issue is the ownership of mineral rights underlying the railroad in 8 sections of land in Mountrail County. The disputed property is land that the railroad acquired by condemnation and through right-of-way deeds. The railroad's lessee filed a crossclaim against the State and a number of other parties that claim an ownership interest adverse to the railroad.

Current Status: A settlement agreement has been signed by all parties and will be filed with the court once proceeds are distributed in accordance with the agreement.

Case: William S. Wilkinson, et. al. v. Board of University & School Lands, Brigham Oil & Gas, LLP; EOG Resources, Inc.

Date Filed: January, 2012

Court: Williams County District Court

Judge: Paul Jacobson

Attorney: Hope Hogan/Jennifer Verleger/Matthew Sagsveen

Opposing

Counsel: Josh Swanson/Rob Stock, Lawrence Bender, Lyle Kirmis

Issues: 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. 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 ordinary high watermark (OHWM) prior to inundation of Lake Sakakawea – rather than the Phase I Delineation – current location of the OHWM. 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 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 grounds to support Counts II through VII. Plaintiffs filed a notice of appeal on June 1, 2016. Both EOG Resources, Inc. and Statoil Oil and Gas LP filed cross-appeals.

On September 28, 2017, the North Dakota Supreme Court reversed the district court's decision and remanded the case back to the district court. The Supreme Court held that:

1. Surface ownership could not be determined without the United States as a party to the action.
2. N.D.C.C. ch. 61-33.1 has a retroactive clause and the district court did not have an opportunity to determine if it applies and governs ownership of the minerals at issue;
3. A "takings" analysis must be conducted if the district court determines the State owns the disputed minerals; and
4. The district court erroneously made findings of disputed fact.

Current

Status:

Due to the passage of S.B. 2134, the Court ordered the case stayed and all deadlines be held in abeyance until the final review findings under S.B. 2134 are issued by the Industrial Commission. When the review findings are issued, the parties must request a status conference with the Court to set a new trial date and other deadlines.

Case:

Whitetail Wave LLC v. XTO Energy, Inc.; the Board of University and School Lands; and the State of North Dakota – 27-2015-CV-00164

Date Filed:

June 4, 2015

Court:

McKenzie County District Court

Judge:

Robin Schmidt

Attorney:

Hope Hogan/Jennifer Verleger

Opposing

Counsel:

Whitetail Wave – Christopher Sweeney; XTO Energy – Lawrence Bender, Michael D. Schoepf

Issues:

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 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.

Current Status: Due to the passage of S.B. 2134, the Court ordered the case stayed and all deadlines be held in abeyance until the final review findings under S.B. 2134 are issued by the Industrial Commission. When the review findings are issued, the parties must request a status conference with the Court to set a new trial date and other deadlines.

Case: Mary K. Starin, as Personal Representative of the Estate of Bruno Herman Weyrauch v. Kelly Schmidt, et. al., - 53-2015-CV-00986

Date Filed: August 17, 2015
 Court: Williams County District Court
 Judge: David Nelson
 Attorney: Hope Hogan/Jennifer Verleger
 Opposing Counsel: Dennis Johnson

Issues: 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. Plaintiffs have brought this action to clear title to the 50% of the minerals that they claim. The Board has leased the 50% mineral interest it reserved in this conveyance.

In January 2016, the State Engineer intervened in this case.

Current Status: Due to the passage of S.B. 2134, the Court ordered the case stayed and all deadlines be held in abeyance until the final review findings under S.B. 2134 are issued by the Industrial Commission. When the review findings are issued, the parties must request a status conference with the Court to set a new trial date and other deadlines.

Case: Whiting Oil and Gas Corporation v. Arlen A. Dean, et. al., - 53-27-2016-CV-00040

Date Filed: January 25, 2016
 Court: McKenzie County District Court
 Judge: Robin Schmidt
 Attorney: Hope Hogan/Jennifer Verleger

Opposing Counsel: Paul Forster, Shane Hanson (Whiting Oil and Gas Corp.), Kevin Chapman (multiple defendants)

Issues: Whiting Oil and Gas Corporation ("Whiting") operates the Kuykendall 34-31-1H well located in McKenzie County near the Montana border. The Yellowstone River flows through the Kuykendall well spacing unit. Over time, the river has shifted westward. There are also islands within the Kuykendall spacing unit. On January 25, 2016, Whiting filed this interpleader action to resolve alleged title questions that have arisen due to the movement of the Yellowstone River. Because of these title questions, Whiting is withholding royalty payments. In its lawsuit, Whiting essentially asks the court to require all those asserting title to the minerals in the spacing unit to set forth and prove their claims, and once the court rules on those claims, Whiting will know who to pay.

The Board claims a mineral interest under the Yellowstone River, including the islands, and the Board also claims a 5% mineral interest in some of the riparian tracts in this spacing unit.

The Board and the State Engineer filed a joint response to the Complaint and several cross claims that have been made against the State.

Current

Status: Case has been scheduled for a court trial (no jury) on August 6-10, 2018.

Case: Continental Resources, Inc. v. North Dakota Board of University and School Lands, et al.
 Date Filed: December 23, 2016
 Court: Federal District Court, 8th Circuit
 Judge: Honorable David Hovland
 Attorney: Charles Carvell, David Garner, Hope Hogan, and Jen Verleger
 Opposing
 Counsel: Lawrence Bender, David Ogden, Paul Wolfson, Shaun Pettigrew

Issues: In December 2016, Continental Resources, Inc. (Continental) brought an interpleader action against the Board of University and School Lands and the United States regarding certain lands underlying Continental operated wells located in McKenzie, Mountrail, and Williams Counties. This case addresses overlapping ownership claims by the State and the United States of minerals underlying the Missouri River. Continental is requesting the Court determine the property interests for the disputed lands so that Continental can correctly distribute the proceeds from the affected wells. Continental has claimed that there is “great doubt as to which Defendant is entitled to be paid royalties related to the Disputed Lands.” Currently, Continental is paying the United States its full royalty based on the acreage it claims. The remaining royalty, over and above what is due the United States, is being escrowed with the Bank of North Dakota pursuant to the Board’s rules.

The United States removed this action to federal district court on January 11, 2017. The Board filed its answer to the complaint on February 13, 2017. The United States filed its answer to the complaint on May 12, 2017. An Amended Complaint was filed by Continental Resources on September 14, 2017. The United States filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction on October 18, 2017. In support of its motion, the United States alleges that it has not waived its sovereign immunity under the Quiet Title Act and the United States alleges that the interpleader action is moot under S.B. 2134.

Current

Status: The Board filed a response on December 20, 2017 opposing the motion to dismiss. Continental has until January 19, 2018 to file a response and the United States must file its reply by March 16, 2018.

Case: ND Office of State Engineer, Board of University and School Lands v. BLM - Case No. IBLA 2016-170
 Tribunal: US Dept. of Interior Office of Hearings and Appeals – Board of Land Appeals
 Attorney: Charles Carvell, Hope Hogan, and Jennifer Verleger
 Opposing
 Counsel: Karan Dunnigan

Issues: In 2014, the Bureau of Land Management (BLM) resurveyed land along the Missouri River to locate the boundary, OHWM, between the public domain land owned by the United States and the riverbed owned by the state of North Dakota. In identifying the OHWM, the BLM applied federal law rather than state law. Specifically, the BLM adopted the survey conducted by the Corps of Engineers as part of the Garrison Dam project. In certain areas, the survey overlaps with the state’s claim to sovereign lands.

After the survey work was complete, the BLM published a “Notice of Filing Plats of Survey; North Dakota” in which BLM intends to formally file the survey plats as Official Plats. After the Federal Register Notice appeared, the State Engineer and the Board jointly filed a protest challenging the filing of the survey plats. The BLM rejected the State’s protest and the State appealed the BLM’s decision to the Interior Board of Land Appeals.

Current
Status: The State is waiting for a decision from the Interior Board of Land Appeals.

Paul Sorum, et. al. v. State of North Dakota, et. al.

Case: Paul Sorum, et. al. v. State of North Dakota, et. al.
Tribunal: Cass County District Court
Judge: John C. Irby
Attorney:
Opposing
Counsel: Terrance W. Moore, Fintan L. Dooley

Issues: The Board was named as a defendant in the above reference case which was served on January 10, 2018. Plaintiffs have filed this action to challenge the Constitutionality of S.B. 2134 passed during the last legislative session and codified as N.D.C.C. ch. 61-33.1. Under the new legislation, “[t]he state sovereign land mineral ownership of the riverbed segments inundated by Pick-Sloan Missouri basin project dams extends only to the historical Missouri riverbed channel up to the ordinary high water mark.” N.D.C.C. § 61-33.1-02. S.B. 2134 established a process by which the Department of Mineral Resources is directed to procure a “qualified engineering and surveying firm” to “review the delineation of the ordinary high water mark of the corps survey segments” for the portion of the Missouri River designated as the “historical Missouri riverbed channel.” N.D.C.C. § 61-33.1-03(2), (3). Following a review process, which includes a public hearing and public comments, the North Dakota Industrial Commission must adopt final review findings which “will determine the delineation of the ordinary high water mark for the segment of the river addressed by the findings.” N.D.C.C. § 61-33.1-03(7). Plaintiffs’ complaint requests from the court a declaratory judgment finding that N.D.C.C. ch. 61-33.1 violates the Public Trust Doctrine and the Anti-Gift, Privileges and Immunities, and Local and Special Law Clauses of the North Dakota Constitution. Plaintiffs are also requesting the Court issue an injunction to prevent all state officials from further implementing and enforcing N.D.C.C. ch. 61-33.1.

Current
Status: Defendants have until March 1, 2018 to answer the Complaint.

Fisketjon v. State of North Dakota

Case: Fisketjon v. State of North Dakota, Case No. 08-2017-CV-03208
Date Filed: November 7, 2017
Court: Burleigh County District Court
Judge: David Reich
Attorney: Jennifer Verleger/Hope Hogan
Opposing
Counsel: Malcolm Brown/Christopher LeCates

Issues: The Plaintiffs filed this quiet title action to clear title to property located adjacent to the Missouri River near Bismarck, North Dakota. An OHWM study was previously prepared on the tract by the State Engineer’s Office. The State claims less property than Plaintiffs believe State to claim.

Current
Status: Parties are currently discussing settlement. A proposed settlement may be presented to the Board at its February meeting.

Motion: **The Board authorizes the Commissioner to sign the disclaimer.**

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		

Continental Resources, Inc. v. North Dakota Board of University & School Lands and North Dakota Department of Trust Lands, Civ. No. 27-2017-CV-00661

Case: Continental Resources, Inc. v. North Dakota Board of University & School Lands and North Dakota Department of Trust Lands, Civ. No. 27-2017-CV-00661
 Date Filed: December 20, 2017
 Court: District Court/McKenzie County
 Attorneys: David Garner
 Opposing
 Counsel: Mark S. Barron/Baker & Hostetler LLP
 Judge: Robin Schmidt

Issues: Continental is seeking a Declaratory Judgment that it is currently paying royalties properly under the Board’s lease. Specifically, Continental is asking the Court to order that Continental is allowed to deduct certain costs from royalty payments and that it does not owe the Defendants any additional royalty payments based on previous deductions.

Current Status: Plaintiff filed a Complaint on December 20, 2017. The Defendants have received an extension to file an Answer until February 5, 2018.

EXECUTIVE SESSION

Motion: **Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board closed the meeting to the public and entered into executive session for purposes of attorney consultation to consult with the Board’s attorneys on litigation related to:**

- **Paul Sorum, et. al. v. State of North Dakota, et. al.**
- **Continental Resources, Inc. v. North Dakota Board of University & School Lands and North Dakota Department of Trust Lands, Civ. No. 27-2017-CV-00661**

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 9:31 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 (via telephone)

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Allie Bement	Mineral Title Specialist
Drew Combs	Minerals Manager
Kristie McCusker	Legal Assistant
Catelin Newell	Office Manager
Adam Otteson	Revenue Compliance Manager
Gerard Schwan	Director of Grants and Claims

Guests in Attendance:

Lt. Governor Sanford	
Leslie Bakken Oliver	Governor's Legal Counsel
David Garner	Office of the Attorney General
Hope Hogan	Office of the Attorney General
Jen Verleger	Office of the Attorney General

The executive session adjourned at 11:03 AM and the Board returned to open session and the public was invited to return to the meeting. During the executive session, the Board provided its attorneys with guidance on Paul Sorum, et. al. v. State of North Dakota, et. al. and Continental Resources, Inc. v. North Dakota Board of University & School Lands and North Dakota Department of Trust Lands, Civ. No. 27-2017-CV-00661.

O P E R A T I O N S

Administrative Rules Update

House Bill 1300, as adopted by the 2017 Legislature, removed the Board's established exemption from the Administrative Agencies Practice Act (N.D.C.C. Ch. 28-32). The bill's effective date was January 1, 2018.

The Board has implemented a number of rules over time. The Department is reviewing the Board's existing rules, together with policies and procedures, to incorporate necessary wording from those into rules to comply with the North Dakota Administrative Code. North Dakota Century Code § 28-32-07 states: "Any rule change, including a creation, amendment, or repeal, made to implement a statutory change must be adopted and filed with the legislative council within nine months of the effective date of the statutory change."

Certain proposed rules will be provided to the Board for review at its February meeting. If approved by the Board, those rules will proceed through the administrative rules making process, including publication, public hearings, review by the Office of Attorney General, and presentation to the Administrative Rules Committee.

The Department's proposed administrative rules are at varying stages of completion. It is anticipated that the Department will have the general information, together with rules for the Energy Infrastructure and Impact Office, Unclaimed Property, Surface Management and Investments divisions, complete for Board review at its February meeting:

The Department proposes that those rules be submitted prior to the rules for the Minerals and Revenue Compliance Divisions, with those two divisions being submitted at a later date due to their complexity.

The Department proposes the following timeline for those rules:

Seek Board Approval of Rules	February 2018
Publish Notice of Intent	early March 2018
Conduct Public Hearings	mid-April 2018
Review Public Comments	early May 2018
Prepare Packet for Review	late May 2018
Submit for Attorney General Review	early June 2018
Administrative Rules Committee Hearing	September 2018
Rules Become Effective	October 2018

Motion: The Board will review the Department’s proposed administrative rules concerning the general information, together with rules for the Energy Infrastructure and Impact Office, Unclaimed Property, Surface and Investments Divisions, for submission to the Administrative Rules Committee at its February 2018 meeting. The proposed rules for the Minerals and Revenue Compliance Divisions will be submitted at a later date.

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

Commissioner Smith provided an update on the Performance Audit and the Department’s Human Resources and Fiscal Policy’s update. The Performance Audit findings and Commissioner testimony for the Legislative Audit and Fiscal Review Committee as well as the Human Resources and Fiscal Policy updates are available at the Department upon request.

R E P O R T S

The Summary of Assets for period ended October 31, 2017 was presented to the Board and is available at the Department upon request.

Report of Easements Issued by Land Commissioner (11/28/17 to 1/12/18)

Granted to: ARROW WATER LLC, HOUSTON-TX
For the Purpose of: Easement-Amend: Salt Water Disposal Well
Right-of-Way Number: RW0007974
Trust : A - Common Schools
Legal Description: MCK-150-95-16-NW4

Granted to: CYPRESS ENERGY PARTNERS, TULSA-OK
For the Purpose of: Easement: Salt Water Pipeline
Right-of-Way Number: RW0008085
Trust : A - Common Schools
Legal Description: WIL-156-101-36-SE4

Granted to: For the Purpose of: Right-of-Way Number: Trust : Legal Description:	ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT Easement: Gas Gathering Pipeline RW0008113 A - Common Schools WIL-156-100-16-NW4, SE4, SW4
Granted to: For the Purpose of: Right-of-Way Number: Trust : Legal Description:	ROUGH RIDER ELECTRIC COOPERATIVE, INC., DICKINSON-ND Easement: Maintenance Yards RW0008134 A - Common Schools BIL-142-101-36-SW4
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 RW0008137 A - Common Schools MCK-150-96-36-SE4
Granted to: For the Purpose of: Right-of-Way Number: Trust : Legal Description:	XTO ENERGY INC, FORT WORTH-TX Easement: Directional Wellsite Location RW0008138 A - Common Schools MCK-150-98-36-SW4
Granted to: For the Purpose of: Right-of-Way Number: Trust : Legal Description:	ARROW WATER LLC, HOUSTON-TX Easement: Salt Water Disposal Well - Extension RW0008153 A - Common Schools MCK-150-95-16-NW4, SW4
Granted to: For the Purpose of: Right-of-Way Number: Trust : Legal Description:	HENRY HILL OIL SERVICES LLC, WILLISTON-ND Easement: Salt Water Pipeline RW0008155 A - Common Schools WIL-154-100-16-SE4
Granted to: For the Purpose of: Right-of-Way Number: Trust : Legal Description:	MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND Easement: Drop Line-Buried Electric Distribution Line RW0008158 A - Common Schools MCK-151-96-36-SW4
Granted to: For the Purpose of: Right-of-Way Number: Trust : Legal Description:	ND DEPT OF TRANSPORTATION, BISMARCK-ND Permit: Temporary Construction RW0008164 A - Common Schools MOU-158-89-36-NE4, SE4
Granted to: For the Purpose of: Right-of-Way Number: Trust : Legal Description:	GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX Easement: Drop Line-Saltwater Pipeline RW0008166 A - Common Schools MCK-150-96-36-SE4

<p>Granted to: For the Purpose of: Right-of-Way Number: Trust : Legal Description:</p>	<p>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND Easement: Electric Distribution Line - Above Ground RW0008169 A - Common Schools WIL-158-101-16-NE4, NW4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust : Legal Description:</p>	<p>LIBERTY MIDSTREAM SOLUTIONS LLC, DENVER-CO On-lease Act. Amend: Gas Gathering Pipeline RW0008175 A - Common Schools WIL-158-95-16-SW4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust : Legal Description:</p>	<p>STATOIL PIPELINES LLC, AUSTIN-TX Easement: Drop Line-Saltwater Pipeline RW0008178 A - Common Schools MCK-153-98-36-SW4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust : Legal Description:</p>	<p>SELECT ENERGY SERVICES LLC, WILLISTON-ND Letter of Permission: Access to School Land RW0008179 A - Common Schools MCK-153-96-16-NE4, SE4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust : Legal Description:</p>	<p>PETRO-HUNT LLC, BISMARCK-ND On-lease Act. Amend: Horizontal Oil Well RW0008180 A - Common Schools MOU-158-91-16-SE4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust : Legal Description:</p>	<p>MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND Easement: Drop Line-Buried Electric Distribution Line RW0008181 A - Common Schools WIL-158-101-16-NE4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust : Legal Description:</p>	<p>TOPOGRAPHIC LAND SURVEYORS INC, FORT WORTH-TX Permit: Planning & Preconstruction Survey RW0008183 A - Common Schools WAR-155-84-1-SW4NW4 LYING N & E OF RIVER CENTERLINE</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust : Legal Description:</p>	<p>LIBERTY MIDSTREAM SOLUTIONS LLC, DENVER-CO On-lease Act. Amend: Multiple Pipelines RW0008186 A - Common Schools WIL-158-95-16-SW4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust : Legal Description:</p>	<p>ANDEAVOR FIELD SERVICES LLC, SAN ANTONIO-TX Permit: Temporary Construction RW0008187 A - Common Schools MOU-155-93-36-SW4</p>

Granted to: **ND ENERGY SERVICES, DICKINSON-ND**
 For the Purpose of: Letter of Permission: Access to School Land
 Right-of-Way Number: RW0008190
 Trust : A - Common Schools
 Legal Description: DUN-146-94-16-NE4, NW4

Granted to: **WEST DAKOTA WATER LLC, WILLISTON-ND**
 For the Purpose of: Letter of Permission: Access to School Land
 Right-of-Way Number: RW0008192
 Trust : A - Common Schools
 Legal Description: WIL-156-100-9-S2SE4

A D J O U R N

There being no further business, the meeting was adjourned at 11:19 AM.

Doug Burgum, Chairman
 Board of University and School Lands

Jodi Smith, Secretary
 Board of University and School Lands