

**Minutes of the Meeting of the  
Board of University and School Lands  
February 22, 2018**

The February 22, 2018 meeting of the Board of University and School Lands was called to order at 8:00 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
Drew Combs	Minerals Division Manager
Susan Dollinger	Unclaimed Property Administrator
Levi Erdmann	Investment Analyst
Michael Humann	Surface Division Manager
Kristie McCusker	Legal Assistant
Catelin Newell	Office Manager
Beckie Strege	Administrative Assistant

**Guests in Attendance:**

Zach Morgan	Marathon Oil
Brenda Selinger	Marathon Oil
Dave Garner	Office of the Attorney General
Brady Pelton	ND Petroleum Council
Geoff Simon	Western Dakota Energy Association
Thomas Von Bische	NextEra Energy
Leslie Bakken Oliver	Governor's Legal Counsel

**A P P R O V A L   O F   M I N U T E S**

A motion to approve the minutes of the January 25, 2018, February 7, 2018, and February 13, 2018, meetings was made by Secretary of State Al Jaeger and seconded by Attorney General Stenehjem and the motion carried unanimously on a voice vote.

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

**Administrative Rules to be Presented to the Administrative Rules Committee**

Set forth in House Bill 1300, the 65<sup>th</sup> Legislative Assembly directed that the Board of University and School Lands no longer be exempt from the Administrative Practices Act. With passage of the legislation the agency began preparing rules for consideration by the Board, reviewed by the Office of Attorney General, and heard by the Legislative Rules Committee. The intent is to adopt these rules with an effective date on October 1, 2018.

The department considered existing rules, together with policies and procedures, to incorporate necessary wording from those into rules which 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.”

If approved by the Board, these rules will move next before a public hearing scheduled for 8:30 a.m. in the Peace Garden Room of the state capitol building, on April 18, 2018. Required newspaper advertisements will be placed in the 53 official county newspapers before March 9, 2018.

**Motion: The Board approves the Commissioner move forward with the adoption of rules process, as contained in North Dakota Century Code chapter 28-32, for the Energy Infrastructure and Impact Office, Unclaimed Property, Surface Management, and Investments Divisions.**

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		

### **Performance Audit Update**

Commissioner Smith presented the recommendation groupings provided by the State Auditor’s Office for the Department’s performance audit follow-up.

### **Information Technology Project Status Update**

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

Department staff, with assistance of Office of Management and Budget procurement staff and Information Technology Department project management staff prepared two Requests for Proposals (RFP) with the objective of procuring design and implementation services for two commercial off-the-shelf programs; one for Land Management and Accounting and one for Unclaimed Property.

Upon review and approval by the Executive Steering Committee, organized under NDCC § 54-59-32, the RFPs for both projects were released on September 25, 2017.

The Executive Steering Committee has determined to reissue the Land Management and Accounting Software RFP. The Unclaimed Property Software has issued the best and final offers and is in the review period of these results.

## **SURFACE MANAGEMENT DIVISION**

### **Foxtail Wind LLC Wind Energy Easement Agreement**

At the June 29, 2017 Board meeting, the Board approved a recommendation authorizing the Commissioner to confirm by letter that the Board would consider a Wind Energy Easement Agreement with Foxtail Wind LLC involving the potential use of trust land within the Foxtail Wind

Farm located on the N2 section 36, T131N, R66W, Dickey County (see attached location map). Further, if the project was approved by the Public Service Commission, the Commissioner would be authorized to negotiate and submit a recommended easement and terms for Board consideration.

Pursuant to local approval and Public Service Commission issuance of the Certificate of Site Compatibility for this project, a Wind Energy Easement Agreement has been negotiated with NextEra Energy Resources for the Foxtail Wind LLC to place 3 wind turbines located on the N2 section 36, T131N, R66 W, Dickey County (see attached project map). The proposed Foxtail Wind Farm is located southeast of Kulm, North Dakota and will contain up to 75 wind towers and produce 150 megawatts of power. The attached Wind Energy Agreement is submitted for Board approval. The easement form used in past agreements was used to develop the Wind Energy Agreement. The Attorney General's Office and Office of Risk Management provided guidance related to the form and to verify conformity with the state contract requirements. The major difference between this agreement and past agreements is that language regarding Met Towers and Transmissions Lines was removed from the agreement because these applications are addressed using separate easement agreements. Exhibit D regarding compensation was also refined to simplify management of the easement agreement.

The following is a brief review of the easement agreement, contract term and compensation package:

**Term:**

An initial term of 3 years to develop the wind farm with a 35 year operating term and the option for 2 additional 25 year renewal terms.

**Compensation:**

- **Easement Consideration** – a one-time payment of \$6.25 per acre to be paid within 30 days of execution of the easement agreement.
- **Development Period Payment:** \$6.25 per acre to be paid annually in advance of the anniversary date of the execution of the Easement Agreement for years 2 through 3 of the initial term.
- **Access Road Payment** – a one-time payment of \$1,200.00 per mile of access roads installed, due within 30 days after the installation of any access roads.
- **Collector Line Payments** – a one-time payment of \$1,200.00 per mile of collector lines installed, due within 30 days after the installation of any underground collector lines.
- **Annual Turbine Payment** - \$4,000.00 per nameplate megawatt rating, per Turbine installed, as increased on an annual basis by 2% beginning with the payment due 1 year after the commencement date of the operating term, with the annual payment due on or before February 15<sup>th</sup> of each calendar year.
- **Annual Land Payment** - \$3,200.00 per year on an annual basis increased on an annual basis by 2% beginning with the payment due 1 year after the commencement date of the operating term, with the annual payment due on or before February 15<sup>th</sup> of each calendar year.

The compensation rates negotiated for the Wind Energy Easement Agreement are consistent with what other landowners will be paid for easements within the Foxtail Wind Farm. Consequently, revenue to the Common Schools Trust Fund for the turbine and land payment when the wind farm becomes operational will yield a combined initial annual payment of \$27,200.00.

**Motion: The Board recommends the Commissioner give approval of the Wind Energy Easement Agreement with Foxtail Wind LLC.**

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		

The Board was provided with a copy of the Wind Easement Agreement, it is available at the Department upon request.

### Report of Easements Issued by Land Commissioner (1/13/18 to 2/12/18)

**Granted to:** **ROUGH RIDER ELECTRIC COOPERATIVE, INC., DICKINSON-ND**  
 For the Purpose of: Easement: Electric Transmission Line  
 Right-of-Way Number: RW0008116  
 Trust: A - Common Schools  
 Legal Description: BIL-144-98-16-SE4

**Granted to:** **PETRO-HUNT LLC, BISMARCK-ND**  
 For the Purpose of: Easement-Amend: Raw Water Pipeline  
 Right-of-Way Number: RW0008147  
 Trust: A - Common Schools  
 Legal Description: WIL-154-99-16-SW4

**Granted to:** **WESTERN AREA WATER SUPPLY AUTHORITY, WILLISTON-ND**  
 For the Purpose of: Easement: Potable Water Pipeline  
 Right-of-Way Number: RW0008149  
 Trust: A - Common Schools  
 Legal Description: MOU-154-89-16-SW4

**Granted to:** **WESTERN AREA WATER SUPPLY AUTHORITY, WILLISTON-ND**  
 For the Purpose of: Easement: Potable Water Pipeline  
 Right-of-Way Number: RW0008150  
 Trust: A - Common Schools  
 Legal Description: WIL-154-95-16-NE4

**Granted to:** **MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND**  
 For the Purpose of: Easement: Electric Distribution Line - Buried  
 Right-of-Way Number: RW0008167  
 Trust: A - Common Schools  
 Legal Description: MCK-153-96-16-SE4

**Granted to:** **MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND**  
 For the Purpose of: Easement: Drop Line-Buried Electric Distribution Line  
 Right-of-Way Number: RW0008168  
 Trust: A - Common Schools  
 Legal Description: MCK-153-96-16-SE4

**Granted to:** **ADVANCED ENGINEERING & ENV SERVICES INC, FARGO-ND**  
 For the Purpose of: Permit: Planning & Preconstruction Survey  
 Right-of-Way Number: RW0008184  
 Trust: A - Common Schools  
 Legal Description: WAR-155-84-1-SW4NW4 LYING N & E OF RIVER CENTERLINE

**Granted to:** SELECT ENERGY SERVICES LLC, WILLISTON-ND  
 For the Purpose of: Letter of Permission: Access to School Land for the purpose of Temporary Surface Frac Water Pipeline  
 Right-of-Way Number: RW0008196  
 Date Issued: 1/22/2018  
 Trust: A - Common Schools  
 Legal Description: MCK-151-96-36-S2

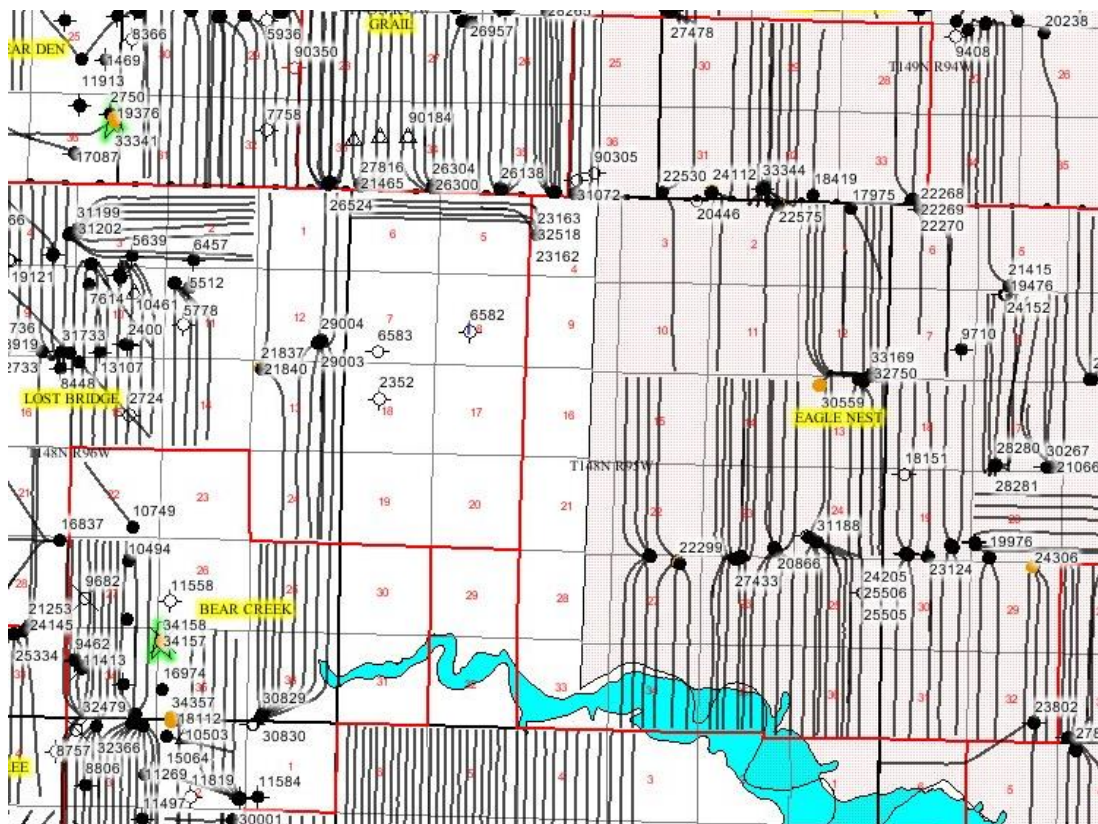
**Granted to:** CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK  
 For the Purpose of: Easement: Subsurface Well Bore  
 Right-of-Way Number: RW0008200  
 Trust: A - Common Schools  
 Legal Description: MCK-151-97-36-S2

**MINERALS MANAGEMENT DIVISION**

**Marathon Oil Company Request for Lease Extension in Dunn County T148-R95W-16: All**

In May of 2013, Marathon Oil Company (Marathon) entered into four leases with the Board of University and School Lands (Board) (OG13-00342, OG13-00343, OG13-00344, and OG13-00345). These leases cover 469.52 acres of common schools mineral tracts in T148N-R95W-16, Dunn County, North Dakota, and Marathon paid a total bonus to the Board of \$3,850,064. Marathon states their total expenses to date are in excess of \$4 million (bonus, surveys, archeological surveys, etc.).

Below is a depiction of the area and the oil and gas development using GIS data from the North Dakota Industrial Commission (NDIC).



Marathon has experienced extreme difficulties in developing these mineral tracts, including; complex stakeholders, environmental concerns, and rough terrain which have impeded timely development of the area. The North Dakota Department of Trust Lands (NDDTL) has been working with Marathon since late 2015 in search of a viable solution to develop the section. At this time, Marathon is seeking two 180-day extensions for all four leases, for a total extension of 360 days.

Note, the current spacing order is the product of a lengthy series of NDIC hearings, protests, and an eventual order favoring Marathon's proposal, which further delayed development within the primary term.

Additionally, surrounding lands are owned in fee and in trust by the Three Affiliated Tribes, allottees, Federal government, ND Game and Fish, NDDTL and various fee owners and each of these owners has their own interests and development plans. Some of the federally managed lands have not been offered for lease; however, the BLM has given Marathon an indication these leases may soon be auctioned. With certain provisions, Marathon could produce NDDTL minerals without those Federal lands.

While the NDDTL manages the minerals, the ND Game and Fish holds the surface and manages those lands. This is an area that is active with bighorn sheep and is in the Little Missouri River corridor. Current plans for development would have a surface location approximately three miles from these lands.

Marathon plans to drill as many as eleven three-mile lateral wells in the Three Forks and Middle Bakken. Their engineers estimate that there are 800,000 barrel of oil equivalent in gross reserves on the Trust lands and estimate that, after full development, the Trust's net income to be \$18,000,000 based on a flat West Texas Intermediate of \$55 barrel.

Section 8 of the Board's Oil and Gas lease states:

If, at the expiration of the primary term, production of oil and/or gas has not been obtained in commercial quantities on the leased premises but drilling, testing, completion, recompletion, reworking, deepening, plugging back, or repairing operations are being conducted thereon in good faith, lessee may, on or before the expiration of the primary term, file a written application with the Commissioner of University and School Lands for a one hundred eighty (180) day extension of this lease, such application to be accompanied by a payment of ten dollars (\$10.00) per acre, and the Commissioner shall, in writing, extend this lease for a period of one hundred eighty (180) days beyond the expiration of the primary term and as long as oil and/or gas is produced in commercial quantities; lessee may, as long as such drilling, testing, or completion operations are being conducted in good faith, make written application to the Commissioner, on or before the expiration of the initial extended period of one hundred eighty (180) days for an additional extension of one hundred eighty (180) days, such application to be accompanied by a payment of twenty dollars (\$20.00) per acre, and the Commissioner shall, in writing, extend this lease for an additional one hundred eighty (180) day period from and after the expiration of the initial extended period of one hundred eighty (180) days, and as long as oil and/or gas is produced in commercial quantities; this lease shall not be extended for more than a total of three hundred sixty (360) days from and after the expiration of the primary term unless production in commercial quantities has been obtained or unless extended by some other provision hereof.

All parties recognize this request does not constitute the activation of paragraph 8; however, given the circumstances, it may be beneficial to all parties to come to a mutually acceptable solution in granting Marathon a 360 day extension to the leases.

**Motion: The Board directs the Commissioner to negotiate a onetime 360 day extension for leases OG13-00342, OG13-00343, OG13-00344, and OG13-00345 and bring those negotiated terms to the Board's regularly scheduled meeting in March 2018.**

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

The Board was provided with a copy of Marathon's extension request letter and Marathon's Lease Extension Request presentation, both are available at the Department upon request.

## R E P O R T S

**The Summary of Assets (Unaudited) for Period Ended November 30, 2017 was provided to the Board.**

## A D J O U R N

There being no further business, the meeting was adjourned at 8:32 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands