

**Minutes of the Meeting of the  
Board of University and School Lands  
April 24, 2018**

The April 24, 2018 meeting of the Board of University and School Lands was called to order at 8:03 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:**

Jodi Smith	Commissioner
Kristie McCusker	Legal Assistant
Catelin Newell	Office Manager
Rick Owings	Administrative Officer

**Guests in Attendance:**

Brent Sanford	Lt. Governor
Troy Seibel	Attorney General's Office
Leslie Bakken Oliver	Governor's Legal Counsel
Will Gardner	Self
Amy Dalrymple	Bismarck Tribune
James MacPherson	Associated Press

**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 March 29, 2018 meeting was made by Secretary of State Al Jaeger and seconded by State Treasurer Kelly Schmidt and the motion carried unanimously on a voice vote.

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

**Information Security Risk Assessment**

The Department of Trust Lands had an Information Security Risk Assessment conducted on February 9, 2018. The purpose of the assessment was to identify and report on potential information technology (IT) and sensitive data risks. The assessment is an integral part of the State of North Dakota's risk management process and helps validate that the Department has implemented an appropriate control environment (e.g., people, processes and technologies) to reduce cyber security risks.

The Department is in the process of completing the implementation of recommended control enhancements to address the level of identified risk.

**M I N E R A L S   M A N A G E M E N T   D I V I S I O N**

**Litigation Update - Paul Sorum, et al. v. The State of North Dakota, et al.**

**Paul Sorum, et al. v. The State of North Dakota, et al., Cass County District Court, Civil No. 09-2018-CV-00089**

Date Filed: January 10, 2018  
 Date Served: January 10, 2018  
 Tribunal: Cass County District Court  
 Judge: John C. Irby  
 Attorney: Matthew Sagsveen, Solicitor General  
 Opposing Counsel: Terrance W. Moore, Fintan L. Dooley

Plaintiffs brought this action against the State of North Dakota, the Board of University and School Lands, the North Dakota Industrial Commission, Governor Burgum and Attorney General Stenehjem (Defendants) seeking to declare N.D.C.C. ch. 61-33.1 unconstitutional, and to enjoin Defendants from implementation or enforcement of N.D.C.C. ch. 61-33.1.

Plaintiffs argue that the Legislature, by passing Senate Bill 2134, codified at N.D.C.C. ch. 61-33.1, has violated the public trust doctrine and the anti-gift (see N.D. Const. art. X, § 18), “equal protection” (see N.D. Const. art. I, § 21), and special laws (see N.D. Const. art. IV, § 13) clauses of the North Dakota Constitution. Plaintiffs are claiming that the legislation results in the unlawful transfer of “approximately \$1.96 billion in cash and State-owned sovereign lands from the citizens of the State . . . to a small group of private parties in western North Dakota.” Plaintiffs allege N.D.C.C. ch. 61-33.1 “disclaims [the State’s] perpetual rights to all minerals under Lake Sakakawea, a total of about 108,000 mineral acres.”

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**EXECUTIVE SESSION**

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**Motion: Under the authority of NDCC §§ 44-04-19.2, the Board enter into executive session for Board consultation related to:**

- **Information Security Risk Assessment**

**And**

**Under the authority of NDCC §§ 44-04-19.1 and 44-04-19.2, the Board enter into executive session for attorney consultation related to:**

- **Paul Sorum, et al. v. The State of North Dakota, et al.**

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

At 8:03 AM the Board entered executive session for the purposes outlined in its adopted motion.

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**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:**

Jodi Smith	Commissioner
Kristie McCusker	Legal Assistant (present for Paul Sorum discussion only)
Catelin Newell	Office Manager
Rick Owings	Administrative Officer

**Guests in Attendance:**

Brent Sanford  
Troy Siebel  
Leslie Bakken Oliver  
Shane Swanson

Lt. Governor  
Attorney General's Office  
Governor's Legal Counsel  
State Information Technology Department (present for ITD discussion only)

The executive session adjourned at 9:31 AM and the Board returned to open session and the public was invited to return to the meeting. During the executive session, the Board discussed the Department's Information Security Risk Assessment and provided its attorneys with guidance on Paul Sorum, et al. v. The State of North Dakota, et al.

**R E P O R T S**

**The Summary of Assets (Unaudited) for Period Ended January 31, 2018 was provided to the Board.**

**Investment Updates****Asset Allocation**

The status of the permanent trusts' asset allocation as of March 31, 2018:

Account/Asset Class	Long-Term Asset Allocation	3/31/18 Actual Allocation \$	3/31/18 Actual Allocation %
Large Cap US Equity	13.2%	\$ 587,664,958	13.3%
Mid/Small Cap US Equity	3.8%	\$ 169,772,178	3.8%
International Equity	13.3%	\$ 568,318,666	12.9%
Emerging Market Equity	3.7%	\$ 160,993,486	3.6%
<b>Total Equities</b>	<b>34.0%</b>	<b>\$ 1,486,749,289</b>	<b>33.7%</b>
Domestic Investment Grade	13.0%	\$ 580,806,743	13.1%
High Yield FI	2.7%	\$ 120,875,480	2.7%
International/Global FI	5.3%	\$ 242,357,182	5.5%
<b>Total Fixed Income</b>	<b>21.0%</b>	<b>\$ 944,039,405</b>	<b>21.4%</b>
<b>Total Absolute Return</b>	<b>20.0%</b>	<b>\$ 887,797,154</b>	<b>20.1%</b>
Commodities	3.0%	\$ 137,817,018	3.1%
MLPs	3.0%	\$ 129,964,588	2.9%
TIPS	2.0%	\$ 88,784,293	2.0%
Natural Resource Equities	2.0%	\$ 88,653,627	2.0%
<b>Total Inflation Strategies</b>	<b>10.0%</b>	<b>\$ 445,219,526</b>	<b>10.1%</b>
Core Real Estate	8.0%	\$ 369,028,361	8.4%
Core Plus Real Estate	7.0%	\$ 284,543,674	6.4%
<b>Total Real Estate</b>	<b>15.0%</b>	<b>\$ 653,572,035</b>	<b>14.8%</b>
<b>Total Asset</b>	<b>100.0%</b>	<b>\$ 4,417,377,409</b>	<b>100.0%</b>

**Update on Direct Lending and Structured Credit Searches**

The Commissioner and RVK have developed a timeline for completion of the manager searches authorized by the Board on March 29, 2018.

April 16	RVK to provide structured credit search book (done)
April 23	Conference call between RVK and staff to review structured credit products and determine semi-finalists (3-4) to interview via phone
April 26	RVK to provide direct lending search book
April 27	Conference call between RVK and staff to review direct lending products and determine semi-finalist (3-4) to interview via phone
April 30 - May 18	Conference calls with semi-finalists to determine which finalists (2-3 in each category) to bring to Bismarck for in person interviews
June 12 - 13	Finalist interviews in Bismarck
June 28	Recommend managers to hire for both the direct lending and structured credit mandates and have those managers present to Land Board

(04/24/18)

## UBS Trumbull Property Fund (\$171.9 million, 3.9% of assets) Succession Planning, Additions and Fee Reduction

Paul Canning will be joining the TPF team as senior portfolio manager; this is part UBS's ongoing succession planning efforts. Paul has been with UBS since 1991, most recently as the portfolio manager of the Trumbull Property Growth and Income Fund. Over the next several months, Paul will transition to become the sole TPF senior Portfolio Manager effective as of July 1, 2018. Kevin Crean, the current portfolio manager will remain with the TPF team to provide his guidance and ensure a seamless transition in anticipation of his eventual retirement. As part of the transition plan Peter Shaplin and Mario Maturo were recently added to the TPF team. Both have strong real estate backgrounds.

In addition to the changes in personnel, UBS announced a fee reduction for the TPF that will be effective the next 2 years. Starting April 1, 2018, TPF will waive its right to charge the variable (incentive) fee it is allowed under the partnership agreement. Fees for this fund will now be approximately 83 (based on current assets). This should result in a fee reduction of 5-15% for each of the next 2 years.

Both staff and RVK are both in support of the fee reduction and have no real concerns over the personnel changes at UBS. We'll continue to monitor the situation going forward.

### Upcoming Investment Manager Meetings

The following meetings with investment managers are planned to discuss strategy, compliance, and performance. They will be held in the Department's conference room.

5/1/2018	10:30 AM	<b>JP Morgan - Income and Growth Fund</b>	Review portfolio performance and discuss changes to portfolio guidelines	\$125.2 million 2.8% of assets
		Jim Sakelaris, Nancy Brown (PM) and Melissa Anezinis		
5/2/2018	2:00 PM	<b>Prologis US Logistics Fund</b>	Review portfolio performance and discuss the recently restructured USLF fund	\$100.9 million 2.3% of assets
		Nathan Paine		
5/4/2018	9:00 AM	<b>Brandywine - Global Opportunistic FI</b>	Firm updated and review of portfolio performance	\$105.5 million 2.4% of assets
		Lisa Welch and Richard Lawrence		
5/16/2018	9:00 AM	<b>PIMCO - All Asset All Authority Fund</b>	Review of fund performance (here to see SIB)	\$297.87million 6.7% of assets
		Matt Clark & Yinyin Wu		

Board members are welcome to attend any manager meetings.

### Spring Surface Lease Auction Summary

The 2018 spring lease auctions were completed in April of 2018. Including tracts leased subsequent to being offered at the spring auctions, following is the summary for this spring as compared to spring 2017.

	2017	2018
Number of counties	29	26
Total leases offered	103	84
Number of leases bid	78 (76%)	51 (61%)
Number of leases bid-up	10 (13%)	15 (18%)
Total amount of minimum advertised bids (leased tracts)	\$170,172	\$143,203
Total amount received	\$181,903	\$160,286
Competition factor (bid-up revenue)	\$11,731 (6%)	\$17,083 (12%)

**Report of Easements Issued by Land Commissioner (3/26/18 to 4/4/18)**

**Granted to:** **FOXTAIL WIND LLC, JUNO BEACH-FL**  
 For the Purpose of: Easement: Wind tower site  
 Right-of-Way Number: RW0008057  
 Trust: A – Common Schools  
 Legal Description: DIC-131-66-36-NE4, NW4

**Granted to:** **ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT**  
 For the Purpose of: Easement: Easement Release  
 Right-of-Way Number: RW0008208  
 Trust: A – Common Schools  
 Legal Description: MCK-150-97-36-SE4

**Granted to:** **CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK**  
 For the Purpose of: Easement: Subsurface Well Bore  
 Right-of-Way Number: RW0008229  
 Trust: A – Common Schools  
 Legal Description: MCK-151-97-36-SE4, SW4

The following letters of permission were issued to groups wishing to use school trust lands under the Board's policy for access to trust lands by organizations. Fees may be charged for this use.

**Granted to:** **WEST DAKOTA WATER LLC, WILLISTON-ND**  
 For the Purpose of: Letter of Permission: Temporary Water Layflat Line  
 Right-of-Way Number: RW0008228  
 Trust: A – Common Schools  
 Legal Description: MCK-151-99-36-SE4

**Granted to:** **SELECT ENERGY SERVICES LLC, WILLISTON-ND**  
 For the Purpose of: Letter of Permission: Temporary Water Layflat Line  
 Right-of-Way Number: RW0008233  
 Trust: A – Common Schools  
 Legal Description: MCK-153-95-16-NW4, SW4 LESS PATENTED ACRES

**Granted to:** **SELECT ENERGY SERVICES LLC, WILLISTON-ND**  
 For the Purpose of: Letter of Permission: Temporary Water Layflat Line  
 Right-of-Way Number: RW0008247  
 Trust: A – Common Schools  
 Legal Description: MCK-150-96-36-NE4, SE4

The following letters of permission were issued to groups wishing to use school trust lands under the Board's policy for access to trust lands by organizations. Fees may be charged for this use.

**Granted to:** **ND DEPT OF HEALTH, DIV OF WATER QUALITY, BISMARCK-ND**  
 For the Purpose of: Letter of Permission: Access to School Land  
 Right-of-Way Number: RW0008221  
 Trust: A – Common Schools  
 Legal Description: HET-135-96-16-NE4, NW4, SE4, SW4

**Granted to:** **NORTH DAKOTA GEOLOGICAL SURVEY, BISMARCK-ND**  
 For the Purpose of: Letter of Permission: Access to School Land  
 Right-of-Way Number: RW0008243  
 Trust: E - Ellendale  
 Legal Description: BIL-137-100-8-E2NW4, E2SW4

<b>Granted to:</b>	<b>NORTH DAKOTA GEOLOGICAL SURVEY, BISMARCK-ND</b>
For the Purpose of:	Letter of Permission: Access to School Land
Right-of-Way Number:	RW0008243
Trust:	A – Common Schools
Legal Description:	BIL-139-101-36-NE4, SE4 BIL-142-101-36-NE4, NW4, SE4, SW4 BIL-144-101-16-SE4, SW4 BIL-144-101-36-NE4, NW4, SE4, SW4 BIL-144-102-36-NE4, NW4, SE4, SW4 GOL-137-103-24-NE4, SE4, SW4 MCK-145-101-6-SE4 MCK-146-101-36-NE4, NW4 MCK-148-99-6-E2SW4, LOTS 6, 7, SE4 MCK-148-99-7-E2NW4, LOTS 1, 2, E2SW4, LOTS 3, 4, NE4, SE4 MCK-148-99-18-E2SW4 LOTS 3, 4, N2NE4, NE4NW4 LOT 1, S2NE4, SE4, SE4NW4, LOT 2 MCK-148-100-12-SE4, SW4 MCK-148-100-13-N2NE4, N2NW4, S2NE4, S2NW4, SE4, SW4 MCK-148-101-16-E2SE4 MCK-148-101-36-NE4, SE4 MCK-149-100-16-NW4, SW4 MCK-150-100-36-SW4 MCK-152-100-36-NE4, NW4, SE4, SW4 MCK-152-101-36-SE4, SW4 MCK-153-98-36-NW4, SW4 SLO-136-102-16-NE4, SE4

### **Wenck Review Update**

At the time of statehood, the federal government conveyed ownership of the beds of navigable lakes and streams to North Dakota under the Equal Footing Doctrine. The Board leases the rights to produce oil and gas from minerals associated with sovereign lands, which N.D.C.C. § 61-33-01 defines as “those areas, including beds and islands, lying within the ordinary high water mark of navigable lakes and streams.” The Office of the State Engineer has responsibility for defining the ordinary high water mark (OHWM) and management responsibility for the bed of navigable waters and any other minerals therein.

In 2009, Bartlett and West was contracted to complete four task orders or phases of a study of the Yellowstone and Missouri Rivers’ OHWM for areas with potential oil and gas development. It should be noted the purpose of the studies was to determine the location of the OHWM. This was the largest study of the OHWM ever completed in North Dakota. Phase I of the study focused on the area west of Williston. Bartlett and West used the State Engineer’s OHWM delineation guidelines and conducted an on-the-ground analysis of the vegetation, soils and hydraulic characteristics for a determination of the OHWM of the river. The study was conducted jointly with the State Engineer and is referred to as Phase I.

The Phase II and IV studies focused on the areas east of Williston. Bartlett and West used a combination of pre-reservoir maps and photos, and high resolution scanning equipment to gather information on the historic OHWM of the Missouri River prior to the formation of Lake Sakakawea.

These studies have been used to manage mineral acres underlying navigable waterways and are used as the initial steps in the process of determining eligible acreages for state-issued oil and gas leases on sovereign lands.

During the 2017 legislative session, SB 2134 was adopted which directed the Department of Mineral Resources to select a qualified engineering and surveying firm to conduct a review of the Corps survey segments from the northern boundary of the Fort Berthold Indian reservation to the southern border of sections 33 and 34, township 153 north, range 102 west. Wenck Associates Inc. (Wenck) were contracted to review the delineation of the OHWM of the Corps survey segments. The review was to determine whether clear and convincing evidence establishes that a portion of the Corps survey does not reasonably reflect the OHWM of the historical Missouri riverbed channel under state law.

On April 17, 2018 Wenck presented to the Industrial Commission the scope of work which included the results of their review. The full report was posted to the Department of Minerals website on April 18, 2018. The Department of Trust Lands (Department) is in the process of reviewing the report and will begin comparing the Wenck review to the Phase II study.

The Department will prepare and present a report to the Board of University and School Lands concerning its review prior to the end of the sixty day comment period.

### **A D J O U R N**

There being no further business, the meeting was adjourned at 9:37 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