

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

The October 25, 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

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Drew Combs	Minerals Director
Jeff Engleson	Investments Director
Peggy Gudvangen	Accounting Director
Mike Humann	Surface Director
Kristie McCusker	Legal Assistant
Catelin Newell	Office Manager
Kate Schirado	Administrative Assistant

Guests in Attendance:

Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Policy Advisor
Dave Garner	Attorney General's Office
Charles Carvell	Attorney General's Office
Mark Hanson	Nilles Law Firm
Amy Dalrymple	Bismarck Tribune
Ryan Monson	Brady Martz
Mindy Piatz	Brady Martz
Geoff Simon	Western Dakota Energy Association
Chris Friez	North American Coal
David Straley	North American Coal
Ashley Jones	Continental Resources
Ryan Baker	Continental Resources
Lawrence Bender	Fredrickson & Byron P.A.
J. Roger Kelley	Continental Resources
Don Key	Continental Resources
Ryan Nelson	Continental Resources
Tony Moss	Continental Resources
Brady Pelton	North Dakota Petroleum Council

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 July 20, 2017 meeting amended to include the omitted Energy Impact and Infrastructure cancelation of grants and September 27, 2018 meeting was made by Secretary of State Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

OPERATIONS

Audited Financial Statements for the Year Ended June 30, 2018

Brady Martz Certified Public Accountants and Consultants completed its review of the financial statements of the Department of Trust Lands for the year ended June 30, 2018 and provided an opinion on the fair presentation of the financial statements.

The draft report identified no audit findings or recommendations.

The electronic version of the audited financial statement had not been posted, but when it finalized it will be available on the State Auditor's website at: <https://www.nd.gov/auditor/trust-lands-nd-department>

Department of Trust Lands Audited Financial Statement Fiscal Year 2018 was presented to the Board and is available at the Department upon request.

Administrative Rules Update

In House Bill 1300, the 65th Legislative Assembly directed the Board of University and School Lands (Board) no longer be exempt from the Administrative Agencies Practice Act. With passage of this legislation, the Department of Trust Lands (Department) began preparing rules to be considered by the Board, reviewed by the Office of Attorney General, and heard by the Legislative Rules Committee. The intent was to adopt these rules with an effective date of 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 Administrative Agencies Practices Act. 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."

Rules concerning General Administration, Energy Infrastructure and Impact Grants, Unclaimed Property, Surface Land Management, and Loan Programs were drafted and proceeded through the initial steps as required by Legislative Council (including posted to the Department's website and the State Secretary's website, publication of a notice of intent completed in all 53 county seat newspapers, and copies of these rules were sent to sponsoring legislators.) A public hearing on these rules was conducted on April 18, 2018. The Attorney General's Office reviewed the Administrative Rules and no comments or suggestions on the content of the rules was made. However, due to the lack of publication on Legislative Council's website, it is necessary to conduct another public hearing.

The Department concluded it is most efficient to withdraw the previously submitted General Administration, Energy Infrastructure and Impact Grants, Unclaimed Property, Surface Land Management, and Loan Programs rules from the process.

The Department will move forward with Administrative Rules for Energy Infrastructure and Impact Grants and Unclaimed Property. Per advisement from the Attorney General's office, the Department provided Legislative Council with notice of an additional public hearing. Since no substantial changes have been made to the drafted Administrative Rules notice will not be publicized in the 53 county seat newspapers.

A public hearing was conducted on October 19, 2018. Comments from the public have been taken into consideration. Administrative Rules for Energy Infrastructure and Impact Grants and Unclaimed Property will be presented to the Administrative Rules Committee on December 12, 2018.

Wenck Study

The 65th Legislative Assembly's adoption of Senate Bill 2134 (SB 2134), codified as N.D.C.C. ch. 61-33.1, provided for the determination of the ordinary high water mark (OHWM) for certain stretches of the Missouri River. The bill directs the North Dakota Industrial Commission (NDIC) to determine the delineation of the OHWM of the US Army Corp of Engineers (USACE) 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, McKenzie, Mountrail, and Williams Counties, North Dakota.

On June 26, 2018, the North Dakota Department of Trust Lands (Department) submitted oral and written comments reflecting the Department's review of the Ordinary High Water Mark of the Missouri River Bed study dated April 2018 (Wenck Study). The Department did not comment as to the Wenck Study's OHWM definition, data compilation methods, methodology, legal research, or other technical matters but did spell out its need for identification of the following:

1. Acreage for specific quarter-quarter sections to fully allocate acreages below the OHWM, including the riverbed;
2. Identification of accretion acreages attributable to riparian or upland landowners by quarter-quarter section;
3. Identification of acreage to two decimal places.

NDIC's September 27, 2018 Order of the Commission, Order No. 29129, found among other things that:

1. "[T]he Wenck Study was not intended to provide accurate acreage allocations for property transfer which is outside the scope of the legislation; the data sets provided to Wenck for use in calculating acreages represent the most efficient method for determination of areas necessary for decisions by the [NDIC]; no land surveying was done nor contracted to be done in the course of [the Wenck] study." Order at 4.
2. "[T]he cost to complete the necessary research and surveys to apportion property significantly exceeds the appropriated funds." Id.
3. "[A]dequate documentation and data for parties to determine how interests might be impacted were provided in the Wenck Study and subsequent communications." Id.

NDIC ordered, among other things, that:

1. The Wenck contract be amended "to provide the NAD83 North Dakota North Zone State Plane Coordinates for the OHWM line and the presumptive OHWM (USACE) in an appendix format in order to perpetuate the line for use by affected parties in future land and mineral surveys and land rights transfers." Id. at 12.
2. "The amended Wenck Study as indicated in [the September 27, 2018] order shall be the determination of the OHWM for USACE segments V, W, X, Y, Z, AA, BB, DD, EE, GG, HH, and KK."

N.D.C.C. § 61-33.1-04(2) provides that upon the adoption of the final review findings by the NDIC: The board of university and school lands shall begin to implement any acreage adjustments, lease bonus and royalty refunds, and payment demands as may be necessary relating to state-issued oil and gas leases. The board shall complete the adjustments, refunds, and payment demands within two years after the date of adoption of the final review findings.

At this time, the Department does not have the information to determine the exact acreage adjustments required to release any royalty proceeds held by the Board of University and School Lands (Board) attributable to oil and gas mineral tracts lying entirely above the OHWM of the historical Missouri riverbed channel on both the corps survey and the state phase two survey. The Department leases these acres by quarter-sections, utilizing the Bureau of Land Management's Public Land Survey System (PLSS). In order for the Department to fully satisfy its requirements under SB 2134, codified at N.D.C.C. ch. 61-33.1, the Department will need to contract with an engineering firm to analyze the Wenck Study and the PLSS maps. Utilizing GIS, the Wenck Study's shapefile can be imported and overlaid with the PLSS maps to break down acreage above and below the Wenck Study's coordinates on a quarter-quarter or government lot basis. However, because the State issued its oil and gas leases on a quarter section basis, if the OHWM of the river runs through any part of a particular quarter section, the Department needs to identify:

1. The amount of acreage in that quarter section that would be sovereign lands below the OHWM and subject to State lease (based on a quarter section);
2. Acreage above the OHWM in each quarter-quarter section or government lot owned by upland owners to allow for more finite calculations; and
3. Acreage allocations for accretions (where accretions are present) lying above the OHWM attributable to riparian tracts within each section.

The Commissioner is seeking approval from the Board for the additional work that needs to be completed to allow the Department to comply with N.D.C.C. ch. 61-33.1. Options include authorization to:

1. Contract with an engineering firm to provide the Department with the necessary data to "implement any acreage adjustments, lease bonus and royalty refunds, and payment demands as may be necessary relating to state-issued oil and gas leases." N.D.C.C. § 61-33.1-04(2)(a); or
2. Contract with an engineering firm to verify and validate operators' well location maps.

Motion: The Board authorizes the Commissioner to contract with an engineering firm to provide the Department with the necessary data to implement any acreage adjustments, lease bonus and royalty refunds, and payment demands as may be necessary relating to state-issued oil and gas leases.

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		

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

Board Surface Land Management Policy Manual – Second Reading

Since January 2018, the Department of Trust Lands (Department) has been reviewing the policies of each of its Divisions. As a result of this review, the Department determined the Board's Surface policies need updating. Board policies instruct the Department on carrying out Department duties and functions. Any changes to these policies will be reviewed by the Board and are not subject to legislative approval.

The Board had a first reading of the proposed Board Surface Land Management Policy Manual on September 27, 2018. A red-lined version that includes suggested revisions has been included in the Board packet for consideration by the Board.

The following Board approved policies will be reviewed at a later date:

- Fair Market Value Method for Establishing Minimum Bids on Trust Lands
- Land Retention and Sales Policy
- Sales of State Land for Landfills
- 15-09 Sales Policy
- Criteria for Retaining Foreclosed Property
- Acquired Properties Management

Listen to audio – who made the motion?

Motion: The Board adopts the proposed Surface Land Management Policy Manual.

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

The redline version of proposed changes to Board Surface Land Management Policy Manual was presented to the Board and is available at the Department upon request.

Fair Market Value Minimum Rent Policy – First Reading

Since January 2018, the Department of Trust Lands (Department) has been reviewing the policies of each of its Divisions. As a result of this review, the Department determined the Board's Surface policies need updating. Board policies instruct the Department on carrying out Department duties and functions. Any changes to these policies will be reviewed by the Board and are not subject to legislative approval.

Recommended revisions to Board policies were included in the proposed North Dakota Board of University and School Lands Surface Land Management Policy Manual. As stated at the September 27, 2018 Board meeting, certain policies were being reviewed and would be provided to the Board at a later date, including the Board's Fair Market Value Method for Establishing Minimum Bids on Trust Lands.

That policy has now been reviewed and revised, with recommendations obtained during the Performance Audit of the Department being considered. A copy of the proposed Fair Market Value Minimum Rent Policy (FMV) is attached for the Board's review. Revisions include:

- The five year moving average reduced to a three year moving average.
- The rental regions were revised.
 - The Land Resource Area vegetation zones replaced the outdated Natural Resources Conservation Service vegetation zones. The vegetation zones are now larger Land Resource Areas, which allow for an increased number of tracts contributing to the average potential grassland productivity value calculation for trust land.

- Rental regions were previously large regions across the state. Rental regions in the proposed FMV policy are now based primarily on one county being a region, with the exception of certain counties, or portions of counties, being grouped together due to:
 - The low number of trust grassland tracts in the area;
 - The low number of survey samples; and
 - The influences of surrounding national grasslands and the management of those lands, *i.e.*, the Badlands.
- Eliminated provisions that were included in other chapters of the Board Surface Land Management Policy Manual and the Department's Surface Policy Manual, including Permanent Improvements.
- Increased the following adjustments:
 - Fence - from \$1.50 per acre to \$1.60 per acre.
 - Badlands Water – from \$.65 per grassland acre to \$.85 per grassland acre. This increase reflects the change in the most common type of water development from a stock water pond to a livestock water pipeline.
- Eliminated tract specific adjustments for:
 - Noxious weeds; and
 - Administrative cost allowance for Grazing Association Management.
- Eliminated tame grass pasture classification due to few trust land tracts to which this would apply.
- Language and formatting changed for better readability, with the cropland and hayland formulas remaining unchanged.

The Commissioner is requesting the Board provide input on the proposed North Dakota Board of University and School Lands Fair Market Value Minimum Rent Policy. This is the “first reading” of proposed policy, with suggestions being taken into consideration and a “second reading” to occur on November 20, 2018.

The Fair Market Value Minimum Rent Policy was presented with the following addendums:

- Addendum A – Grassland Leasing Regions
- Addendum B – Fence Adjustment Determination for Fair Market Value Minimum Rent Policy
- Addendum C – Grassland Productivity Worksheet
- Addendum D – Grassland Resource Areas
- Addendum E – Land Resource Area Productivity Chart
- Addendum F – Badlands Water Adjustment Determination for Fair Market Value Minimum Rent Policy
- Addendum G – Badlands Water Adjustment Tracts
- Addendum H – Cropland Productivity Worksheet
- Addendum I – Region Cropland Productivity Index
- Addendum J – Region Hayland Productivity Index
- Addendum K – Hayland Productivity Worksheet

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

Investment Policy Statement Review and Update – First Reading

The Board's Investment Policy Statement (IPS) is to be formally reviewed at least every four years. However, the Commissioner has chosen to review the IPS on an annual basis to ensure that it is up to date and relevant at all times.

For historical knowledge, RVK was selected by the North Dakota Board of University and School Lands (Board) in March 2013 to provide strategic investment consulting advice focused on asset allocation, investment policy development, and implementation options for the Permanent Trust Funds (PTFs) and the Strategic Investment and Improvements Fund (SIIF). Over the course of

seven months, RVK worked closely with the Department of Trust Lands' (Department) staff and the Board to define the objectives and policy guidelines under the Board's long-term strategic investment plan.

The initial project included the following tasks completed by RVK:

1. A recommendation of an asset allocation for the PTFs that balances the Board's dual responsibilities under North Dakota law, and also recognizes the Board's risk tolerance and the current market conditions.

Throughout the course of the project, several asset allocation scenarios and the associated risks were provided to assist the Board in making decisions concerning the investment of the assets of the PTFs. The Board reviewed asset allocation models that projected the financial condition of the PTFs, and the effect on distributions under various economic and market conditions. All scenarios were developed recognizing the Board's responsibility to follow the Prudent Investor Rule.

2. Recommendations for a complete update of the Board's investment policies and procedures for the PTFs to help ensure the Board meets its long-term PTF goals and objectives.

The IPS was redrafted to reflect the decisions made by the Board, input received from Department staff, and to incorporate best practices for investment policy construction. As drafted, the IPS includes an investment management framework for the PTFs, Capital Building Fund, SIIF, Coal Development Trust Fund, and the Indian Cultural Education Trust (collectively, Funds).

3. An analysis and recommendation as to the most appropriate way to transition from the Board's 2015 asset allocation and policies to RVK's recommended investment plan. The analysis and recommendation included a timetable for implementing the recommendations, the resources and staffing needed to implement, an analysis and discussion of possible options for implementing, and the projected cost of implementing, managing, and monitoring the program going forward.
4. A recommendation was made to establish specific goals, objectives, and investment policies for the SIIF. Such recommendations took into consideration the differences between the nature and the investment timeframe of the SIIF as compared to the PTFs, including liquidity and expendability.

Based on an analysis of the cash flow needs of the SIIF, the Board determined that the SIIF should continue to invest fully in cash and cash-like instruments. The recommendations took into consideration the differences between the objective and the investment timeframe of the SIIF as compared to the PTFs. The unique objectives and asset allocation for the SIIF are reflected in the IPS.

This year, most of the proposed changes to the IPS are cosmetic in nature, cleaning up outdated language or fixing minor errors found in the current version of the document. Substantive changes include the following:

- **Securities Litigation (page 10):** In August of 2018, the Board directed the Commissioner to contract with Financial Recovery Technologies (FRT), a securities litigation monitoring and claims filing services firm. The Commissioner and staff are in the process of finalizing a contract with FRT. Over the next year FRT will work with the Commissioner and staff to update the Board's current securities litigation program and policies to more actively engage in securities litigation monitoring.

- **Distribution Policy (page 12-13):** By law, distributions from the Common Schools Trust Fund occur from August through April of each school year. In the past lower amounts were paid out early in the year and higher amounts were paid out later in the year; this was an attempt to match distributions with income as it was earned. Starting in fiscal year 2018, at OMB's request, distributions are being made in approximately equal amounts each month.
- **Capitol Building Fund Strategic Asset Allocation (page 22):** When the first IPS was adopted, in August 2015 the Board adopted investment guidelines for the Capitol Building Fund. At that time the Commissioner was of the belief that the Capitol Grounds Planning Commission (CGPC) had also adopted those guidelines, when in fact, the guidelines had been presented to the Commission, but were never formally adopted. This change corrects the policy to state that the Board, not the Commission, has adopted the guidelines.

During the August 2018 Board meeting the Board requested additional information pertaining to the investments of the SIIF. The SIIF is a fund financed by the revenues earned from approximately 800,000 sovereign mineral acres including those formerly owned by the Bank of North Dakota and State Treasurer and minerals located under navigable rivers and lakes (N.D.C.C. ch. 15-08.1 and § 61-33-07). The SIIF also receives a substantial portion of the oil and gas production and extraction taxes collected by the State (N.D.C.C. § 57-51.1-07.5).

In 2011, Legislature approved the merger of the Lands and Minerals Trust Fund and the Permanent Oil Tax Trust Fund (N.D.C.C. § 15-08.1-04 and § 61-33-07). The intent of the fund is for one-time expenditures relating to improving state infrastructure or for initiatives to improve the efficiency and effectiveness of State government.

In August 2015 the Board adopted the current asset allocation and investment guidelines for the SIIF. The Department Staff and RVK reviewed current projected cash flows from the SIIF. As the SIIF is subject to legislative appropriation, the projected expenditures of the SIIF are not controlled by the Board, but rather mandated by North Dakota legislature. Based upon the analysis, RVK recommended that the SIIF maintain its allocation to cash or enhanced cash like exposures. The current investment portfolio would be considered "enhanced cash like".

The primary goal of the SIIF investment portfolio is to preserve capital and maintain liquidity to meet spending needs. Historically this fund has been treated as the equivalent of General Fund II. Due to the expendable nature of the SIIF, the strategic allocation for the fund is 100% low duration investment grade fixed income investments. The Commissioner believes this asset allocation remains appropriate given the unknown amounts and timing of projected cash flows. If the Board would like to pursue an investment strategy to enhance returns further, RVK will gladly work with the Board to reassess the risk tolerance and reward expectations that were used to arrive at the current strategic allocation.

The Commissioner requested the Board provide input on the proposed Investment Policy Statement. This was the "first reading" of proposed policy, with suggestions being taken into consideration and a "second reading" to occur on November 20, 2018.

The Investment Policy Statement presented to the Board is available at the Department upon request.

Loan Pool Account Policy

At the September 27, 2018 Board Meeting, the Board adopted proposed substantive changes to the Board Farm Loan Rules and Regulations. As part of the ongoing process of policy review and with a goal of consistency in format and wording, there were revisions that could be made to the Farm Loan Rules and Regulations that would help to promote that goal.

The Farm Loan Rules and Regulations document is better defined as a Board policy, rather than rules and regulations. No substantive changes were made from the September 27, 2018 meeting;

however, the Board policy was modified to reflect the format of the other Board policies: the name was changed to the Loan Pool Account Policy, section numbers were removed, additional definitions were added, the subordination section was made part of the body of the policy, and the terms and conditions were added as an addendum. Language and capitalization were revised to reflect consistency in the Board policies going forward.

Motion: The Board adopts the proposed changes to the Board Loan Pool Account Policy, effective today.

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 Proposed Loan Pool Account Policy & Terms & Conditions Addendum was presented to the Board and is available at the Department upon request.

Securities Lending Annual Report

The ND Land Board Securities Lending report describing the performance and status of the Board’s securities lending program for the fiscal year ended June 30, 2018 was presented to the Board and is available at the Department upon request.

Securities lending is a way to generate incremental income by temporarily loaning out otherwise idle securities (stocks and bonds) to other investors for a fee. The Board participates in securities lending programs through both Northern Trust and State Street Global Advisors.

The Board’s investment policy statement specifies that any securities lending program in which the Board engages should utilize a high-quality and conservative collateral reinvestment approach that safeguards the return of principal and maintains adequate daily liquidity to support trade settlement activity and portfolio restructuring activities. Both Northern Trust and State Street maintain such programs.

A review of the Board’s Northern Trust securities lending program by RVK concluded that it is broadly delivering value to the investment program, with no recommended changes. The Board’s participation in State Street’s program is also providing significant revenue to the trusts without adding significant risk.

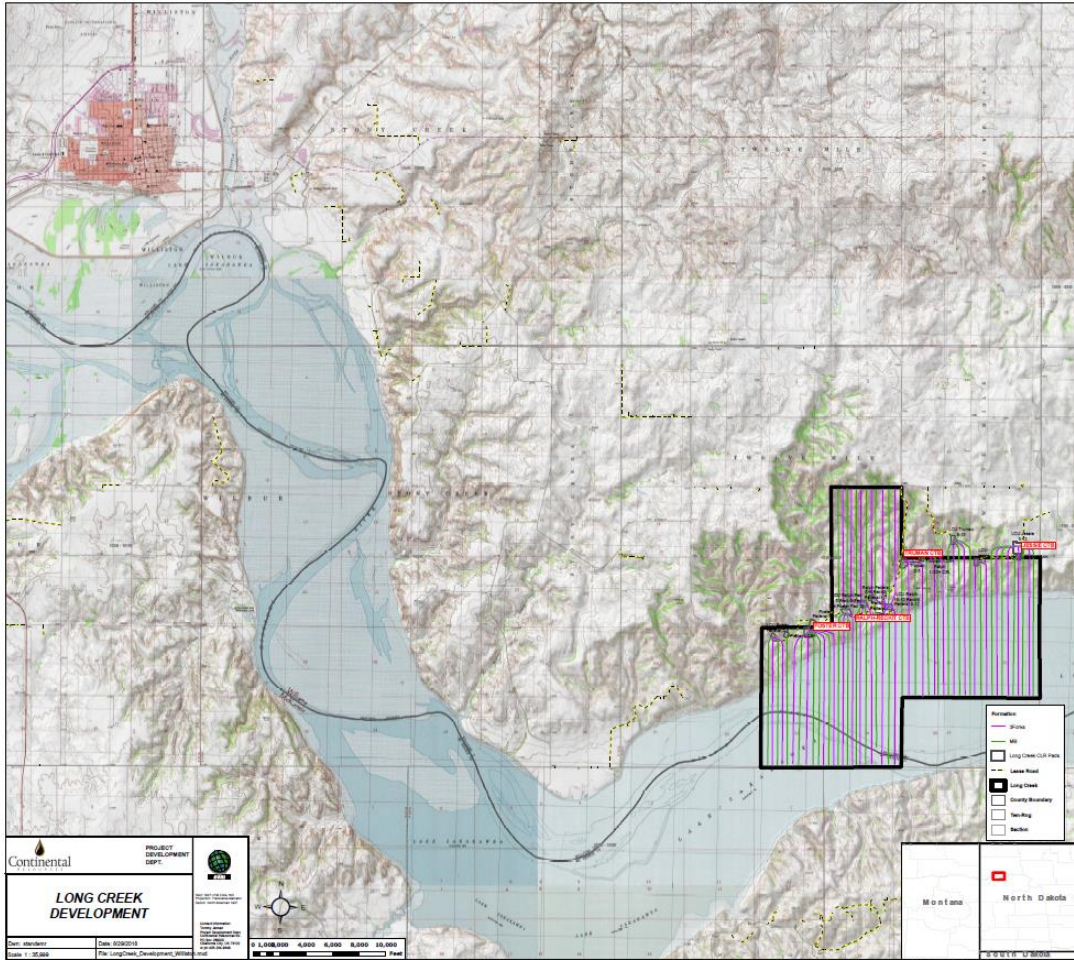
The Commissioner believes that the risks taken in the securities lending programs in which the Board participates are prudent, and recommends that the Board continue to participate in both programs going forward.

MINERALS MANAGEMENT

Continental Resources, Inc. Proposed Long Creek Unit

Continental Resources Inc. (Continental) is seeking support from the Board of University and School Lands (Board) and the Department of Trust Lands (Department) in its effort to create a Primary Unit in Williams County, North Dakota, to safely and efficiently develop ten sections of land on the north side of Lake Sakakawea in Long Creek Field, Sections 15, 22, 23, 24, 25, 26, 27, 28, 33 & 34 – T153N, R99W (6398.71 gross acres). Continental operates all of the current

spacing units within the proposed boundary. If approved, they would control approximately 87% working interest.



The area of the proposed unit is in extremely rough terrain with steep coulees, bluffs, and hills that create unique development issues. These features restrict where locations, roads, and pipelines can be built, limiting where specific wells can be connected to a central tank battery. Additionally, over 50% of the proposed Unit boundary is within Lake Sakakawea, which further complicates the development of the area. The approval of a unitization will allow Continental to reduce surface disturbance by fourteen acres by creating four central tank battery locations versus a minimum of thirteen separate locations. A reduction in central tank batteries will also reduce spill point risk near Lake Sakakawea. Within the boundary of the proposed unit, all of the current spacing units are being held by one well (4 wells total). Section 15 does not have a producing well.

The Board manages approximately 2,728.41 net mineral acres (42.64%) within the proposed Unit boundary. The net royalty interest in the proposed Unit is 7.34%. The Department and Continental have discussed the ownership of sovereign minerals lying within the boundary of Lake Sakakawea.

County	Legal	Subdivision	Trust	Net Acres
MCK	153-99-23	River in S2	R	202.82
MCK	153-99-24	River in S2	R	149.72
MCK	153-99-25	All River	R	622.75
MCK	153-99-26	River in E2, S2SW4, and River in NW4	A, R	356.94
MCK	153-99-33	All	A, R	582.69

MCK	153-99-34	E2NE4, River in SE4, River in SW4, and River in NW	A, R	377.53
WIL	153-99-22	W2SE4 and SW4	A	240.00
WIL	153-99-27	Lot 2 SW4NE4, NW4SE4, and NE4SW4, SW4SW4	A	196.70
			Total	2,729.15

*R – Sovereign Minerals (river). A – Common Schools

Additionally, the State owns surface acreage in the area of potential locations for well pad sites. Currently, Continental has a well pad on Section 21.

Without the development of a unitized wellsite, two developable well locations will need to be eliminated from the development plan at a combined value of \$30 million due to the unavailable surface footprint for separate line well pads. Additionally, the inability to direct production to the nearest centralized tank battery may eliminate the opportunity to drill additional wellbore slots. The project timeline would extend well beyond the unitization schedule due to the magnitude of infrastructure installation for a committed 56 new well project, delaying revenue to all parties of interest.

It is worth noting, there are disadvantages the Board should consider, such as:

- Complex drilling and scheduling requirements set by the NDIC to insure protection of correlative rights. If established, the NDIC will need to monitor the activity of the unit to insure that Continental is in compliance with the order.
- Some fee owners (private mineral owners) will object to their interests being pooled into a larger unit. If so ordered, some owners will be forced to join. Continental has reported that there are 205 individual royalty owners and 15 overriding royalty owners. To date, all owners have been notified of the proposal. There have been approximately a dozen inquiries for additional information. Thus far, Continental has received no negative feedback.
- It removes some negotiating rights from landowners for the establishment of surface infrastructure, i.e., roads, tank batteries, and electrical lines.
- It is unknown how the Ordinary High Water Mark (OHWM) survey will effect ownership of the proposed unit. It is estimated, within the proposed unit, 12 parcels that are unaffected, 11 that are completely affected and 4 that are partially affected by the recent survey conducted by the NDIC. Continental has historically escrowed disputed tracts in the proposed unit with the Bank of North Dakota. The Department is currently showing that Continental has approximately \$2.4 million in escrow for the current operating wells.
- Revenues may decrease over the short term.

Continental believes that this unitization would account for an additional 46 million barrels of oil equivalent to be produced from the area. Continental would utilize two rigs, with development avoiding excessive and costly well bore shut ins and isolations. There would be a maximization of reserves recovered by creating access to fully develop minerals within the boundary that would otherwise be partially stranded. The formula ordered by the NDIC would allocate production in a manner that is equitable to all interest owners.

Motion: The Board conditionally endorses the proposed unit, dependent upon approval from North Dakota Industrial Commission and subject to all laws, rules, and regulations of the State.

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

Nomination of Coal Acres – McLean County, The Falkirk Mining Company.

The Commissioner has received a nomination for the right to lease 320 surface acres and 480 coal acres within two Board-managed mineral and surface tracts. The nomination was submitted by The Falkirk Mining Company, a subsidiary of North American Coal Corporation and includes the following lands:

Township 147 North, Range 82 West

Section 36: S½

Township 146 North, Range 82 West

Section 4: S½

The sequence of events leading to the issuance of a coal lease is as follows:

1. Nominations are submitted, with initial offer of lease terms.
2. Due diligence is done on the title: verify ownership, lease status, legal, and various tasks needed to prepare the tracts to be leased.
3. Date of auction is established.
4. Required advertising is scheduled and submitted to the appropriate newspapers.
5. The Commissioner gathers information, usually at company's local office, to determine the fair market for the lease terms, including bonus and royalty rate.
6. Board of University and School Lands is notified of auction.
7. Per statute, a public comment period and hearing is held prior to the auction.
8. Auction is held.
9. Proposed leases are presented to the Board for final approval.
 - I. If approved, leases are issued to the winning bidder.
 - II. If not approved, deficiencies are corrected to meet the expectations of the Board. In some cases, it is expected that the process would start over, beginning with step 3.

The nominated tracts will be offered for lease at auction, subsequent to a public hearing to take place in the Department of Trust Lands' conference room at a date yet to be determined.

The Company nominated 320 surface acres and 480 coal acres and offered \$100 bonus/net surface acre or a total of \$32,000.00 and \$100 bonus per net coal acre or a total of \$48,000.00 for the right to a 15-year renewable lease. The company also offered annual rental payments of \$5.00 per net acre of surface and \$5.00 per net acre of coal. The company offered \$0.16 per ton of coal mined and removed and a surface royalty of \$0.12 surface royalty per ton of coal mined, both coupled with a 3% annual increase.

With the 2013 legislative change removing the minimum royalties from law, the board's rules now outline a provision whereby the records of the mining company's lease with private owners are inspected to arrive at a fair 'market rate' of royalties. The market rate then serves as the basis for the lease auction opening bid.

Examinations of the terms for private mineral leases within The Falkirk Mining Company indicate that the company’s offer for bonus and annual rent of trust minerals is consistent with the prevailing local terms.

Motion: The Board authorizes the Commissioner to offer these two tracts with the terms and mineral and surface royalty rate at \$0.16 per ton of coal mined and removed and a surface royalty of \$0.12 surface royalty per ton of coal mined and \$100 per acre per year term in a 15 year renewable lease; and to auction the leases with an opening bid \$100 at the next auction.

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

LITIGATION

Newfield Exploration Company, Newfield Production Company, and Newfield RMI LLC v.State of North Dakota, ex rel. the North Dakota Board of University and School Lands and the Office of the Commissioner of University and School Lands, a/k/a the North Dakota Department of Trust Lands, Civ. No. 27-2018-CV-00143

Date Filed: March 7, 2018
Court: District Court/McKenzie County
Attorneys: David Garner
Opposing
Counsel: Lawrence Bender and Spencer Ptacek/Fredrikson & Byron, P.A.
Judge: Robin Schmidt

Plaintiff is seeking a Declaratory Judgment that it is currently paying gas royalties properly under the Board’s lease. Specifically, Plaintiff is asking the Court to order that gas royalty payments made by the Plaintiff be based on the gross amount received by the Plaintiff from an unaffiliated third-party purchaser, not upon the gross amount paid to a third party by a downstream purchaser, and that Plaintiff does not owe the Defendants any additional gas royalty payments based on previous payments.

A Complaint and Answer with Counterclaims have been filed. Newfield filed an Answer to Counterclaims. Newfield filed its Motion for Summary Judgment and Defendants filed a Response to Newfield’s Motion and a Cross-Motion for Summary Judgment. Newfield’s Response to the Cross-Motion for Summary Judgment was due on October 19, 2018 (Attached).

March 9, 2018 Plaintiff’s filed Summons, Complaint, & Exhibits
March 9, 2018 Notice of Assignment & Case Number
March 13, 2018 Notice of Appearance – David Garner
April 11, 2018 Answer and Counterclaims
May 2, 2018 Answer to Counterclaims
June 12, 2018 Notice of Scheduling Conference
July 19, 2018 Amended Notice of Telephonic Scheduling Conference
July 27, 2019 Scheduling Conference

August 1, 2018	Notice of Court Trial – September 10-11, 2019
August 13, 2018	Plaintiff’s Notice of Motion for Summary Judgment, Motion for Summary Judgment, Brief in Support of Motion for Summary Judgment, Affidavit of Jay Williams
September 12, 2018	Notice of Cross-Motion for Summary Judgment; Cross-Motion for Summary Judgment; Brief in Support of Defendants’ Response to Plaintiffs’ Motion for Summary Judgment and in Support of Defendants’ Cross-Motion for Summary Judgment; Affidavit of Adam Otteson, with Exhibits
October 19, 2018	Plaintiffs’ Response to Defendants’ Cross-Motion for Summary Judgment due
November 9, 2018	Defendants’ Reply to Plaintiffs’ Cross-Motion for Summary Judgment due
September 10-11, 2019	Trial

Assistant Attorney General Resignation

The Department of Trust Lands (Department) has been notified that Assistant Attorney General Hope Hogan tendered her resignation to the Attorney General and will no longer be available to represent the Board of University and School Lands in the following cases:

- *EOG Resources, Inc. v. Soo Line Railroad Co., et. al.*, Civ. No. 31-10-CV-00010, Mountrail County District Court
- *Whiting Oil and Gas Corporation v. Arlen A. Dean, et. al.*, Civ. No. 27-2016-CV-00040, McKenzie County District Court
- *ND Office of State Engineer, Board of University and School Lands v. BLM*, Case No. IBLA 2016-170, US Dept. of Interior Office of Hearings and Appeals – Board of Land Appeals
- *Continental Resources, Inc. v. North Dakota Board of University and School Lands, et al.*, Case No. 1:17-cv-00014, Federal District Court, 8th Circuit
- *William S. Wilkinson, et. al. v. Board of University & School Lands, Brigham Oil & Gas, LLP; EOG Resources, Inc.*; Case No. 53-2012-CV-00038, Williams County District Court
- *Whitetail Wave LLC v. XTO Energy, Inc.; the Board of University and School Lands; and the State of North Dakota* – 27-2015-CV-00164, McKenzie County District Court
- *Mary K. Starin, as Personal Representative of the Estate of Bruno Herman Weyrauch v. Kelly Schmidt, et. al.*, Civ. No. 53-2015-CV-00986, Williams County District Court

The Commissioner is working with the Attorney General’s office on a case-by-case basis to identify the best approach for representation of the Board of University and School Lands.

Board of University and School Lands Major Case Summary as of October 24, 2018

The following is a summary of active litigation. Detailed case specific memorandums will be presented to the Board upon changes in case status or as new events requiring Board consideration occur.

UNCLAIMED PROPERTY

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. The parties have exchanged discovery and are in the process of resolving issues regarding depositions of certain states. The parties have agreed to stipulate as to the authenticity of the documents produced in discovery rather than undertake depositions.

REVENUE COMPLIANCE

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: A Complaint and Answer with Counterclaims have been filed. Continental filed an Answer to Counterclaims. Continental served discovery and responses were due July 30, 2018. Defendant served discovery and Continental replied on September 17, 2018. Trial scheduled for February 1, 2019.

Case: **Newfield Exploration Company, Newfield Production Company, and Newfield RMI LLC v. State of North Dakota, ex rel. the North Dakota Board of University and School Lands and the Office of the Commissioner of University and School Lands, a/k/a the North Dakota Department of Trust Lands, Civ. No. 27-2018-CV-00143**

Date Filed: March 7, 2018

Court: District Court/McKenzie County

Attorneys: David Garner

Opposing

Counsel: Lawrence Bender and Spencer Ptacek/Fredrikson & Byron, P.A.

Judge: Robin Schmidt

Issues: Plaintiff is seeking a Declaratory Judgment that it is currently paying gas royalties properly under the Board's lease. Specifically, Plaintiff is asking the Court to order that gas royalty payments made by the Plaintiff be based on the gross amount received by the Plaintiff from an unaffiliated third-party purchaser, not upon the gross amount paid to a third party by a downstream purchaser, and that Plaintiff does not owe the Defendants any additional gas royalty payments based on previous payments.

Current Status:

A Complaint and Answer with Counterclaims have been filed. Newfield filed an Answer to Counterclaims. A Scheduling conference was held July 27, 2018. Plaintiffs' filed a Motion for Summary Judgment on August 13, 2018 and Defendants filed a Cross-Motion for Summary Judgment. Plaintiffs' Response is due on October 19, 2018 and Defendants' Reply is due November 9, 2018. Trial is scheduled for September 10 and 11, 2019.

Minerals

Case: **EOG Resources, Inc. v. Soo Line Railroad Co., et. al., Civ. No. 31-10-CV-00010**

Date Filed: Jan. 20, 2010

Court: Mountrail County District Court

Judge: Todd 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: Whiting Oil and Gas Corporation v. Arlen A. Dean, et. al., Civ. No. 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:

The court trial (no jury) scheduled for August 6-10, 2018 was postponed to April 22 - 26, 2019. The initial scheduling order was amended for the State to conduct field work that could not be completed in the winter. Due to property flooding from high flows on the Yellowstone River, the State has been unable to conduct field work. Therefore, a telephonic scheduling conference was held August 16, 2018 to discuss the Court’s wishes for resetting deadlines. All deadlines and the April 2019 trial were cancelled. A January 3, 2019 telephonic status conference was scheduled.

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.

Case: **Continental Resources, Inc. v. North Dakota Board of University and School Lands, et al., Case No. 1:17-cv-00014**

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 filed a response and the United States filed its reply. The United States filed a Motion to Dismiss on March 16, 2018. The Board filed a Surreply to the Motion to Dismiss on April, 16, 2018. Awaiting decision from the Court on the United States’ Motion to Dismiss.

Case: **William S. Wilkinson, et. al. v. Board of University & School Lands, Brigham Oil & Gas, LLP; EOG Resources, Inc.; Case No. 53-2012-CV-00038**

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. Plaintiff, after NDIC issued the review findings, requested a status conference with the Court to set a new trial date and

other deadlines. The Board and State Engineer filed a Motion for Continued Stay of Proceedings on October 11, 2018. A telephonic status conference is scheduled for November 2, 2018.

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. The Board and State Engineer filed a Motion for Continued Stay of Proceedings on October 19, 2018.

Case: **Mary K. Starin, as Personal Representative of the Estate of Bruno Herman Weyrauch v. Kelly Schmidt, et. al., Civ. No. 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. The Board and State Engineer filed a Motion for Continued Stay of Proceedings on October 12, 2018. Plaintiffs filed a Response to Defendants' Motion to Stay Proceedings on October 23, 2018.

Case: **Paul Sorum, et. al. v. State of North Dakota, et. al. – Civ. No. 09-2018-CV 00089**
Tribunal: **Cass County District Court**
Judge: **John C. Irby**
Attorney: **Mark Hanson & Peter Hvidston, Nilles Law Firm**
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:

An Answer was filed. Defendants filed a Motion to Dismiss, which was denied in April 2018. Petition for Supervisory Writ and Exercise of Original Jurisdiction was filed by Defendants and denied in May 2018. A Motion for Preliminary Injunction was brought by Plaintiffs and a hearing was held on May 21, 2018. An Order for Preliminary Injunction was filed June 26, 2018. A Scheduling Conference was held on September 6, 2018 and the following briefing deadlines were set: Summary Judgment Motions due October 22, 2018; Response Briefs due December 6, 2018; and the Reply briefs are due December 21, 2018. A hearing on the Motions for Summary Judgment is scheduled for 9:00 a.m. January 4, 2019, Fargo.

Mineral Title Dispute of Historic Riverbed within the Fort Berthold Indian Reservation

Since June 2008, the Board has visited a number of times about identifying state ownership boundaries associated with the original Missouri riverbed 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.

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. 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 3rd-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.

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.

Most of the Board's leases require disputed royalties to be escrowed with the Bank of North Dakota.

On January 18, 2017 the Solicitor of the U.S. Department of the 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. On October 23, 2017, the Board submitted to the Department of the Interior its critique of and response to the Solicitor's opinion.

In June of 2018, the Solicitor's Office temporarily suspended the 2017 Solicitor's Opinion insofar as it addresses title to the riverbed.

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:	Mark R. Hanson, Special Assistant Attorney 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."

February 28, 2018	Defendants moved to dismiss Plaintiffs' Complaint as Plaintiffs failed to join indispensable parties.
March 5, 2018	Plaintiffs brought a Motion for Preliminary Injunction. A hearing was previously scheduled for March 27, 2018.
March 7, 2018	Defendants brought an Expedited Motion to Stay or Extend Time to Respond to Plaintiffs' Motion for Preliminary Injunction and to Postpone the March 27, 2018 Hearing on Such Motion (Motion to Stay).
March 8, 2018	The Court granted Defendants' Motion to Stay pending a decision on Defendants' Motion to Dismiss currently pending before the court, and cancelled the March 27, 2018 hearing.
March 9, 2018	Plaintiffs opposed the Motion to Stay and requested reconsideration of the Order.
March 14, 2018	Plaintiffs' request for reconsideration was denied.
March 19, 2018	Rule 16 Conference held.
March 21, 2018	Defendants filed a joint Reply Brief in Support of Motion to Dismiss.
March 27, 2018	North Dakota Petroleum Council filed a Motion for Leave to File an Amicus Curiae Brief in Opposition of Plaintiff's Motion for Preliminary Injunction (Motion to File Amicus Brief).

April 2, 2018 Defendants filed a Response of No Objection to North Dakota Petroleum Council's Motion to File Amicus Brief.

April 4, 2018 Plaintiffs' filed a Brief in Opposition to North Dakota Petroleum Council's Motion to File Amicus Brief.

April 5, 2018 North Dakota Petroleum Council filed a Reply Brief in Support of Motion to File Amicus Brief.

April 9, 2018 Defendant North Dakota Industrial Commission filed a Second Amended Notice of Hearing on Defendants' Motion to Dismiss changing the time of the hearing on April 11 from 1:30 p.m. to 2:30 p.m.

April 11, 2018 Request by Media to Attend Hearing Via Telephone Conference Call, proposed Order, Certificate of Service (RE: April 1, 2018 hearing)

April 11, 2018 Hearing on Defendants' Motion to Dismiss. Motion to Dismiss was denied.

April 11, 2018 Order Allowing Media Coverage Via Telephone Conference Call denied as untimely.

April 18, 2018 State Defendants filed a Response to Plaintiffs Motion for Preliminary Injunction, with supporting documents.

April 25, 2018 Defendants filed a Petition for Supervisory Writ and Exercise of Original Jurisdiction with the North Dakota Supreme Court.

April 30, 2018 Scheduled hearing on the Plaintiffs' Motion for Preliminary Injunction.

May 2, 2018 Third Amended Notice of Hearing on Motion for Preliminary Injunction – scheduling hearing for May 21, 2018

May 9, 2018 Order of Denial issued by the North Dakota Supreme Court – denying Defendants' request for supervisory writ.

May 14, 2018 Order Denying Motion to Stay Pending Order on Petition for Supervisory Writ and Exercise of Original Jurisdiction

May 18, 2018 Defendants filed Supplemental Affidavit of Lynn D. Helms in Support of the State Defendants['] Response to Plaintiffs' Motion for Preliminary Injunction

May 21, 2018 Hearing on Motion for Preliminary Injunction – Judge Irby ordered from the Bench – Judge ordered royalties totaling more than \$200 million be kept by the State, prohibiting the State from forfeiting oil royalties, rents and bonus payments

May 23, 2018 Notice of Hearing on Motion for Summary Judgment

May 29, 2018 Plaintiffs' Request for Production of Documents to Defendant (Set 1), Plaintiffs' Requests for Admissions to Defendants, Affidavit of Electronic Service (Discovery not filed)

May 30, 2018 Motion, Affidavit and proposed Order for Pro Hac Vice of Anne T. Regan,

May 30, 2018 Motion, Affidavit and proposed Order for Pro Hac Vice Gregory S. Otsuka

May 31, 2018 Proposed Findings of Fact, Conclusions of Law and Order for Preliminary Injunction, Ex. 1 – Fiscal Note to Findings of Fact, Conclusions of Law and Order for Preliminary Injunction

June 1, 2018 Letter to Judge Irby re: Plaintiff's proposed Findings

June 1, 2018 Letter to Judge Irby re: undisputed facts, discovery, etc.; Ex. A – Plaintiffs' Requests for Admissions to Defendants; Ex. B – Plaintiffs' Request for Production of Documents to Defendants (Set No. 1); Ex. C – Email Exchange between attorneys May 30, 2018;

June 5, 2018	Letter to Judge Irby responding to Gaustad's letter
June 8, 2018	Notice of Appearance of Mark R. Hanson, Special Assistant Attorney General Representing the Board of University and School Lands of the State of North Dakota
June 8, 2018	Notice of Hearing (Telephonic Conference) (RE: Discovery Issues)
June 11, 2018	Transcript (of Hearing on Motion for Preliminary Injunction)
June 12, 2018	Substitution of Counsel Representing the Board of University and School Lands of the State of North Dakota
June 12, 2018	State Defendants' Objection to Plaintiffs' Proposed Order for Preliminary Injunction; Exhibit A – Proposed Order for Preliminary Injunction
June 12, 2018	Notice of Demand for Production or Inspection of Documents to ND Petroleum Council; Subpoena Duces Tecum
June 14, 2018	Proposed Scheduling Order (RE: Stipulated Facts)
June 14, 2018	Notice of Expedited Motion for a Discovery Protection Order by Defendants; Expedited Motion for a Discovery Protection Order by Defendants; Memo in Support of Expedited Motion for a Discovery Protection Order by Defendants; Exhibit A – Notice of Demand for Production or Inspection of Documents to ND Petroleum Council with Subpoena
June 14, 2018	Defendant Board of University and School Lands of the State of North Dakota Joinder in the State Defendants' Objection to Plaintiffs' Proposed Preliminary Injunction
June 20, 2018	Memorandum in Opposition to Expedited Motion for Protective Order, Exhibit 1 -Plaintiff's Request for Production of Documents to Defendants; Exhibit 2 -Plaintiffs Request for Production of Documents to Defendants; Exhibit 3 – May 30, 2018 email
June 22, 2018	Plaintiffs' Objections to Defendants' Proposed Order and Memorandum in Opposition to Defendants' Objections; Exhibit 1 – Transcript Excerpt
June 25, 2018	Reply Memorandum in Support of Expedited Motion for a Discovery Protection Order by Defendants
June 25, 2018	Hearing on Expedited Motion for Discovery Protection Order to be held during telephonic scheduling conference
June 28, 2018	Proposed Order – from Court's June 25, 2018 ruling that (1) on July 23, 2018 the parties submit to the Court a statement of undisputed facts and additional facts a party believes are material undisputed facts, but for which the parties cannot agree, (2) the Court will review the submitted facts and make a determination by August 1 if cross motions for summary judgment are appropriate, (3) if cross motions for summary judgment are appropriate the Court will provide a briefing schedule, (4) discovery is stayed, and (5) if the Court determines that cross-motions for summary judgment are not appropriate, then responses to currently served discovery are due 30 days from the date of such determination by the Court.
July 3, 2018	Order for Pro Hac Vice Admission of Anne T. Regan
July 3, 2018	Order for Pro Hac Vice Admission of Gregory S. Otsuka
July 6, 2018	Order (Scheduling Deadlines) as set out in the June 28 proposed order was signed by the Court.
July 9, 2018	Notice of Hearing – Pretrial Conference – September 6, 2018
July 9, 2018	Amended Notice of Hearing – Scheduling Conference – September 6, 2018

July 13, 2018	Transcript (June 25, 2018 hearing)
July 23, 2018	Deadline for parties to confer & file statement of undisputed material facts and other material facts for which all parties cannot agree
August 1, 2018	Court's anticipated deadline to review undisputed facts and any submitted Claimed Supplemental Undisputed Facts to determine if cross motions for summary judgment are appropriate – if appropriate, briefing schedule will be issued. If not appropriate, then (1) the currently served discovery must be answered within 30 days and (2) the parties can engage in further discovery.
August 27, 2018	Hearing Scheduled by Plaintiffs on Motion for Summary Judgment CANCELLED BY THE COURT
August 30, 2018	Letter to Judge Irby – RE: appearance at scheduling conference
September 6, 2018	Notice of Hearing - Scheduling Conference and Pretrial Conference– 9:30 a.m. Cass County Courthouse
September 10, 2018	Proposed Order for Briefing Schedule and Order for Oral Argument Hearing –due dates: Summary Judgments Motions and Briefs – on or before October 22, 2018; Answer Briefs – on or before December 6, 2018 Reply Briefs - on or before December 21, 2018. Hearing on Motions for Summary Judgment – January 4, 2019, 9:00 a.m. – Cass County Courthouse
October 22, 2018	Motion for Summary Judgment, Memorandum of Law in Support of Motion for Summary Judgment, Affidavit of Terrance W. Moore, proposed Order
October 22, 2018	State Defendants' Notice Motion for Summary Judgment, Motion for Summary Judgment, Brief in Support of Motion for Summary Judgment, Affidavit of Lynn Helms, Affidavit of Jodi Smith
January 4, 2019	Hearing on Motions for Summary Judgment – scheduled for January 4, 2019, 9:00 a.m. – Cass County Courthouse

The Plaintiffs' Memorandum of Law in Support of Motion for Summary Judgment and State Defendants' Brief in Support of Motion for Summary Judgment were presented to the Board and are available at the Department upon request.

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending and potential litigation.

EXECUTIVE SESSION

Motion: Under the authority of N.D.C.C. §§ 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.**
- **Mineral 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 9:25 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:

Jodi Smith	Commissioner
Kristie McCusker	Legal Assistant
Catelin Newell	Office Manager
Kate Schirado	Administrative Assistant

Guests in Attendance:

Leslie Bakken Oliver	Governor’s Legal Counsel
Reice Haase	Governor’s Policy Advisor
Charles Carvell	Attorney General’s Office – Mineral Title Dispute Case Only
Mark Hanson	Nilles Law Firm – Paul Sorum Case Only
Brent Sanford	Lt. Governor

The executive session adjourned at 11:04 AM and the Board returned to open session and the public was invited to return to the meeting. During the executive session, the Board was provided information regarding the Paul Sorum et al. v. The State of North Dakota, et al.

R E P O R T S

Report of Easements Issued by Land Commissioner 9/14/2018 to 10/15/2018

Granted to:	CENEX PIPELINE LLC, LAUREL-MT
For the Purpose of:	Easement: Oil Transmission Pipeline
Right-of-Way Number:	RW0007873
Trust:	A – Common Schools
Legal Description:	MOU-155-91-36-NW4 MOU-155-92-36-NE4,NW4 MOU-155-93-36-NE4, NW4 MOU-155-94-36-NE4, NW4

Granted to:	ROUGH RIDER ELECTRIC COOPERATIVE, INC., DICKINSON ND
For the Purpose of:	Easement: Electric Distribution Line - Above Ground
Right-of-Way Number:	RW0008062
Trust:	A – Common Schools
Legal Description:	DUN-143-92-16-SE4

Granted to:	CENEX PIPELINE LLC, LAUREL-MT
For the Purpose of:	Easement: Oil Transmission Pipeline
Right-of-Way Number:	RW0008206
Trust:	A – Common Schools
Legal Description:	WIL-156-97-36-SE4, SW4 WIL-156-99-36-NW4

Granted to:	OASIS MIDSTREAM SERVICES LLC, HOUSTON-TX
For the Purpose of:	Easement-Amend: Multiple Pipelines
Right-of-Way Number:	RW0008277
Trust:	A – Common Schools
Legal Description:	WIL-156-101-16-NE4, NW4
Granted to:	ANDEAVOR FIELD SERVICES LLC, SAN ANTONIO-TX
For the Purpose of:	Easement-Amend: Oil Transmission Pipeline
Right-of-Way Number:	RW0008325
Trust:	A – Common Schools
Legal Description:	MCK-149-95-16-NW4
Granted to:	CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK
For the Purpose of:	On-lease Act. Amend: Horizontal Oil Well
Right-of-Way Number:	RW0008356
Trust:	A – Common Schools
Legal Description:	DUN-147-96-36-NE4, NW4
Granted to:	CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK
For the Purpose of:	On-lease Act. Amend: Horizontal Oil Well
Right-of-Way Number:	RW0008357
Trust:	A – Common Schools
Legal Description:	DUN-147-96-36-NE4, NW4
Granted to:	FALKIRK MINING COMPANY, BISMARCK-ND
For the Purpose of:	Permit: Coal Exploration
Right-of-Way Number:	RW0008363
Trust:	A – Common Schools
Legal Description:	MCL-147-82-36-SE4, SW4
Granted to:	BNN NORTH DAKOTA LLC, LAKEWOOD-CO
For the Purpose of:	Easement: Salt Water Pipeline
Right-of-Way Number:	RW0008365
Trust:	A – Common Schools
Legal Description:	MOU-155-93-36-NW4, 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:	AMES SAVAGE WATER SOLUTIONS LLC, WILLISTON-ND
For the Purpose of:	Letter of Permission: Temporary Water Layflat Line
Right-of-Way Number:	RW0008366
Damage Payment to Lessee:	N/A
Trust:	A – Common Schools
Legal Description:	MOU-155-94-36-NW4
Granted to:	NORTHWEST WATER TRANSFER, WILLISTON-ND
For the Purpose of:	Letter of Permission: Temporary Water Layflat Line
Right-of-Way Number:	RW0008367
Trust:	A – Common Schools
Legal Description:	WIL-158-95-36-NE4, NW4, SW4
Granted to:	SELECT ENERGY SERVICES LLC, WILLISTON-ND
For the Purpose of:	Letter of Permission: Temporary Water Layflat Line
Right-of-Way Number:	RW0008368

Trust: A – Common Schools
 Legal Description: MCK-150-98-36-NW4, SW4

Granted to: **CHIPPEWA RESOURCES INC, MINOT-ND**
 For the Purpose of: Permit: Planning & Preconstruction Survey
 Right-of-Way Number: RW0008369
 Damage Payment to Lessee: N/A
 Trust: A – Common Schools
 Legal Description: N/A

Granted to: **MAGNUS SERVICES LLC, WATFORD CITY-ND**
 For the Purpose of: Letter of Permission: Temporary Water Layflat Line
 Right-of-Way Number: RW0008377
 Trust: A – Common Schools
 Legal Description: WIL-153-100-36-NE4, SE4

Granted to: **STREAMLINE WATER SERVICES LLC, WILLISTON-ND**
 For the Purpose of: Letter of Permission: Temporary Water Layflat Line
 Right-of-Way Number: RW0008384
 Trust: A – Common Schools
 Legal Description: MCK-150-98-36-SE4, SW4

Investment Updates

Asset Allocation

The status of the permanent trusts' asset allocation as of September 30, 2018:

Account/Asset Class	Long-Term Asset Allocation	9/30/18 Actual Allocation \$	9/30/18 Actual Allocation %	9/30/18 %Diff.
Large Cap US Equity	13.3%	\$ 629,778,585	13.6%	0.3%
Mid/Small Cap US Equity	3.7%	\$ 176,777,651	3.8%	0.1%
International Equity	13.3%	\$ 599,732,144	12.9%	-0.4%
Emerging Market Equity	3.7%	\$ 169,758,056	3.7%	0.0%
Total Equities	34.0%	\$ 1,576,046,436	34.0%	0.0%
Core Fixed Income	12.6%	\$ 596,794,595	12.9%	0.3%
Non-Core Fixed Income	8.4%	\$ 375,301,978	8.1%	-0.3%
Total Fixed Income	21.0%	\$ 972,096,574	21.0%	0.0%
Total Absolute Return	20.0%	\$ 927,878,796	20.0%	0.0%
Commodities	3.0%	\$ 142,229,164	3.1%	0.1%
MLPs	3.0%	\$ 143,605,225	3.1%	0.1%
TIPS	2.0%	\$ 88,719,636	1.9%	-0.1%
Natural Resource Equities	2.0%	\$ 92,640,225	2.0%	0.0%
Total Inflation Strategies	10.0%	\$ 467,194,249	10.1%	0.1%
Core Real Estate	8.0%	\$ 381,318,550	8.2%	0.2%
Core Plus Real Estate	7.0%	\$ 307,589,033	6.6%	-0.4%
Total Real Estate	15.0%	\$ 688,907,582	14.9%	-0.1%
Total Asset	100.0%	\$ 4,632,123,637	100.0%	

Angelo Gordon (\$36.00 million, 0.8% of PTF assets)

Direct Lending Fund

The new Angelo Gordon Direct Lending portfolio was funded in late-August, with an initial call of \$6 million. Since then there have been three additional calls; two for \$11.25 million and an

additional call for \$7.5 million that will fund on October 29, 2018. By the end of October 2018, 24% of the total \$150 million commitment will be funded.

Schroders (\$70.0 million, 1.6% of PTF assets)

Securitized Credit

The initial funding of the Schroder's securitized credit portfolio was completed on September 17, 2018, with a deposit of \$35 million. A second transaction of \$35 million was transferred to Schroders on October 11, 2018. The Commissioner expects to complete funding of this portfolio at the beginning of November, with the transfer of an additional \$25 million.

Lazard (high yield bonds) and First International (international fixed income)

During mid-October, the Commissioner worked with Northern Trust to liquidate the Lazard and First International portfolios. A portion of the cash generated was used to fund October transfers to both Schroders and Angelo Gordon. An additional \$25 million will be held in cash pending the final transfer to Schroders in late-October. The balance of the liquidation proceeds will be held in the Payden & Rygel Low Duration Fund, to be used to fund Angelo Gordon calls over the next 18 to 24 months.

BND Farm Loan Pool (\$7.4. million, 0.2% of PTF assets)

Direct Farm Lending

During October, BND was in contact with the Department of Trust Lands to prepare to fund a farm loan by the end of October; this will be the first transfer of funds to the farm loan pool since late-2009. According to BND there is a solid market for these loans at the present time, so the Board can expect to fund as much as \$5-10 million of loans before the end of 2018.

Although BND met the needs of North Dakota farmers and ranchers over the past 9 years, the Commissioner is excited to once again be using permanent trust dollars to invest in North Dakota farm real estate loans. With rates now yielding over 6.25%, these high quality loans will meet the trusts' investment needs for years to come, while also providing affordable financing options to farmers and ranchers in North Dakota.

Westwood Holdings Group, (\$302.91 million, 6.7% of PTF pool)

Westwood Income Opportunities Fund (Absolute Return)

In July, Westwood announced that Mark Freeman, CIO and co-PM of Westwood Income Opportunities strategy, will be retiring on March 8, 2019. Todd Williams remains co-PM of the strategy. Additionally, Dan Barnes, PM of another multi-asset strategy, Westwood Worldwide Opportunities, was recently named co-PM of the Income Opportunities portfolio. Although the co-PMs are supported by a team of 20 individuals, including a strong team of research analysts, Mr. Freeman is a key individual for the strategy.

Since the announcement, RVK and has done extensive due diligence on Westwood, including spending time in Westwood's office meeting with key personnel for both the product and the company. The results of that diligence is that RVK currently recommends the Board of University and School Lands not replace Westwood. A copy of RVK's due diligence memo is available for review upon request.

RVK will continue to monitor and evaluate the situation at Westwood closely, to see if this change will result in a loss of assets, reduced stability at the firm, negative performance or other issues. RVK will report back to the Board if they believe there is cause for concern 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.

October 25, 2018, 10:00 AM PIMCO – All Assets All Authority Fund

Absolute Return (\$305.0 million, 6.8% of PTF pool)
Matt Clark and Yinyin Wu

A D J O U R N

There being no further business, the meeting was adjourned at 11:07 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands