

**Minutes of the Meeting of the
Board of University and School Lands
December 17, 2018**

The December 17, 2018 meeting of the Board of University and School Lands was called to order at 1:00 PM 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 (via Telephone)
Kelly Schmidt	State Treasurer

Member Absent:

Kirsten Baesler	Superintendent of Public Instruction
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Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Drew Combs	Minerals Director
Jeff Engleson	Investments Director
Kristie McCusker	Paralegal
Catelin Newell	Office Manager
Kate Schirado	Administrative Assistant
Gerard Schwan	Grants Administrator
Joseph Stegmiller	Natural Resource Professional

Guests in Attendance:

Brent Sanford	Lt. Governor
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Policy Advisor
Dave Garner	Attorney General's Office
Mark Hanson	Nilles Law Firm
Tom Stromme	Bismarck Tribune
Amy Dalrymple	Bismarck Tribune
Josh Kevan	RVK
Marcia Beard	RVK
Troy Seibel	Attorney General's Office
Faith Harron	Stanford
Geoff Simon	WDEA

APPROVAL OF MINUTES

A motion to approve the minutes of the November 20, 2018 meeting was made by Secretary Al Jaeger and seconded by Treasurer Kelly Schmidt and the motion carried unanimously on a voice vote.

LITIGATION

Board of University and School Lands Major Case Summary as of December 12, 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. On November 27, 2018, the parties filed a Joint Motion to Vacate Trial Date and Joint Status Report, agreeing that no later than February 1, 2019, the parties would submit to the Court a proposed case management statement incorporating a schedule for dispositive motions. **Trial scheduled for February 1, 2019 was cancelled to allow for additional discovery.**

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 was filed October 19, 2018 and Defendants' Reply was filed November 9, 2018. A hearing on the Motions for Summary Judgment is scheduled for January 4, 2019 at 1:30 p.m., McKenzie County. 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: 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. The parties stipulated to dismissal of the pending action. **An Order of Dismissal Without Prejudice, Notice of Entry of Judgment, and a Judgment of dismissal were filed on November 30, 2018. Hearing on Order to Show Cause scheduled for December 6, 2018 was cancelled.**

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: David Garner/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 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, 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: **Jennifer Verleger/Matthew Sagsveen/David Garner**
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. The telephonic status conference scheduled for November 2, 2018 was cancelled. **A Hearing on the Motion for Continued Stay was held November 30, 2018. Defendants submitted a proposed Order and the Judge asked for Plaintiffs to submit a proposed Order, which was filed December 4, 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: David Garner/Jennifer Verleger
Opposing Counsel: Whitetail Wave – Christopher Sweeney; XTO Energy – Lawrence Bender

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 and XTO filed a Response in Support of Continued Stay on October 26, 2018. On November 5, 2018, the Court entered its Order for Continued Stay of Proceedings, staying the proceedings, holding all deadlines in abeyance, and ordering that upon final disposition of the Sorum lawsuit the parties will request a status conference to schedule a new trial date and reset other deadlines. **The continued stay was affirmed on November 27, 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: David Garner/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. A hearing on the Motion to Stay

Proceedings was held scheduled November 16, 2018. **Stay was granted. Trial previously scheduled for February of 2019 was continued until February 5, 6, and 7, 2020.**

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 were filed October 22, 2018. Response Briefs were filed December 10, 2018. 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.

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.**
- **William S. Wilkinson, et. al. v. Board of University & School Lands**

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

At 1:10 PM 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 (via Telephone)
Kelly Schmidt	State Treasurer

Member Absent:

Kirsten Baesler	Superintendent of Public Instruction
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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
Mark Hanson	Nilles Law Firm – Paul Sorum Case Only
Brent Sanford	Lt. Governor
Troy Seibel	Attorney General's Office
Dave Garner	Attorney General's Office

The executive session adjourned at 2:23 PM 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. and William S. Wilkinson, et. al. v. Board of University & School Lands.

ENERGY INFRASTRUCTURE AND IMPACT OFFICE

Reallocation of Funding Request – G180002

In August 2017, the Board of University and Schools Lands (Board) approved grants for continued support for organizations combatting the effects of human trafficking and providing victim treatment and services. Of the three recipients sharing the \$809,900 in funding. The Board awarded \$93,272 to Mountrail County (grant G180002) with their sub-grantee, Council on Abused Women Services (CAWS) North Dakota. The organization requests a reallocation in funding due to new federal awards in October 2018 (see attached). This reallocation would enable CAWS North Dakota to increase their effectiveness under the state grant and address the unmet needs of human trafficking victims and allied organizations providing the services for victims under the state grant.

To reduce administrative costs across the board, this sub-grantee has cooperative agreements with other non-profit and third party entities helping deliver victim services, including:

- 1) FUSE (a statewide anti-trafficking and exploitation coalition housed at Youthworks);
- 2) The Improve Group (a third party that incorporates data to provide analysis and evaluation for the program), and;
- 3) University of Mary (conducts the demand reduction program for offenders ordered by the court to help curtail human trafficking).

Categorical changes to the amounts:

Category:	Previously Approved:	Requested Change:	Annotation:
Contracts:	FUSE Director - \$19,740	Increase \$1,627	Increased training requests
	Improve Group - \$10,000	Increase \$7,183	Additional evaluation hours
	U-Mary - \$20,000	Increase \$9,603	Additional training hours
	ND Human Trafficking Taskforce - \$27,090	Decrease \$27,090	Covered by the federal grant received, move funds to Improve Group and U-Mary
Other Items:	Admin Costs - \$4,442	Decrease \$4,442	Funds go to FUSE Director and Improve Group contracts

This grant reimbursed the sub-grantee \$14,903.36 from expenditures made this past summer.

The North Dakota Bureau of Criminal Investigation is in support of this grant request.

Motion: The Board approves the reallocation of funds for Mountrail County grant G180002 as described above.

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		

MINERALS MANAGEMENT

Board Coal 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 of University and School Land's (Board) Coal Policy needed 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 Department met with representatives from North American Coal and BNI on October 31, 2018 and requested they provide comments on the proposed North Dakota Board of University and School Lands Coal Policy Manual; no revisions were requested during this meeting. The Commissioner requested the Board provide input on the proposed Coal Policy Manual during this meeting. Additionally, an open comment period was held and no comments were received.

Motion: The Board adopts the proposed North Dakota Board of University and School Lands Coal Policy.

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

The North Dakota Board of University and School Lands Coal Policy manual is available at the Department upon request.

SURFACE MANAGEMENT

Fair Market Value Minimum Rent Policy – 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.

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 Board had a first reading of the proposed North Dakota Board of University and School Lands Fair Market Value Minimum Rent Policy on October 25, 2018. The Department requested the North Dakota Stockmen’s Association and the Little Missouri, Medora and McKenzie County Grazing Associations provide comments on the proposed North Dakota Board of University and School Lands Fair Market Value Minimum Rent Policy. A red-lined version that includes suggested revisions has been included in the Board packet for consideration by the Board. Additionally, a copy of the summary of comments on the policy has been attached for review.

Motion: The Board adopts the proposed North Dakota Board of University and School Lands Fair Market Value Minimum Rent Policy.

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

The Fair Market Value Minimum Rent Policy with addendums and summary of comments on the Proposed Fair Market Value Minimum Rent policy were provided to the Board and are available upon request at the Department.

OPERATIONS

Employee Survey Update

The Department of Trust Lands' staff received the second all team member survey this fall, which resulted in an 86 percent team response rate (most of the employees who did not respond are temporary field staff.)

Last January, leadership identified three key areas to focus our efforts on over the year:

- (1) Policies & Procedures;
- (2) Teamwork; and
- (3) Leadership.

Policies were reviewed and revised throughout the past year and are complete. Teamwork was addressed through the recommendations of an internal staff committee. Leadership was promoted through team spirit and by holding supervisors and others accountable for their respective divisions' success. Leadership learning opportunities were provided throughout the year.

The results of this year's employee survey demonstrated a significant improvement over last years; particularly in those areas in which the Department focused efforts.

Policies & Procedures	2017	2018
Q9. Processes and procedures allow me to effectively meet my customer's needs.	50%	68%
Teamwork	2017	2018
Q18. There is a climate of trust within my team.	53%	76%
Q19. My teammates display a high degree of teamwork.	56%	76%
Q20. My team has a climate in which diverse perspectives are valued.	53%	71%
Q21. My teammates develop and value relationships with others.	63%	68%
Q22. My teammates are committed to performing quality work.	70%	80%
Q45. Team members of the agency where I work trust and support each other.	30%	72%
Q46. Information and knowledge are shared openly.	23%	68%
Leadership	2017	2018
Q23. I receive the right amount of communication from my immediate supervisor.	63%	84%
Q24. My immediate supervisor believes customer service is important in our team.	80%	88%
Q25. I understand my immediate supervisor's expectations of me.	66%	84%
Q26. My immediate supervisor holds me accountable for achieving results.	72%	88%
Q27. I am comfortable giving my immediate supervisor feedback.	73%	88%
Q28. My immediate supervisor recognizes me for a job well done.	66%	80%
Q29. My immediate supervisor treats me with respect.	76%	88%
Q30. I am comfortable raising ethical concerns to my immediate supervisor.	72%	84%
Q31. My immediate supervisor encourages me to think creatively at work.	73%	76%
Q32. I have confidence in my immediate supervisor within the agency where I work.	63%	84%

Q33. My immediate supervisor is willing to take a risk on new ideas.	63%	88%
Q34. My agency's senior leadership informs team members about the things we need to know.	53%	80%
Q35. My agency's senior leadership seeks input from others before making important decisions.	40%	64%
Q36. My agency's senior leadership sets an example for others to follow.	46%	80%
Q37. My agency's senior leadership are transparent in their decisions.	43%	60%
Q38. My agency's senior leadership treats others with respect.	50%	84%
Q39. I am confident my agency's senior leadership will respond to unethical behavior.	50%	80%
Q40. I have confidence in my agency's senior leadership to make the appropriate decisions.	53%	80%

Over the course of the next year, the Department leadership will focus efforts in three key areas:

- (1) Technology, Tools & Workflow;
- (2) Teamwork; and
- (3) Leadership.

Engineering Firm Request for Proposal

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.

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.

On October 25, 2018, the Board authorized 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.

In order to fully satisfy all requirements under SB 2134, in addition to those solely related to state-issued oil and gas leases, it would also be beneficial for the engineering firm to provide this information for all property impacted by N.D.C.C. ch. 61-33.1 so that this information is available to the Department, operators, and the public. The engineering firm would provide the Department with the necessary acreage adjustment data to allow the Board and oil and gas well operators to implement any acreage adjustments, lease bonus and royalty refunds, and payment demands as may be necessary.

Motion: The Board requests proposals for analysis and GIS services for property related to the OHWM Study of the historical Missouri riverbed channel prepared by Wenck Associates, Inc. and adopted by NDIC on September 27, 2018 in Order No. 29129 to determine acreage above and below the OHWM within the following area: the northern boundary of the Fort Berthold Indian Reservation (approximately river mile 1482) to the southern border of Sections 33 and 34, Township 153 North, Range 102 West (just beyond river mile 1564), a distance of approximately 83 river miles.

Recommendation: The Board	Motion	Second	Aye	Nay	Absent
Secretary Jaeger			X		
Superintendent Baesler					X
Treasurer Schmidt	X		X		
Attorney General Stenehjem		X	X		
Governor Burgum			X		

I N V E S T M E N T S

Quarterly Investment Reports – 3rd Quarter 2018

Marcia Beard and Josh Kevan from RVK reviewed the performance of the Board of University and School Land’s (Board) investment program for the period ending September 30, 2018.

The first report they reviewed is prepared by RVK to enable the Board to monitor and evaluate the collective performance of the permanent trusts’ investments and the performance of individual managers within the program. In order to provide an overview of the program and highlight critical

information, an executive summary has been incorporated into the Board report. A more comprehensive, detailed report is also available.

After RVK's presentation, Jeff Engleson reviewed the report which details the activities of the Strategic Investment and Improvements Fund, the Coal Development Trust Fund and the Capitol Building Fund, as well as the performance of Northern Trust separate investment pool that holds the assets of these three funds.

The following items were presented to the Board and are available at the Department upon request: RVK Permanent Trust Fund Performance Analysis Report, Other Funds Managed by the Board Report, RVK Ultra-short Performance Report

An Investment Overview presentation was reviewed with the Board and is available at the Department upon request.

R E P O R T S

Report of Easements Issued by Land Commissioner 11/14/2018 to 12/6/2018

Granted to: SOUTHWESTERN PRODUCTION CORP, LAKEWOOD-CO
For the Purpose of: Permit: Access Road
Right-of-Way Number: RW0008059
Trust: A - Common Schools
Legal Description: BIL-138-102-26-SW4

Granted to: ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT
For the Purpose of: Easement: Drop Line-Gas Gathering Pipeline
Right-of-Way Number: RW0008350
Trust: A - Common Schools
Legal Description: MCK-150-98-36-SW4

Granted to: WHITING OIL AND GAS CORPORATION, DENVER-CO
For the Purpose of: Easement: Gas Gathering Pipeline
Right-of-Way Number: RW0008352
Trust: A - Common Schools
Legal Description: WIL-156-97-36-NW4

Granted to: ANDEAVOR FIELD SERVICES LLC, SAN ANTONIO-TX
For the Purpose of: Easement: Drop Line-Oil Gathering Pipeline
Right-of-Way Number: RW0008372
Trust: A - Common Schools
Legal Description: DUN-146-94-36-SW4

Granted to: NP RESOURCES LLC, DENVER-CO
For the Purpose of: Easement: Salt Water Disposal Well - Extension
Right-of-Way Number: RW0008382
Trust: A - Common Schools
Legal Description: GOL-143-103-36-NE4, NW4

Granted to: MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND
For the Purpose of: Easement: Drop Line-Buried Electric Distribution Line
Right-of-Way Number: RW0008383
Trust: A - Common Schools
Legal Description: DUN-146-94-36-SW4

Granted to: **WWC ENGINEERING, HELENA-MT**
For the Purpose of: Permit: Planning & Preconstruction Survey
Right-of-Way Number: RW0008397
Damage Payment to Lessee: N/A
Trust: A - Common Schools
Legal Description: N/A

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: **SELECT ENERGY SERVICES LLC, WILLISTON-ND**
For the Purpose of: Letter of Permission: Temporary Water Layflat Line
Right-of-Way Number: RW0008400
Trust: A - Common Schools
Legal Description: MCK-153-94-36-SW4

Granted to: **TEK INDUSTRIES, MANDAREE-ND**
For the Purpose of: Letter of Permission: Temporary Water Layflat Line
Right-of-Way Number: RW0008401
Trust: A - Common Schools
Legal Description: MOU-150-92-10-S2SW4

Granted to: **BRIDGER PIPELINE LLC, CASPER-WY**
For the Purpose of: Easement-Amend: Oil Gathering Pipeline
Right-of-Way Number: RW0008404
Trust: A - Common Schools
Legal Description: DUN-147-96-36-NE4

Granted to: **CATES EARTH SCIENCE TECHNOLOGIES INC, BISMARCK ND**
For the Purpose of: Letter of Permission: Temporary Water Layflat Line
Right-of-Way Number: RW0008405
Trust: A - Common Schools
Legal Description: MOU-151-92-36-W2NE4SW4, NW4SW4, S2SW4

Granted to: **KDK CONSULTING, WEST FARGO-ND**
For the Purpose of: Permit: Planning & Preconstruction Survey
Right-of-Way Number: RW0008410
Trust: A - Common Schools
Legal Description: N/A

Granted to: **MBI ENERGY SERVICES, KILLDEER-ND**
For the Purpose of: Letter of Permission: Temporary Water Layflat Line
Right-of-Way Number: RW0008411
Trust: A - Common Schools
Legal Description: MCK-149-96-16-NW4, SE4, SW4

Investment Updates

Asset Allocation

The table below shows the unaudited status of the permanent trusts' asset allocation as of November 30, 2018. Audited November numbers will most likely not be available before the Board of University and School Lands (Board) board meeting:

Account/Asset Class	Long-Term Asset Allocation	11/30/18 Actual Allocation \$	11/30/18 Actual Allocation %	11/30/18 % Diff.
Large Cap US Equity	13.3%	\$ 602,094,618	13.4%	0.1%
Mid/Small Cap US Equity	3.7%	\$ 164,733,925	3.7%	0.0%
International Equity	13.3%	\$ 580,081,432	12.9%	-0.4%
Emerging Market Equity	3.7%	\$ 168,471,343	3.8%	0.1%
Total Equities	34.0%	\$ 1,515,381,317	33.8%	-0.2%
Core Fixed Income	12.6%	\$ 646,903,670	14.4%	1.8%
Non-Core Fixed Income	8.4%	\$ 283,272,774	6.3%	-2.1%
Total Fixed Income	21.0%	\$ 930,176,445	20.7%	-0.3%
Total Absolute Return	20.0%	\$ 910,164,143	20.3%	0.3%
Commodities	3.0%	\$ 127,513,432	2.8%	-0.2%
MLPs	3.0%	\$ 132,673,028	3.0%	0.0%
TIPS	2.0%	\$ 87,834,555	2.0%	0.0%
Natural Resource Equities	2.0%	\$ 85,484,939	1.9%	-0.1%
Total Inflation Strategies	10.0%	\$ 433,505,954	9.7%	-0.3%
Core Real Estate	8.0%	\$ 381,318,549	8.5%	0.5%
Core Plus Real Estate	7.0%	\$ 314,628,272	7.0%	0.0%
Total Real Estate	15.0%	\$ 695,946,821	15.5%	0.5%
Total Asset	100.0%	\$ 4,485,174,680	100.0%	

Angelo Gordon (\$47.25 million, 1.1% of PTF assets)

Direct Lending Fund

The Angelo Gordon Direct Lending portfolio was funded in late-August, with an initial call of \$6 million. There have been five additional calls totaling \$48.25 million, including the most recent call for \$7.5 million that was transferred to Angelo Gordon on December 10, 2018. Once the December transfer is made, the trusts will have transferred 36.5% of the total \$150 million committed made to this fund.

BND Farm Loan Pool (\$12.8 million, 0.3% of PTF assets)

Direct Farm Lending

On October 26, 2018, \$5 million was sent to the Farm Loan Pool account at BND in the anticipation of the funding four different loans. This was the first transfer of funds to the farm loan pool since late-2009; the first loan was funded in late-October.

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 million of additional loans over the next few months.

The Quarterly Financial Statement (Unaudited) for Period Ended September 30, 2018 was provided to the Board for review.

A D J O U R N

There being no further business, the meeting was adjourned at 3:55 PM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands